AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

match are expended if these expenditures are not inconsistent with the Domestic Volunteer Service Act of 1973, as amended.

APPENDIX TO PART 1235—PROCEDURES TO RESOLVE QUESTIONED COSTS

I. Because implementation of section 224 may impact on how questioned costs are treated when raised in the context of an audit or program monitoring exercise, this appendix explains how questioned costs will be resolved. This part does not create any new auditing requirements.

II. All expenditures in support of a federal grant may be reviewed by an authorized audit or program monitoring review. Adequate financial records and supporting documentation must be maintained for both cash and in-kind contributions. (See ACTION's Grants Management Handbook for Grantees, ACTION Order 2650.2)

III. Three definitions are important to understand in relation to resolution of questioned costs:

(a) The term ''questioned cost'', pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. Appendix 3, means an expenditure of grant funds that is questioned because of:

(1) An alleged violation of a provision of the Domestic Volunteer Service Act of 1973, as amended, or other law, regulation, or grant governing the expenditure of funds by the grantee;

(2) A finding that at the time of an audit or program review the cost is not supported by adequate documentation; or

(3) A finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

(b) The term ''disallowed cost'' means a questioned cost related to federal or local match expenditures that ACTION management, in a management decision, has sustained or agreed should not be charged to the Government.

(c) The term ''program finding'' means a questioned cost identified as from the grantee's excess locally generated contributions which is referred to ACTION program management for consideration.

IV. When costs are questioned from locally generated contributions, a distinction will be made between costs as part of the *local match* and costs as part of the *excess contribution*.

V. Normally, when expenditures of Federal or non-Federal local match funds are questioned, a management decision is made to either allow or disallow the costs. When an expenditure of excess locally generated funds is questioned, however, it will not be treated as a potential disallowed cost but identified as a program finding and referred to ACTION program management for resolution.

VI. Program findings may include, but are not limited to:

(a) Inadequate records to document the expenditures and provide assurance of the grantee's internal controls over the use of its cash and in-kind contributions; and

(b) Evidence that expenditures were made that are inconsistent with the Domestic Volunteer Service Act of 1973, as amended.

VII. Once program findings are determined by ACTION program management, decisions may be made to take corrective steps, including but not limited to:

(a) Requiring the grantee to adhere to stated program goals and objectives as a condition for future funding;

(b) Requiring the grantee to adopt a stronger financial management and control system.

Based on past experience, it is expected that corrective steps will be needed only in rare instances.

VIII. If the grantee has raised locally generated contributions in excess of the matching requirement and those expenditures are not questioned, and are consistent with the DVSA of 1973, as amended, for local match expenditures, they may be substituted for any disallowed portion of local match costs in order for the grantee to meet its matching requirement.

CHAPTER XIII—OFFICE OF HUMAN DEVELOPMENT SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER A—OFFICE OF HUMAN DEVELOPMENT SERVICES, GENERAL PROVISIONS [RESERVED]

SUBCHAPTER B—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, HEAD START PROGRAM

Part		*Page*
1301	Head Start grants administration	93
1302	Policies and procedures for selection, initial funding, and refunding of Head Start grantees, and for selection of replacement grantees	98
1303	Appeal procedures for Head Start grantees and current or prospective delegate agencies	104
1304	Program performance standards for the operation of Head Start programs by grantee and delegate agencies	119
1305	Eligibility, recruitment, selection, enrollment and attendance in Head Start	146
1306	Head Start staffing requirements and program options	151
1308	Head Start program performance standards on services for children with disabilities	160
1309	Head Start facilities purchase, major renovation and construction	189
1310	Head Start transportation	200
1311	Head Start Fellows Program	207

SUBCHAPTER C—THE ADMINISTRATION ON AGING, OLDER AMERICANS PROGRAMS

1321	Grants to State and community programs on aging	209
1326	Grants to Indian tribes for support and nutrition services	224

Part *Page*

1328 Grants for supportive and nutritional services to older Hawaiian natives 228

SUBCHAPTER D—THE ADMINISTRATION FOR NATIVE AMERICANS, NATIVE AMERICAN PROGRAMS

1336 Native American programs 233

SUBCHAPTER E—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT PROGRAM

1340 Child abuse and neglect prevention and treatment 247

SUBCHAPTER F—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, FAMILY AND YOUTH SERVICES BUREAU

1351 Runaway and Homeless Youth Program 261

SUBCHAPTER G—THE ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, FOSTER CARE MAINTENANCE PAYMENTS, ADOPTION ASSISTANCE, AND CHILD AND FAMILY SERVICES

1355 General 266
1356 Requirements applicable to Title IV-E 309
1357 Requirements applicable to Title IV-B 342

SUBCHAPTER H—FAMILY VIOLENCE PREVENTION AND SERVICES PROGRAMS

1370 Family violence prevention and services programs 357

SUBCHAPTER I—THE ADMINISTRATION ON DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DISABILITIES PROGRAM

1385 Requirements applicable to the developmental disabilities program 358
1386 Formula grant programs 361
1387 Projects of national significance 379
1388 The university affiliated programs 380

SUBCHAPTERS J–K [RESERVED]

SUBCHAPTER A—OFFICE OF HUMAN DEVELOPMENT SERVICES, GENERAL PROVISIONS [RESERVED] SUBCHAPTER B—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, HEAD START PROGRAM

PART 1301—HEAD START GRANTS ADMINISTRATION

Subpart A—General

Sec.
1301.1 Purpose and scope.
1301.2 Definitions.

Subpart B—General Requirements

1301.10 General.
1301.11 Insurance and bonding.
1301.12 Annual audit of Head Start programs.
1301.13 Accounting system certification.

Subpart C—Federal Financial Assistance

1301.20 Matching requirements.
1301.21 Criteria for increase in Federal financial assistance.

Subpart D—Personnel and General Administration

1301.30 General requirements.
1301.31 Personnel policies.
1301.32 Limitations on costs of development and administration of a Head Start program.
1301.33 Delegation of program operations.
1301.34 Grantee appeals.

AUTHORITY: 42 U.S.C. 9801 et seq.

SOURCE: 44 FR 24061, Apr. 24, 1979, unless otherwise noted.

Subpart A—General

§ 1301.1 Purpose and scope.

This part establishes regulations applicable to program administration and grants management for all grants under the Act, including grants for technical assistance and training and grants for research, demonstration, and pilot projects.

§ 1301.2 Definitions.

For the purposes of this part, unless the context requires otherwise:

Act means title V of the Economic Opportunity Act of 1964, as amended.

Budget period means the interval of time, into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

Community means a city, county, a multi-city or multi-county unit within a state, an Indian reservation, or any neighborhood or other geographic area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to operate a Head Start program.

Delegate agency means a public or private non-profit organization or agency to which a grantee has delegated all or part of its responsibility for operating a Head Start program.

Development and administrative costs mean costs incurred in accordance with an approved Head Start budget which do not directly relate to the provision of program component services, including services to children with disabilities, as set forth and described in the Head Start program performance standards (45 CFR part 1304).

Dual benefit costs mean costs incurred in accordance with an approved Head Start budget which directly relate to both development and administrative functions and to the program component services, including services to children with disabilities, as set forth and described in the Head Start program performance standards (45 CFR part 1304).

Head Start Agency or ''grantee'' means a local public or private non-profit agency designated to operate a Head Start program by the responsible HHS official, in accordance with part 1302 of this chapter.

Head Start program means a program, funded under the Act and carried out by a Head Start agency or a delegate agency, that provides ongoing comprehensive child development services.

Independent auditor means an individual accountant or an accounting firm, public or private agency, association, corporation, or partnership, that is sufficiently independent of the agency being audited to render objective

and unbiased opinions, conclusions, and judgments.

Indirect costs mean those costs of a Head Start agency, as approved by the cognizant agency, the agency which has authority to set the grantee's indirect cost rate, which are not readily identifiable with a particular project or program but nevertheless are necessary to the general operation of the agency and the conduct of its activities.

Major disaster means any natural disaster or catastrophe which is of such severity and magnitude as to directly affect the capability of the Head Start agency of agencies providing Head Start programs to the damaged community to continue the programs without an increase in the Federal share above 80 percent.

Program costs mean costs incurred in accordance with an approved Head Start budget which directly relate to the provision of program component services, including services to children with disabilities, as set forth and described in the Head Start Program Performance Standards (45 CFR part 1304).

Responsible HHS official means the official of the Department of Health and Human Services who has authority to make grants under the Act.

Total approved costs mean the sum of all costs of the Head Start program approved for a given budget period by the Administration on Children, Youth and Families, as indicated on the Financial Assistance Award. Total approved costs consist of the Federal share plus any approved non-Federal share, including non-Federal share above the statutory minimum.

[44 FR 24061, Apr. 24, 1979, as amended at 57 FR 41884, Sept. 14, 1992]

Subpart B—General Requirements

§ 1301.10 General.

(a) Except as specified in paragraph (b) of this section, the following HHS regulations shall apply to all grants made under the Act:

45 CFR part 16 Department grant appeals process (except as provided in § 1301.34)
45 CFR part 46 Protection of Human Subjects
45 CFR part 74 Administration of grants
45 CFR part 75 Informal grant appeals procedures (Indirect cost rates and other cost allocations)
45 CFR part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964
45 CFR part 81 Practice and procedure for hearings under part 80
45 CFR part 84 Nondiscrimination on the basis of handicap in Federally assisted programs.

(b) 45 CFR part 74 is superseded as follows:

(1) Section 1301.11 of this subpart supersedes § 74.15 of part 74 with respect to insurance and bonding of private, non-profit Head Start agencies; and

(2) Section 1301.12 of this subpart supersedes § 74.61 of part 74 with respect to audit requirements for all Head Start agencies.

§ 1301.11 Insurance and bonding.

(a) Private nonprofit Head Start agencies and their delegate agencies shall carry reasonable amounts of student accident insurance, liability insurance for accidents of their premises, and transportation liability insurance.

(b) Private nonprofit Head Start and delegate agencies shall make arrangements for bonding officials and employees authorized to disburse program funds.

§ 1301.12 Annual audit of Head Start programs.

(a) An audit of the Head Start program covering the prior budget period of each Head Start agency and its delegate agencies, if any, shall be made by an independent auditor to determine:

(1) Whether the agency's financial statements are accurate;

(2) Whether the agency is complying with the terms and conditions of the grant; and

(3) Whether appropriate financial and administrative procedures and controls have been installed and are operating effectively. Head Start agencies shall either include delegate agency audits as a part of their own audits or provide for separate independent audits of their delegate agencies.

(b) Upon a written request showing necessity, the responsible HHS official may approve a period other than the

prior budget period to be covered by the annual audit.

(c) Unless otherwise approved by the responsible HHS official, the report of the audit shall be submitted to the responsible HHS official, in the manner and form prescribed by him or her, within 4 months after the prior budget period.

§ 1301.13 Accounting system certification.

(a) Upon request by the responsible HHS official, each Head Start agency or its delegate agency shall submit an accounting system certification, prepared by an independent auditor, stating that the accounting system or systems established by the Head Start agency, or its delegate, has appropriate internal controls for safeguarding assets, checking the accuracy and reliability of accounting data, and promoting operating efficiency.

(b) A Head Start agency shall not delegate any of its Head Start program responsibilities to a delegate agency prior to receiving a certification that the delegate agency's accounting system meets the requirements specified in paragraph (a) of this section.

Subpart C—Federal Financial Assistance

§ 1301.20 Matching requirements.

(a) Federal financial assistance granted under the act for a Head Start program shall not exceed 80 percent of the total costs of the program, unless:

(1) An amount in excess of that percentage is approved under section 1301.21; or

(2) The Head Start agency received Federal financial assistance in excess of 80 percent for any budget period falling within fiscal year 1973 or fiscal year 1974. Under the circumstances described in clause

(3) Of the preceding sentence, the agency is entitled to receive the same percentage of Federal financial assistance that it received during such budget periods.

(b) The non-Federal share will not be required to exceed 20 percent of the total costs of the program.

(c) Federal financial assistance awarded to Head Start grantees for training and technical assistance activities shall be included in the Federal share in determining the total approved costs of the program. Such financial assistance is, therefore, subject to the 20 percent non-Federal matching requirement of this subpart.

[44 FR 24061, Apr. 24, 1979, as amended at 57 FR 41884, Sept. 14, 1992]

§ 1301.21 Criteria for increase in Federal financial assistance.

The responsible HHS official, on the basis of a written application and any supporting evidence he or she may require, will approve financial assistance in excess of 80 percent if he or she concludes that the Head Start agency has made a reasonable effort to meet its required non-Federal share but is unable to do so; and the Head Start agency is located in a county:

(a) That has a personal per capita income of less that $3,000 per year; or

(b) That has been involved in a major disaster.

Subpart D—Personnel and General Administration

§ 1301.30 General requirements.

Head Start agencies and delegate agencies shall conduct the Head Start program in an effective and efficient manner, free of political bias or family favoritism. Each agency shall also provide reasonable public access to information and to the agency's records pertaining to the Head Start program.

§ 1301.31 Personnel policies.

(a) *Written policies.* Grantee and delegate agencies must establish and implement written personnel policies for staff, that are approved by the Policy Council or Policy Committee and that are made available to all grantee and delegate agency staff. At a minimum, such policies must include:

(1) Descriptions of each staff position, addressing, as appropriate, roles and responsibilities, relevant qualifications, salary range, and employee benefits (see 45 CFR 1304.52(c) and (d));

(2) A description of the procedures for recruitment, selection and termination (see paragraph (b) of this Section, Staff recruitment and selection procedures);

(3) Standards of conduct (see 45 CFR 1304.52(h));

(4) Descriptions of methods for providing staff and volunteers with opportunities for training, development, and advancement (see 45 CFR 1304.52(k), Training and development);

(5) A description of the procedures for conducting staff performance appraisals (see 45 CFR 1304.52(i), Staff performance appraisals);

(6) Assurances that the program is an equal opportunity employer and does not discriminate on the basis of gender, race, ethnicity, religion or disability; and

(7) A description of employee-management relation procedures, including those for managing employee grievances and adverse actions.

(b) *Staff recruitment and selection procedures.* (1) Before an employee is hired, grantee or delegate agencies must conduct:

(i) An interview with the applicant;

(ii) A verification of personal and employment references; and

(iii) A State or national criminal record check, as required by State law or administrative requirement. If it is not feasible to obtain a criminal record check prior to hiring, an employee must not be considered permanent until such a check has been completed.

(2) Grantee and delegate agencies must require that all current and prospective employees sign a declaration prior to employment that lists:

(i) All pending and prior criminal arrests and charges related to child sexual abuse and their disposition;

(ii) Convictions related to other forms of child abuse and neglect; and

(iii) All convictions of violent felonies.

(3) Grantee and delegate agencies must review each application for employment individually in order to assess the relevancy of an arrest, a pending criminal charge, or a conviction.

(c) *Declaration exclusions.* The declaration required by paragraph (b)(2) of this section may exclude:

(1) Traffic fines of $200.00 or less;

(2) Any offense, other than any offense related to child abuse and/or child sexual abuse or violent felonies, committed before the prospective employee's 18th birthday which was finally adjudicated in a juvenile court or under a youth offender law;

(3) Any conviction the record of which has been expunged under Federal or State law; and

(4) Any conviction set aside under the Federal Youth Corrections Act or similar State authority.

(d) *Probationary period.* The policies governing the recruitment and selection of staff must provide for a probationary period for all new employees that allows time to monitor employee performance and to examine and act on the results of the criminal record checks discussed in paragraph (b) (1) of this Section.

(e) *Reporting child abuse or sexual abuse.* Grantee and delegate agencies must develop a plan for responding to suspected or known child abuse or sexual abuse as defined in 45 CFR 1340.2(d) whether it occurs inside or outside of the program.

(The information collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraph (b).)

[61 FR 57225, Nov. 5, 1996, as amended at 63 FR 2313, Jan. 15, 1998]

§ 1301.32 Limitations on costs of development and administration of a Head Start program.

(a) *General provisions.* (1) Allowable costs for developing and administering a Head Start program may not exceed 15 percent of the total approved costs of the program, unless the responsible HHS official grants a waiver approving a higher percentage for a specific period of time not to exceed twelve months.

(2) The limit of 15 percent for development and administrative costs is a maximum. In cases where the costs for development and administration are at or below 15 percent, but are judged by the responsible HHS official to be excessive, the grantee must eliminate excessive development and administrative costs.

(b) *Development and administrative costs.* (1) Costs classified as development and administrative costs are those costs related to the overall management of the program. These costs can be in both the personnel and nonpersonnel categories.

(2) Grantees must charge the costs of organization-wide management functions as development and administrative costs. These functions include planning, coordination and direction; budgeting, accounting, and auditing; and management of purchasing, property, payroll and personnel.

(3) Development and administrative costs include, but are not limited to, the salaries of the executive director, personnel officer, fiscal officer/bookkeeper, purchasing officer, payroll/insurance/property clerk, janitor for administrative office space, and costs associated with volunteers carrying out administrative functions.

(4) Other development and administrative costs include expenses related to administrative staff functions such as the costs allocated to fringe benefits, travel, per diem, transportation and training.

(5) Development and administrative costs include expenses related to bookkeeping and payroll services, audits, and bonding; and, to the extent they support development and administrative functions and activities, the costs of insurance, supplies, copy machines, postage, and utilities, and occupying, operating and maintaining space.

(c) *Program costs.* Program costs include, but are not limited to:

(1) Personnel and non-personnel costs directly related to the provision of program component services and component training and transportation for staff, parents and volunteers;

(2) Costs of functions directly associated with the delivery of program component services through the direction, coordination or implementation of a specific component;

(3) Costs of the salaries of program component coordinators and component staff, janitorial and transportation staff involved in program component efforts, and the costs associated with parent involvement and component volunteer services; and

(4) Expenses related to program staff functions, such as the allocable costs of fringe benefits, travel, per diem and transportation, training, food, center/classroom supplies and equipment, parent activities funds, insurance, and the occupation, operation and maintenance of program component space, including utilities.

(d) *Dual benefit costs.* (1) Some costs benefit both the program components as well as development and administrative functions within the Head Start program. In such cases, grantees must identify and allocate appropriately the portion of the costs that are for development and administration.

(2) Dual benefit costs include, but are not limited to, salaries, benefits and other costs (such as travel, per diem, and training costs) of staff who perform both program and development and administrative functions. Grantees must determine and allocate appropriately the part of these costs dedicated to development and administration.

(3) Space costs, and costs related to space, such as utilities, are frequently dual benefit costs. The grantee must determine and allocate appropriately the amount or percentage of space dedicated to development and administration.

(e) *Relationship between development and administrative costs and indirect costs.* (1) Grantees must categorize costs in a Head Start program as development and administrative or program costs. These categorizations are separate from the decision to charge such costs directly or indirectly.

(2) Grantees must charge all costs, whether program or development and administrative, either directly to the project or as part of an indirect cost pool.

(f) *Requirements for compliance.* (1) Head Start grantees must calculate the percentage of their total approved costs allocated to development and administration as a part of their budget submission for initial funding, refunding or for a request for supplemental assistance in connection with a Head Start program. These costs may be a part of the direct or the indirect cost pool.

(2) The Head Start grant applicant shall delineate all development and administrative costs in its application.

(3) Indirect costs which are categorized as program costs must be fully explained in the application.

(g) *Waiver.* (1) The responsible HHS official may grant a waiver of the 15

percent limitation on development and administrative costs and approve a higher percentage for a specific period of time not to exceed twelve months. The conditions under which a waiver will be considered are listed below and encompass those situations under which development and administrative costs are being incurred, but the provision of actual services has not begun or has been suspended. A waiver may be granted when:

(i) A new Head Start grantee or delegate agency is being established or services are being expanded by an existing Head Start grantee or delegate agency, and the delivery of component services to children and families is delayed until all program development and planning is well underway or completed; or

(ii) Component services are disrupted in an existing Head Start program due to circumstances not under the control of the grantee.

(2) A Head Start grantee that estimates that the cost of development and administration will exceed 15 percent of total approved costs must submit a request for a waiver that explains the reasons for exceeding the limitation. This must be done as soon as the grantee determines that it cannot comply with the 15 percent limit, regardless of where the grantee is within the grant funding cycle.

(3) The request for the waiver must include the period of time for which the waiver is requested. It must also describe the action the grantee will take to reduce its development and administrative costs so that the grantee will be able to assure that these costs will not exceed 15 percent of the total approved costs of the program after the completion of the waiver period.

(4) If granted, the waiver and the period of time for which it will be granted will be indicated on the Financial Assistance Award.

(5) If a waiver requested as a part of a grant application for funding or refunding is not approved, no Financial Assistance Award will be awarded to the Head Start program until the grantee resubmits a revised budget that complies with the 15 percent limitation.

(Information collection requirements contained in paragraphs (f) (2) and (3) of this section were approved on January 26, 1993, by the Office of Management and Budget under Control Number 0980–1043).

[57 FR 41885, Sept. 14, 1992, as amended at 58 FR 26918, May 6, 1993]

§ 1301.33 Delegation of program operations.

Federal financial assistance is not available for program operations where such operations have been delegated to a delegate agency by a Head Start agency unless the delegation of program operations is made by a written agreement and has been approved by the responsible HHS official before the delegation is made.

§ 1301.34 Grantee appeals.

An agency receiving a grant under the Act for technical assistance and training, or for a research, demonstration, or pilot project may appeal adverse decisions in accordance with part 16 of this title. Head Start agencies are also subject to the appeal procedures in part 16 except appeals by those agencies for suspension, termination and denial of refunding are subject to part 1303 of this title.

PART 1302—POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING, AND REFUNDING OF HEAD START GRANTEES, AND FOR SELECTION OF REPLACEMENT GRANTEES

Subpart A—General

Sec.
1302.1 Purpose and scope.
1302.2 Definitions.
1302.3 Consultation with public officials and consumers.
1302.4 Transfer of unexpended balances.
1302.5 Notice for show cause and hearing.

Subpart B—Basis for Selection of Grantees

1302.10 Selection among applicants.

1302.11 Selection among applicants to replace grantee.

Subpart C—Change in Grantee Requiring Amendment of Approved Application or Replacement of Head Start Program

1302.20 Grantee to show both legal status and financial viability.
1302.21 Grantee shows legal status but not financial viability.
1302.22 Suspension or termination of grantee which shows financial viability but not legal status.
1302.23 Suspension or termination of grantee which shows legal status but not financial viability.
1302.24 Denial of refunding of grantee.
1302.25 Control of funds of grantee scheduled for change.

Subpart D—Replacement of Indian Tribal Grantees

1302.30 Procedure for identification of alternative agency.
1302.31 Requirements of alternative agency.
1302.32 Alternative agency—prohibition.

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

SOURCE: 44 FR 24062, Apr. 24, 1979, unless otherwise noted.

Subpart A—General

§ 1302.1 Purpose and scope.

The purpose of this part is to set forth policies and procedures for the selection, initial funding and refunding of Head Start grantees and for the selection of replacement grantees in the event of the voluntary or involuntary termination, or denial of refunding, of Head Start programs. It particularly provides for consideration of the need for selection of a replacement grantee where the continuing eligibility (legal status) and fiscal capability (financial viability) of a grantee to operate a Head Start program is cast in doubt by the cessation of funding under section 519 of the Act or by the occurrence of some other major change. It is intended that Head Start 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 grantees be fully protected.

§ 1302.2 Definitions.

As used in this part—

Act means Title V of The Economic Opportunity Act of 1964, as amended.

Approvable application means an application for a Head Start program, either as an initial application or as an application to amend an approved application governing an on-going Head Start program, which, in addition to showing that the applicant has legal status and financial viability, provides for comprehensive services for children and families and for effective and responsible administration which are in conformity with the Act and applicable regulations, the Head Start Manual and Head Start policies.

Community action agency means a public or private nonprofit agency or organization designated as a community action agency by the Director of the Community Services Administration pursuant to section 210(a) or section 210(d) of the Act.

Community action program means a program operated by a community action agency.

Financial viability means the capability of an applicant or the continuing capability of a grantee to furnish the non-Federal share of the cost of operating an approvable or approved Head Start program.

Head Start grantee or *grantee* means a public or private nonprofit agency or organization whose application to operate a Head Start program pursuant to section 514 of the Act has been approved by the responsible HHS official.

Indian tribe means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (c)) or established pursuant to such Act (43 U.S.C. 1601 *et seq.*) that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

Legal status means the existence of an applicant or grantee as a public agency or organization under the law of the State in which it is located, or existence as a private nonprofit agency or organization as a legal entity recognized under the law of the State in

which it is located. Existence as a private non-profit agency or organization may be established under applicable State or Federal law.

Responsible HHS official means the official of the Department of Health and Human Services who has authority to make grants under the Act.

[44 FR 24062, Apr. 24, 1979, as amended at 63 FR 34329, June 24, 1998]

§ 1302.3 Consultation with public officials and consumers.

Responsible HHS officials will consult with Governors, or their representatives, appropriate local general purpose government officials, and Head Start Policy Council and other appropriate representatives of communities to be served on the proposed replacement of Head Start grantees.

§ 1302.4 Transfer of unexpended balances.

When replacing a grantee, unexpended balances of funds in the possession of such grantee in the fiscal year following the fiscal year for which the funds were appropriated may be transferred to the replacement grantee if the approved application of the replacement grantee provides for the continuation of the Head Start services without significant change to the same enrollees and their parents and undertakes to offer employment to the staff of the terminating grantee. A letter of concurrence in the change should be obtained from the terminating grantee whenever possible.

§ 1302.5 Notice for show cause and hearing.

(a) Except in emergency situations, the responsible HHS official will not suspend financial assistance under the Act unless the grantee has been given an opportunity, in accordance with part 1303, subpart D, of this chapter, to show cause why such action should not be taken.

(b) The responsible HHS official will not terminate a grant, suspend a grant for longer than 30 days, or deny refunding to a grantee, unless the grantee has been given an opportunity for a hearing in accordance with part 1303 of this chapter.

Subpart B—Bases for Selection of Grantees

§ 1302.10 Selection among applicants.

(a) The basis for selection of applicants proposing to operate a Head Start program will be the extent to which the applicants demonstrate in their application the most effective Head Start program.

(b) In addition to the applicable criteria at section 641(d) of the Head Start Act, the criteria for selection will include:

(1) The cost effectiveness of the proposed program;

(2) The qualifications and experience of the applicant and the applicant's staff in planning, organizing and providing comprehensive child development services at the community level, including the administrative and fiscal capability of the applicant to administer all Head Start programs carried out in the designated service area;

(3) The quality of the proposed program as indicated by adherence to or evidence of the intent and capability to adhere to Head Start Performance Standards (in 45 CFR part 1304) and program policies, including the opportunities provided for employment of target area residents and career development for paraprofessional and other staff and provisions made for the direct participation of parents in the planning, conduct and administration of the program;

(4) The proposed program design and option including the suitability of facilities and equipment proposed to be used in carrying out the program, as it relates to community needs and as the applicant proposes to implement the program in accordance with program policies and regulations; and

(5) The need for Head Start services in the community served by the applicant.

[57 FR 41887, Sept. 14, 1992]

§ 1302.11 Selection among applicants to replace grantee.

The bases for making a selection among applicants which submit approvable applications to replace a grantee, in addition to the basis in § 1302.10 of this part, shall be:

(a) The extent to which provision is made for a continuation of services to the eligible children who have been participating as enrollees in the program;

(b) The extent to which provision is made for continuation of services to the target area or areas served by the program; and

(c) The extent to which provision is made for continued employment by the applicant of the qualified personnel of the existing program.

Subpart C—Change in Grantee Requiring Amendment of Approved Application or Replacement of Head Start Program

§ 1302.20 Grantee to show both legal status and financial viability.

(a) Upon the occurrence of a change in the legal condition of a grantee or of a substantial diminution of the financial resources of a grantee, or both, for example, such as might result from cessation of grants to the grantee under section 514 of the Act, the grantee is required within 30 days after the effective date of the regulations in this Part or the date the grantee has notice or knowledge of the change, whichever is later, to show in writing to the satisfaction of the responsible HHS official that it has and will continue to have legal status and financial viability. Failure to make this showing may result in suspension, termination or denial of refunding.

(b) The responsible HHS official will notify the grantee in writing of the decision as to the grantee's legal status and financial viability within 30 days after receiving the grantee's written submittal.

(c) When it is consistent with proper and efficient administration, the responsible HHS official may extend a grantee's program year to end on the date when a change in its legal condition or a substantial diminution of financial resources, or both, is scheduled to take place.

§ 1302.21 Grantee shows legal status but not financial viability.

(a) If a grantee shows legal status but impaired financial viability the responsible HHS official will entertain a timely request for amendment of the grantee's approved application which restores the grantee's financial viability either by a reduction in the program which produces minimum disruption to services and functions, or by an amendment which incorporates essential functions and services not previously funded as part of the total cost of the Head Start program, and, therefore, requires an increase in the amount of the Head Start grant but which will not result in a Federal share of the total cost of the Head Start program in excess of the percentage authorized by the Act or applicable regulations. In considering such a request which includes an increase in the Head Start grant the responsible HHS official will take into account the funds available to him for obligation and whether the proposed increase is consistent with that distribution of Head Start funds which:

(1) Maximizes the number of childen served within his area of responsibility, or in the case of experimental or demonstration programs, the experimental or demonstration benefits to be achieved, and

(2) Maintains approximately the same distribution of Head Start program funds to States as exist during the fiscal year in which his decision is made.

(b) A request for amendment will be considered to be timely if it is included with the written submittal required by § 1302.20(a) of this part, submitted within 30 days after receiving the notice required by § 1302.20(b) of this part, or submitted as a part of a timely application for refunding.

(c) The grantee will be notified in writing by the responsible HHS official within 30 days after submission of the requested amendment of the decision to approve or disapprove the requested amendment. If the requested amendment is disapproved the notice will contain a statement of the reasons for disapproval.

§ 1302.22 Suspension or termination of grantee which shows financial viability but not legal status.

If a grantee fails to show that it will continue to have legal status after the

date of change even though it may show financial viability, the grant shall be suspended or terminated or refunding shall be denied as of the date of change. If it appears reasonable to the responsible HHS official that the deficiency in legal status will be corrected within 30 days he may suspend the grant for not to exceed 30 days after the date of change or the date of submission of a timely request for amendment. If such correction has not been made within the 30 day period the grant shall be terminated.

§ 1302.23 Suspension or termination of grantee which shows legal status but not financial viability.

(a) If the date of change of financial viability precedes or will precede the end of the grantee's program year the grant will be suspended or terminated on that date, or, if a request for amendment has been submitted under § 1302.21 of this part, upon written notice of disapproval of the requested amendment, whichever is later. If it appears reasonable to the responsible HHS official that the deficiency in financial viability will be corrected within 30 days he may suspend the grant for not to exceed 30 days after the date of change or notice of disapproval. If such correction has not been made within the 30 day period the grant will be terminated.

§ 1302.24 Denial of refunding of grantee.

(a) If the date of change will coincide with or will come after the end of the program year and the grantee has notice or knowledge of such change prior to the end of the program year any action taken to approve the grantee's application for refunding for the following program year shall be subject to rescission or ratification depending upon the decision of the responsible HHS official on the grantee's legal status and financial viability and on any requested amendment submitted by the grantee. If the requested amendment is disapproved the responsible HHS official may extend the program year in accordance with § 1302.20(c) of this part.

(b) If the date of change coincides with the end of the program year and the grantee does not have notice or knowledge of the change prior thereto and the grantee's application for refunding for the following program year has been approved, such approval shall be subject to rescission or ratification depending upon the decision of the responsible HHS official on the grantee's legal status and viability and on any requested financial amendment submitted by the grantee.

(c) If the date of change will coincide with or will come after the end of the program year and if the responsible HHS official has prior notice thereof from the grantee or other official source such as the Community Services Administration action to approve any application for refunding submitted by the grantee shall be deferred pending decision by the responsible HHS official on the grantee's legal status and financial viability and any requested amendment submitted by the grantee.

(d) When the responsible HHS official determines to approve a requested amendment for refunding he will approve it for the full term of the proposed program period, if that period as approved is no longer than a program year.

§ 1302.25 Control of funds of grantee scheduled for change.

Responsible HHS officials will place strict controls on the release of grant funds to grantees which are scheduled for change by cessation of their grants under section 519 of the Act. Specifically, the following controls will be established:

(a) Funds will be released on a monthly basis regardless of the form of grant payment.

(b) Funds released each month will be limited to the amount required to cover actual disbursements during that period for activities authorized under the approved Head Start program.

(c) The amount of funds released must be approved each month by the responsible HHS official.

Subpart D—Replacement of Indian Tribal Grantees

SOURCE: 63 FR 34329, June 24, 1998, unless otherwise noted.

§ 1302.30 Procedure for identification of alternative agency.

(a) An Indian tribe whose Head Start grant has been terminated, or which has been denied refunding as a Head Start grantee, may identify an agency and request the responsible HHS official to designate such agency as an alternative agency to provide Head Start services to the tribe if:

(1) The tribe was the only agency that was receiving federal financial assistance to provide Head Start services to members of the tribe; and

(2) The tribe would be otherwise precluded from providing such services to its members because of the termination or denial of refunding.

(b)(1) The responsible HHS official, when notifying a tribal grantee of the intent to terminate financial assistance or deny its application for refunding, must notify the grantee that it may identify an agency and request that the agency serve as the alternative agency in the event that the grant is terminated or refunding denied.

(2) The tribe must identify the alternate agency to the responsible HHS official, in writing, within the time for filing an appeal under 45 CFR Part 1303.

(3) The responsible HHS official will notify the tribe, in writing, whether the alternative agency proposed by the tribe is found to be eligible for Head Start funding and capable of operating a Head Start program. If the alternative agency identified by the tribe is not an eligible agency capable of operating a Head Start program, the tribe will have 15 days from the date of the sending of the notification to that effect from the responsible HHS official to identify another agency and request that the agency be designated. The responsible HHS official will notify the tribe in writing whether the second proposed alternate agency is found to be an eligible agency capable of operating the Head Start program.

(4) If the tribe does not identify a suitable alternative agency, a replacement grantee will be designated under these regulations.

(c) If the tribe appeals a termination of financial assistance or a denial of refunding, it will, consistent with the terms of 45 CFR Part 1303, continue to be funded pending resolution of the appeal. However, the responsible HHS official and the grantee will proceed with the steps outlined in this regulation during the appeal process.

(d) If the tribe does not identify an agency and request that the agency be appointed as the alternative agency, the responsible HHS official will seek a permanent replacement grantee under these regulations.

§ 1302.31 Requirements of alternative agency.

The agency identified by the Indian tribe must establish that it meets all requirements established by the Head Start Act and these requirements for designation as a Head Start grantee and that it is capable of conducting a Head Start program. The responsible HHS official, in deciding whether to designate the proposed agency, will analyze the capacity and experience of the agency according to the criteria found in section 641(d) of the Head Start Act and §§ 1302.10 (b)(1) through (5) and 1302.11 of this part.

§ 1302.32 Alternative agency—prohibition.

(a) No agency will be designated as the alternative agency pursuant to this subpart if the agency includes an employee who:

(1) Served on the administrative or program staff of the Indian tribal grantee, and

(2) Was responsible for a deficiency that:

(i) Relates to the performance standards or financial management standards described in the Head Start Act; and

(ii) Was the basis for the termination or denial of refunding described in § 1302.30 of this part.

(b) The responsible HHS official shall determine whether an employee was responsible for a deficiency within the meaning and context of this section.

PART 1303—APPEAL PROCEDURES FOR HEAD START GRANTEES AND CURRENT OR PROSPECTIVE DELEGATE AGENCIES

Subpart A—General

Sec.
1303.1 Purpose and application.
1303.2 Definitions.
1303.3 Right to attorney, attorney fees, and travel costs.
1303.4 Remedies.
1303.5 Service of process.
1303.6 Successor agencies and officials.
1303.7 Effect of failure to file or serve documents in a timely manner.
1303.8 Waiver of requirements.

Subpart B—Appeals by Grantees

1303.10 Purpose.
1303.11 Suspension on notice and opportunity to show cause.
1303.12 Summary suspension and opportunity to show cause.
1303.13 Appeal by a grantee of a suspension continuing for more than 30 days.
1303.14 Appeal by a grantee from a termination of financial assistance.
1303.15 Appeal by a grantee from a denial of refunding.
1303.16 Conduct of hearing.
1303.17 Time for hearing and decision.

Subpart C—Appeals by Current or Prospective Delegate Agencies

1303.20 Appeals to grantees by current or prospective delegate agencies of rejection of an application, failure to act on an application, or termination of a grant or contract.
1303.21 Procedures for appeal by current or prospective delegate agencies to the responsible HHS official from denials by grantees of an application or failure to act on an application.
1303.22 Decision on appeal in favor of grantee.
1303.23 Decision on appeal in favor of the current or prospective delegate agency.
1303.24 OMB control number.

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

SOURCE: 57 FR 59264, Dec. 14, 1992, unless otherwise noted.

Subpart A—General

§ 1303.1 Purpose and application.

This part prescribes regulations based on section 646 of the Head Start Act, 42 U.S.C. 9841, as it applies to grantees and current or prospective delegate agencies engaged in or wanting to engage in the operation of Head Start programs under the Act. It prescribes the procedures for appeals by current and prospective delegate agencies from specified actions or inaction by grantees. It also provides procedures for reasonable notice and opportunity to show cause in cases of suspension of financial assistance by the responsible HHS official and for an appeal to the Departmental Appeals Board by grantees in cases of denial of refunding, termination of financial assistance, and suspension of financial assistance.

§ 1303.2 Definitions.

As used in this part:

Act means the Head Start Act, 42 U.S.C. section 9831, *et seq.*

ACYF means the Administration on Children, Youth and Families in the Department of Health and Human Services, and includes Regional staff.

Agreement means either a grant or a contract between a grantee and a delegate agency for the conduct of all or part of the grantee's Head Start program.

Day means the 24 hour period beginning at 12 a.m. local time and continuing for the next 24 hour period. It includes all calendar days unless otherwise expressly noted.

Delegate Agency means a public or private non-profit organization or agency to which a grantee has delegated by written agreement the carrying out of all or part of its Head Start program.

Denial of Refunding means the refusal of a funding agency to fund an application for a continuation of a Head Start program for a subsequent program year when the decision is based on a determination that the grantee has improperly conducted its program, or is incapable of doing so properly in the future, or otherwise is in violation of applicable law, regulations, or other policies.

Funding Agency means the agency that provides funds directly to either a grantee or a delegate agency. ACYF is the funding agency for a grantee, and a grantee is the funding agency for a delegate agency.

Grantee means the local public or private non-profit agency which has been

designated as a Head Start agency under 42 U.S.C. 9836 and which has been granted financial assistance by the responsible HHS official to operate a Head Start program.

Interim Grantee means an agency which has been appointed to operate a Head Start program for a period of time not to exceed one year while an appeal of a denial of refunding, termination or suspension action is pending.

Prospective Delegate Agency means a public or private non-profit agency or organization which has applied to a grantee to serve as a delegate agency.

Responsible HHS Official means the official who is authorized to make the grant of financial assistance to operate a Head Start program or his or her designee.

Submittal means the date of actual receipt or the date the material was served in accordance with § 1303.5 of this part for providing documents or notices of appeals, and similar matters, to either grantees, delegate agencies, prospective delegate agencies, or ACYF.

Substantial Rejection means that a funding agency requires that the funding of a current delegate agency be reduced to 80 percent or less of the current level of operations for any reason other than a determination that the delegate agency does not need the funds to serve all the eligible persons it proposes to serve.

Suspension of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee.

Termination of a grant or delegate agency agreement means permanent withdrawal of the grantee's or delegate agency's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or delegate agency. Termination does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's or delegate agency's underestimate of the unobligated balance in a prior period;

(2) Refusal by the funding agency to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation renewal, extension or supplemental award);

(3) Withdrawal of the unobligated balance as of the expiration of a grant;

(4) Annulment, i.e., voiding of a grant upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Work day means any 24 hour period beginning at 12 a.m. local time and continuing for 24 hours. It excludes Saturdays, Sundays, and legal holidays. Any time ending on one of the excluded days shall extend to 5 p.m. of the next full work day.

§ 1303.3 Right to attorney, attorney fees, and travel costs.

(a) All parties to proceedings under this part, including informal proceedings, have the right to be represented by an attorney.

(1) Attorney fees may be charged to the program grant in an amount equal to the usual and customary fees charged in the locality. However, such fees may not exceed $250.00 per day, adjusted annually to reflect the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) beginning one year after the effective date of these regulations. The grantee or delegate agency may use current operating funds to pay these costs. The fees of only one attorney may be charged to the program grant with respect to a particular dispute. Such fees may not be charged if the grantee or delegate agency has an attorney on its staff, or if it has a retainer agreement with an attorney which fully covers fees connected with litigation. The grantee or delegate agency shall have the burden of establishing the usual and customary fees and shall furnish documentation to support that determination that is satisfactory to the responsible HHS official.

(2) A grantee or delegate agency may designate up to two persons to attend and participate in proceedings held under this Part. Travel and per diem costs of such persons, and of an attorney representing the grantee or delegate agency, shall not exceed those allowable under Standard Governmental Travel Regulations in effect at the time of the travel.

(b) In the event that use of program funds under this section would result in curtailment of program operations or inability to liquidate prior obligations, the party so affected may apply to the responsible HHS official for payment of these expenses.

(c) The responsible HHS official, upon being satisfied that these expenditures would result in curtailment of program operations or inability to liquidate prior obligations, must make payment therefor to the affected party by way of reimbursement from currently available funds.

§ 1303.4 Remedies.

The procedures established by subparts B and C of this Part shall not be construed as precluding ACYF from pursuing any other remedies authorized by law.

§ 1303.5 Service of process.

Whenever documents are required to be filed or served under this part, or notice provided under this part, certified mail shall be used with a return receipt requested. Alternatively, any other system may be used that provides proof of the date of receipt of the documents by the addressee. If this regulation is not complied with, and if a party alleges that it failed to receive documents allegedly sent to it, there will be a rebuttable presumption that the documents or notices were not sent as required by this part, or as alleged by the party that failed to use the required mode of service. The presumption may be rebutted only by a showing supported by a preponderance of evidence that the material was in fact submitted in a timely manner.

§ 1303.6 Successor agencies and officials.

Wherever reference is made to a particular Federal agency, office, or official it shall be deemed to apply to any other agency, office, or official which subsequently becomes responsible for administration of the program or any portion of it.

§ 1303.7 Effect of failure to file or serve documents in a timely manner.

(a) Whenever an appeal is not filed within the time specified in these or related regulations, the potential appellant shall be deemed to have consented to the proposed action and to have waived all rights of appeal.

(b) Whenever a party has failed to file a response or other submission within the time required in these regulations, or by order of an appropriate HHS responsible official, the party shall be deemed to have waived the right to file such response or submission.

(c) A party fails to comply with the requisite deadlines or time frames if it exceeds them by any amount.

(d) The time to file an appeal, response, or other submission may be waived in accordance with § 1303.8 of this part.

§ 1303.8 Waiver of requirements.

(a) Any procedural requirements required by these regulations may be waived by the responsible HHS official or such waiver requests may be granted by the Departmental Appeals Board in those cases where the Board has jurisdiction. Requests for waivers must be in writing and based on good cause.

(b) Approvals of waivers must be in writing and signed by the responsible HHS official or by the Departmental Appeals Board when it has jurisdiction.

(c) ''Good cause'' consists of the following:

(1) Litigation dates cannot be changed;

(2) Personal emergencies pertaining to the health of a person involved in and essential to the proceeding or to a member of that person's immediate family, spouse, parents, or siblings;

(3) The complexity of the case is such that preparation of the necessary documents cannot reasonably be expected to be completed within the standard time frames;

(4) Other matters beyond the control of the party requesting the waiver, such as strikes and natural disasters.

(d) Under no circumstances may ''good cause'' consist of a failure to meet a deadline due to the oversight of either a party or its representative.

(e) Waivers of timely filing or service shall be granted only when necessary in the interest of fairness to all parties, including the Federal agency. They will be granted sparingly as prompt resolution of disputes is a major goal of these regulations. The responsible HHS official or the Departmental Appeals Board shall have the right, on own motion or on motion of a party, to require such documentation as deemed necessary in support of a request for a waiver.

(f) A request for an informal meeting by a delegate agency, including a prospective delegate agency, may be denied by the responsible HHS official, on motion of the grantee or on his or her own motion, if the official concludes that the written appeal fails to state plausible grounds for reversing the grantee's decision or the grantee's failure to act on an application.

(g) The requirements of this section may not be waived.

Subpart B—Appeals by Grantees

§ 1303.10 Purpose.

(a) This subpart establishes rules and procedures for the suspension of a grantee, denial of a grantee's application for refunding, or termination of assistance under the Act for circumstances related to the particular grant, such as ineffective or improper use of Federal funds or for failure to comply with applicable laws, regulations, policies, instructions, assurances, terms and conditions or, in accordance with part 1302 of this chapter, upon loss by the grantee of legal status or financial viability.

(b) This subpart does not apply to any administrative action based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964.

§ 1303.11 Suspension on notice and opportunity to show cause.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend financial assistance to a grantee in whole or in part for breach or threatened breach of any requirement stated in § 1303.10 pursuant to notice and opportunity to show cause why assistance should not be suspended.

(b) The responsible HHS official will notify the grantee as required by § 1303.5 or by telegram that ACYF intends to suspend financial assistance, in whole or in part, unless good cause is shown why such action should not be taken. The notice will include:

(1) The grounds for the proposed suspension;

(2) The effective date of the proposed suspension;

(3) Information that the grantee has the opportunity to submit written material in opposition to the intended suspension and to meet informally with the responsible HHS official regarding the intended suspension;

(4) Information that the written material must be submitted to the responsible HHS official at least seven days prior to the effective date of the proposed suspension and that a request for an informal meeting must be made in writing to the responsible HHS official no later than seven days after the day the notice of intention to suspend was mailed to the grantee;

(5) Invitation to correct the deficiency by voluntary action; and

(6) A copy of this subpart.

(c) If the grantee requests an informal meeting, the responsible HHS official will fix a time and place for the meeting. In no event will such meeting be scheduled less than seven days after the notice of intention to suspend was sent to the grantee.

(d) The responsible HHS official may at his or her discretion extend the period of time or date for making requests or submitting material by the grantee and will notify the grantee of any such extension.

(e) At the time the responsible HHS official sends the notice of intention to suspend financial assistance to the grantee, the official will send a copy of it to any delegate agency whose activities or failures to act are a substantial cause of the proposed suspension, and will inform such delegate agency that it is entitled to submit written material in opposition and to participate in the informal meeting with the responsible HHS official if one is held. In addition, the responsible HHS official may give such notice to any other Head Start delegate agency of the grantee.

(f) Within three days of receipt of the notice of intention to suspend financial assistance, the grantee shall send a copy of such notice and a copy of this subpart to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency that wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting regarding the intended suspension, if not otherwise afforded a right to participate, may request permission to do so from the responsible HHS official, who may grant or deny such permission. In acting upon any such request from a delegate agency, the responsible HHS official will take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the delegate agency requesting such permission appear to be adequately represented by other participants.

(g) The responsible HHS official will consider any timely material presented in writing, any material presented during the course of the informal meeting as well as any showing that the grantee has adequately corrected the deficiency which led to the suspension proceedings. The decision of the responsible HHS official will be made within five days after the conclusion of the informal meeting, or, if no informal meeting is held, within five days of receipt by the responsible HHS official of written material from all concerned parties. If the responsible HHS official concludes that the grantee has failed to show cause why financial assistance should not be suspended, the official may suspend financial assistance in whole or in part and under such terms and conditions as he or she specifies.

(h) Notice of such suspension will be promptly transmitted to the grantee as required in § 1303.5 of this part or by some other means showing the date of receipt, and shall become effective upon delivery or on the date delivery is refused or the material is returned. Suspension shall not exceed 30 days unless the responsible HHS official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated in accordance with § 1303.14, the suspension of financial assistance will be rescinded.

(i) New obligations incurred by the grantee during the suspension period will be not be allowed unless the granting agency expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of the granting agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(j) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until the grantee's suspension is lifted.

(k) The responsible HHS official may modify the terms, conditions and nature of the suspension or rescind the suspension action at any time on his or her own initiative or upon a satisfactory showing that the grantee has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspension partly or fully rescinded may, at the discretion of the responsible HHS official, be reimposed with or without further proceedings, except that the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with § 1303.14 or unless the responsible HHS official and the grantee agree to continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of financial assistance will be rescinded.

§ 1303.12 Summary suspension and opportunity to show cause.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend financial assistance 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.

(b) The notice of summary suspension will be given to the grantee as required by § 1303.5 of this part, or by some other means showing the date of receipt, and shall become effective on delivery or on the date delivery is refused or the material is returned unclaimed.

(c) The notice must include the following items:

(1) The effective date of the suspension;

(2) The grounds for the suspension;

(3) The extent of the terms and conditions of any full or partial suspension;

(4) A statement prohibiting the grantee from making any new expenditures or incurring any new obligations in connection with the suspended portion of the program; and

(5) A statement advising the grantee that it has an opportunity to show cause at an informal meeting why the suspension should be rescinded. The request for an informal meeting must be made by the grantee in writing to the responsible HHS official no later than five workdays after the effective date of the notice of summary suspension as described in paragraph (b) of this section.

(d) If the grantee requests in writing the opportunity to show cause why the suspension should be rescinded, the responsible HHS official will fix a time and place for an informal meeting for this purpose. This meeting will be held within five workdays after the grantee's request is received by the responsible HHS official. Notwithstanding the provisions of this paragraph, the responsible HHS official may proceed to deny refunding or initiate termination proceedings at any time even though financial assistance of the grantee has been suspended in whole or in part.

(e) Notice of summary suspension must also be furnished by the grantee to its delegate agencies within two workdays of its receipt of the notice from ACYF by certified mail, return receipt requested, or by any other means showing dates of transmittal and receipt or return as undeliverable or unclaimed. Delegate agencies affected by the summary suspension have the right to participate in the informal meeting as set forth in paragraph (d) of this section.

(f) The effective period of a summary suspension of financial assistance may not exceed 30 days unless:

(1) The conditions creating the summary suspension have not been corrected; or

(2) The parties agree to a continuation of the summary suspension for an additional period of time; or

(3) The grantee, in accordance with paragraph (d) of this section, requests an opportunity to show cause why the summary suspension should be rescinded, in which case it may remain in effect in accordance with paragraph (h) of this section; or

(4) Termination or denial of refunding proceedings are initiated in accordance with § 1303.14 or § 1303.15.

(g) Any summary suspension that remains in effect for more than 30 days is subject to the requirements of § 1303.13 of this part. The only exceptions are where there is an agreement under paragraph (f)(2) of this section, or the circumstances described in paragraph (f)(4) or (h)(1) of this section exist.

(h)(1) If the grantee requests an opportunity to show cause why a summary suspension should be rescinded, the suspension of financial assistance will continue in effect until the grantee has been afforded such opportunity and a decision has been made by the responsible HHS official.

(2) If the suspension continues for more than 30 days, the suspension remains in effect even if it is appealed to the Departmental Appeals Board.

(3) Notwithstanding any other provisions of these or other regulations, if a denial of refunding occurs or a termination action is instituted while the summary suspension is in effect, the suspension shall merge into the later action and funding shall not be available until the action is rescinded or a decision favorable to the grantee is rendered.

(i) The responsible HHS official must consider any timely material presented in writing, any material presented during the course of the informal meeting, as well as any other evidence that the grantee has adequately corrected the deficiency which led to the summary suspension.

(j) A decision must be made within five work days after the conclusion of the informal meeting with the responsible HHS official. If the responsible HHS official concludes, after considering the information provided at the informal meeting, that the grantee has failed to show cause why the suspension should be rescinded, the responsible HHS official may continue the suspension, in whole or in part and under the terms and conditions specified in the notice of suspension.

(k) New obligations incurred by the grantee during the suspension period will not be allowed unless the granting agency expressly authorizes them in the notice of suspension or by an amendment to the notice. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension, denial of refunding or termination.

(l) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's summary suspension is lifted or a new grantee is selected in accordance with subpart B of this part.

(m) At the discretion of the funding agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(n) The responsible HHS official may modify the terms, conditions and nature of the summary suspension or rescind the suspension action at any time upon receiving satisfactory evidence that the grantee has adequately corrected the deficiency which led to the suspension and that the deficiency will not occur again. Suspension partly or fully rescinded may, at the discretion of the responsible HHS official, be reimposed with or without further proceedings.

§ 1303.13 Appeal by a grantee of a suspension continuing for more than 30 days.

(a) This section applies to summary suspensions that are initially issued for more than 30 days and summary suspensions continued for more than 30 days except those identified in paragraph § 1303.12(g) of this part.

(b) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend a grant for more than 30 days. A suspension may, among other bases, be imposed for the same reasons that justify termination of financial assistance or which justify a denial of refunding of a grant.

(c) A notice of a suspension under this section shall set forth:

(1) The reasons for the action;

(2) The duration of the suspension, which may be indefinite;

(3) The fact that the action may be appealed to the Departmental Appeals Board and the time within which it must be appealed.

(d) During the period of suspension a grantee may not incur any valid obligations against Federal Head Start grant funds, nor may any grantee expenditure or provision of in-kind services or items of value made during the period be counted as applying toward any required matching contribution required of a grantee, except as otherwise provided in this part.

(e) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's suspension is lifted or a new grantee is selected in accordance with subparts B and C of 45 CFR part 1302.

(f) Any appeal to the Departmental Appeals Board must be made within five days of the grantee's receipt of notice of suspension or return of the notice as undeliverable, refused, or unclaimed. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the grantee believes is relevant and supportive of its position.

All such appeals shall be addressed to the Departmental Appeals Board, and the appellant will send a copy of the appeal to the Commissioner, ACYF, and the responsible HHS official. Appeals will be governed by the Departmental Appeals Board's regulations at 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee requesting a hearing as part of its appeal shall be afforded one by the Departmental Appeals Board.

(g) If a grantee is successful on its appeal any costs incurred during the period of suspension that are otherwise allowable may be paid with Federal grant funds. Moreover, any cash or in-kind contributions of the grantee during the suspension period that are otherwise allowable may be counted toward meeting the grantee's non-Federal share requirement.

(h) If a grantee's appeal is denied by the Departmental Appeals Board, but the grantee is subsequently restored to the program because it has corrected those conditions which warranted the suspension, its activities during the period of the suspension remain outside the scope of the program.

Federal funds may not be used to offset any costs during the period, nor may any cash or in-kind contributions received during the period be used to meet non-Federal share requirements.

(i) If the Federal agency institutes termination proceedings during a suspension, or denies refunding, the two actions shall merge and the grantee need not file a new appeal. Rather, the Departmental Appeals Board will be notified by the Federal agency and will automatically be vested with jurisdiction over the termination action or the denial of refunding and will, pursuant to its rules and procedures, permit the grantee to respond to the notice of termination. In a situation where a suspension action is merged into a termination action in accordance with this section, the suspension continues until there is an administrative decision by the Departmental Appeals Board on the grantee's appeal.

§ 1303.14 Appeal by a grantee from a termination of financial assistance.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may terminate financial assistance to a grantee. Financial assistance may be terminated in whole or in part.

(b) Financial assistance may be terminated for any or all of the following reasons:

(1) The grantee is no longer financially viable;

(2) The grantee has lost the requisite legal status or permits;

(3) The grantee has failed to comply with the required fiscal or program reporting requirements applicable to grantees in the Head Start program;

(4) The grantee has failed to timely correct one or more deficiencies as defined in 45 CFR Part 1304;

(5) The grantee has failed to comply with the eligibility requirements and limitations on enrollment in the Head Start program, or both;

(6) The grantee has failed to comply with the Head Start grants administration requirements set forth in 45 CFR part 1301;

(7) The grantee has failed to comply with the requirements of the Head Start Act;

(8) The grantee is debarred from receiving Federal grants or contracts;

(9) The grantee fails to abide by any other terms and conditions of its award of financial assistance, or any other applicable laws, regulations, or other applicable Federal or State requirements or policies.

(c) A notice of termination shall set forth:

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

(2) The fact that the termination may be appealed within 30 days to the Departmental Appeals Board (with a

copy of the appeal sent to the responsible HHS official and the Commissioner, ACYF) and that such appeal shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, and that any grantee that requests a hearing shall be afforded one, as mandated by 42. U.S.C. 9841.

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

(4) That, if the activities of a delegate agency are the basis, in whole or in part, for the proposed termination, the identity of the delegate agency.

(5) That the grantee's appeal must meet the requirements set forth in paragraph (d) of this section.

(6) That a failure by the responsible HHS official to meet the requirements of this paragraph may result in the dismissal of the termination action without prejudice, or the remand of that action for the purpose of reissuing it with the necessary corrections.

(d) A grantee's appeal must:

(1) Be in writing;

(2) Specifically identify what factual findings are disputed;

(3) Identify any legal issues raised, including relevant citations;

(4) Include an original and two copies of each document the grantee believes is relevant and supportive of its position (unless the grantee has obtained permission from the Departmental Appeals Board to submit fewer copies);

(5) Include any request for specifically identified documents the grantee wishes to obtain from ACF and a statement of the relevance of the requested documents, and a statement that the grantee has attempted informally to obtain the documents from ACF and was unable to do so;

(6) Grantees may submit additional documents within 14 days of receipt of the documentation submitted by ACF in response to the grantee's appeal and initial submittals. The ACF response to the appeal and initial submittals of the grantee shall be filed no later than 30 days after ACF's receipt of the material. In response to such a submittal, ACF may submit additional documents should it have any, or request discovery in connection with the new documents, or both, but must do so within 10 days of receipt of the additional filings;

(7) Include a statement on whether the grantee is requesting a hearing; and

(8) Be filed with the Departmental Appeals Board and be served on the responsible HHS official who issued the termination notice and on the Commissioner of ACYF. The grantee must also serve a copy of the appeal on any delegate agency that would be financially affected at the time the grantee files its appeal.

(e) The Departmental Appeals Board sanctions with respect to a grantee's failure to comply with the provisions of paragraph (d) of this section are as follows:

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

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

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

(f) (1) During a grantee's appeal of a termination decision, funding will continue until an adverse decision is rendered or until expiration of the then current budget period. At the end of the current budget period, if a decision has not been rendered, the responsible HHS official shall award an interim grant to the grantee until a decision is made.

(2) If a grantee's funding has been suspended, no funding shall be available during the termination proceedings, or at any other time, unless the action is rescinded or the grantee's appeal is successful. An interim grantee will be appointed during the appeal period.

(3) If a grantee does not appeal an administrative decision to court within 30 days of its receipt of the decision, a replacement grantee will be immediately sought. An interim grantee may be named, if needed, pending the selection of a replacement grantee.

(4) An interim grantee may be sought even though the grantee has appealed an administrative decision to court within 30 days, if the responsible HHS official determines it necessary to do so. Examples of circumstances that warrant an interim grantee are to protect children and families from harm and Federal funds from misuse or dissipation or both.

(g) If the Departmental Appeals Board informs a grantee that a proposed termination action has been set down for hearing, the grantee shall, within five days of its receipt of this notice, send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice. The grantee shall send the Departmental Appeals Board and the responsible HHS official a list of all delegate agencies notified and the dates of notification.

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

(i) The results of the proceeding and any measure taken thereafter by ACYF pursuant to this part shall be fully binding upon the grantee and all its delegate agencies, whether or not they actually participated in the hearing.

(j) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted within a reasonable period of time to be fixed by the Departmental Appeals Board upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date had been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of written information and argument submitted by the parties to the Departmental Appeals Board.

(k) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

[57 FR 59264, Dec. 14, 1992, as amended at 61 FR 57226, Nov. 5, 1996; 65 FR 4768, Feb. 1, 2000]

§ 1303.15 Appeal by a grantee from a denial of refunding.

(a) After receiving concurrence from the Commissioner, ACYF, a grantee's application for refunding may be denied by the responsible HHS official for circumstances described in paragraph (c) of this section.

(b) When an intention to deny a grantee's application for refunding is arrived at on a basis to which this subpart applies, the responsible HHS official will provide the grantee as much advance notice thereof as is reasonably possible, in no event later than 30 days after the receipt by ACYF of the application. The notice will inform the grantee that it has the opportunity for a full and fair hearing on whether refunding should be denied.

(1) Such appeals shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee which requests a hearing shall be afforded one, as mandated by 42 U.S.C. 9841.

(2) Any such appeals must be filed within 30 days after the grantee receives notice of the decision to deny refunding.

(c) Refunding of a grant may be denied for any or all of the reasons for which a grant may be terminated, as set forth in § 1303.14(b) of this part.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1303.16 Conduct of hearing.

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

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

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

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

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

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

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

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

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

§ 1303.17 Time for hearing and decision.

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

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

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

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

(2) Either party requests summary disposition; or

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

reasons beyond the control of either party or the Board.

[65 FR 4770, Feb. 1, 2000]

Subpart C—Appeals by Current or Prospective Delegate Agencies

§ 1303.20 Appeals to grantees by current or prospective delegate agencies of rejection of an application, failure to act on an application or termination of a grant or contract.

(a) A grantee must give prompt, fair and adequate consideration to applications submitted by current or prospective delegate agencies to operate Head Start programs. The failure of the grantee to act within 30 days after receiving the application is deemed to be a rejection of the application.

(b) A grantee must notify an applicant in writing within 30 days after receiving the application of its decision to either accept or to wholly or substantially reject it. If the decision is to wholly or substantially reject the application, the notice shall contain a statement of the reasons for the decision and a statement that the applicant has a right to appeal the decision within ten work days after receipt of the notice. If a grantee fails to act on the application by the end of the 30 day period which grantees have to review applications, the current or prospective delegate agency may appeal to the grantee, in writing, within 15 work days of the end of the 30 day grantee review period.

(c) A grantee must notify a delegate agency in writing of its decision to terminate its agreement with the delegate agency, explaining the reasons for its decision and that the delegate agency has the right to appeal the decision to the grantee within ten work days after receipt of the notice.

(d) The grantee has 20 days to review the written appeal and issue its decision. If the grantee sustains its earlier termination of an award or its rejection of an application, the current or prospective delegate agency then may appeal, in writing, to the responsible HHS official. The appeal must be submitted to the responsible HHS official within ten work days after the receipt of the grantee's final decision. The appeal must fully set forth the grounds for the appeal.

(e) A grantee may not reject the application or terminate the operations of a delegate agency on the basis of defects or deficiencies in the application or in the operation of the program without first:

(1) Notifying the delegate agency of the defects and deficiencies;

(2) Providing, or providing for, technical assistance so that defects and deficiencies can be corrected by the delegate agency; and

(3) Giving the delegate agency the opportunity to make appropriate corrections.

(f) An appeal filed pursuant to a grantee failing to act on a current or prospective delegate agency's application within a 30 day period need only contain a copy of the application, the date filed, and any proof of the date the grantee received the application. The grantee shall have five days in which to respond to the appeal.

(g) Failure to appeal to the grantee regarding its decision to reject an application, terminate an agreement, or failure to act on an application shall bar any appeal to the responsible HHS official.

§ 1303.21 Procedures for appeal by current or prospective delegate agencies to the responsible HHS official from denials by grantees of an application or failure to act on an application.

(a) Any current or prospective delegate agency that is dissatisfied with the decision of a grantee rendered under § 1303.20 may appeal to the responsible HHS official whose decision is final and not appealable to the Commissioner, ACYF. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the current or prospective delegate agency believes is relevant and supportive of this position, including all written material or documentation submitted to the grantee under the procedures set forth in § 1303.20, as well as a copy of any decision rendered by the grantee. A copy of the appeal and all material filed with the responsible HHS official must be simultaneously served on the grantee.

(b) In providing the information required by paragraph (a) of this section, delegate agencies must set forth:

(1) Whether, when and how the grantee advised the delegate agency of alleged defects and deficiencies in the delegate agency's application or in the operation of its program prior to the grantee's rejection or termination notice;

(2) Whether the grantee provided the delegate agency reasonable opportunity to correct the defects and deficiencies, the details of the opportunity that was given and whether or not the grantee provided or provided for technical advice, consultation, or assistance to the current delegate agency concerning the correction of the defects and deficiencies;

(3) What steps or measures, if any, were undertaken by the delegate agency to correct any defects or deficiencies;

(4) When and how the grantee notified the delegate agency of its decision;

(5) Whether the grantee told the delegate agency the reasons for its decision and, if so, how such reasons were communicated to the delegate agency and what they were;

(6) If it is the delegate agency's position that the grantee acted arbitrarily or capriciously, the reasons why the delegate agency takes this position; and

(7) Any other facts and circumstances which the delegate agency believes supports its appeal.

(c) The grantee may submit a written response to the appeal of a prospective delegate agency. It may also submit additional information which it believes is relevant and supportive of its position.

(d) In the case of an appeal by a delegate agency, the grantee must submit a written statement to the responsible HHS official responding to the items specified in paragraph (b) of this section. The grantee must include information that explains why it acted properly in arriving at its decision or in failing to act, and any other facts and circumstances which the grantee believes supports its position.

(e)(1) The responsible HHS official may meet informally with the current or prospective delegate agency if such official determines that such a meeting would be beneficial to the proper resolution of the appeal. Such meetings may be conducted by conference call.

(2) An informal meeting must be requested by the current or prospective delegate agency at the time of the appeal. In addition, the grantee may request an informal meeting with the responsible HHS official. If none of the parties requests an informal meeting, the responsible HHS official may hold such a meeting if he or she believes it would be beneficial for a proper resolution of the dispute. Both the grantee and the current or prospective delegate agency may attend any informal meeting concerning the appeal. If a party wishes to oppose a request for a meeting it must serve its opposition on the responsible HHS official and any other party within five work days of its receipt of the request.

(f) A grantee's response to appeals by current or prospective delegate agencies must be submitted to the responsible HHS official within ten work days of receipt of the materials served on it by the current or prospective delegate agency in accordance with paragraph (a) of this section. The grantee must serve a copy of its response on the current or prospective delegate agency.

(g) The responsible HHS official shall notify the current or prospective delegate agency and the grantee whether or not an informal meeting will be held. If an informal meeting is held, it must be held within ten work days after the notice by the responsible HHS official is mailed. The responsible HHS official must designate either the Regional Office or the place where the current or prospective delegate agency or grantee is located for holding the informal meeting.

(h) If an informal meeting is not held, each party shall have an opportunity to reply in writing to the written statement submitted by the other party. The written reply must be submitted to the responsible HHS official within five work days after the notification required by paragraph (g) of this section. If a meeting is not to be held, notice of that fact shall be served on the parties within five work days of the receipt of a timely response to such a request or the expiration of the time

for submitting a response to such a request.

(i) In deciding an appeal under this section, the responsible HHS official will arrive at his or her decision by considering:

(1) The material submitted in writing and the information presented at any informal meeting;

(2) The application of the current or prospective delegate agency;

(3) His or her knowledge of the grantee's program as well as any evaluations of his or her staff about the grantee's program and current or prospective delegate agency's application and prior performance; and

(4) Any other evidence deemed relevant by the responsible HHS official.

§ 1303.22 Decision on appeal in favor of grantee.

(a) If the responsible HHS official finds in favor of the grantee, the appeal will be dismissed unless there is cause to remand the matter back to the grantee.

(b) The grantee's decision will be sustained unless it is determined by the responsible HHS official that the grantee acted arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements.

(c) The decision will be made within ten workdays after the informal meeting. The decision, including a statement of the reasons therefor, will be in writing, and will be served on the parties within five workdays from the date of the decision by the responsible HHS official.

(d) If the decision is made on the basis of written materials only, the decision will be made within five workdays of the receipt of the materials. The decision will be served on the parties no more than five days after it is made.

§ 1303.23 Decision on appeal in favor of the current or prospective delegate agency.

(a) The responsible HHS official will remand the rejection of an application or termination of an agreement to the grantee for prompt reconsideration and decision if the responsible HHS official's decision does not sustain the grantee's decision, and if there are issues which require further development before a final decision can be made. The grantee's reconsideration and decision must be made in accordance with all applicable requirements of this part as well as other relevant regulations, statutory provisions, and program issuances. The grantee must issue its decision on remand in writing to both the current or prospective delegate agency and the responsible HHS official within 15 workdays after the date of receipt of the remand.

(b) If the current or prospective delegate agency is dissatisfied with the grantee's decision on remand, it may appeal to the responsible HHS official within five workdays of its receipt of that decision. Any such appeal must comply with the requirements of § 1303.21 of this part.

(c) If the responsible HHS official finds that the grantee's decision on remand is incorrect or if the grantee fails to issue its decision within 15 work days, the responsible HHS official will entertain an application by the current or prospective delegate agency for a direct grant.

(1) If such an application is approved, there will be a commensurate reduction in the level of funding of the grantee and whatever other action is deemed appropriate in the circumstances. Such reduction in funding shall not be considered a termination or denial of refunding and may not be appealed under this part.

(2) If such an application is not approved, the responsible HHS official will take whatever action he or she deems appropriate under the circumstances.

(d) If, without fault on the part of a delegate agency, its operating funds are exhausted before its appeal has been decided, the grantee will furnish sufficient funds for the maintenance of the delegate agency's current level of operations until a final administrative decision has been reached.

(e) If the responsible HHS official sustains the decision of the grantee following remand, he or she shall notify the parties of the fact within 15 work days of the receipt of final submittal of documents, or of the conclusion of any meeting between the official and the parties, whichever is later.

§ 1303.24 OMB control number.

The collection of information requirements in sections 1303.10 through 1303.23 of this part were approved on January 22, 1993, by the Office of Management and Budget and assigned OMB control number 0980–0242.

[58 FR 13019, Mar. 9, 1993]

PART 1304—PROGRAM PERFORMANCE STANDARDS FOR THE OPERATION OF HEAD START PROGRAMS BY GRANTEE AND DELEGATE AGENCIES

Subpart A—General

Sec.
1304.1 Purpose and scope.
1304.2 Effective date.
1304.3 Definitions.

Subpart B—Early Childhood Development and Health Services

1304.20 Child health and developmental services.
1304.21 Education and early childhood development.
1304.22 Child health and safety.
1304.23 Child nutrition.
1304.24 Child mental health.

Subpart C—Family and Community Partnerships

1304.40 Family partnerships.
1304.41 Community partnerships.

Subpart D—Program Design and Management

1304.50 Program governance.
1304.51 Management systems and procedures.
1304.52 Human resources management.
1304.53 Facilities, materials, and equipment.

Subpart E—Implementation and Enforcement

1304.60 Deficiencies and quality improvement plans.
1304.61 Noncompliance.

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

SOURCE: 61 FR 57210, Nov. 5, 1996, unless otherwise noted.

Subpart A—General

§ 1304.1 Purpose and scope.

This part describes regulations implementing sections 641A, 644(a) and (c), and 645A(h) of the Head Start Act, as amended (42 U.S.C. 9801 *et seq.*). Section 641A, paragraph (a)(3)(C) directs the Secretary of Health and Human Services to review and revise, as necessary, the Head Start Program Performance Standards in effect under prior law. This paragraph further provides that any revisions should not result in an elimination or reduction of requirements regarding the scope or types of Head Start services to a level below that of the requirements in effect on November 2, 1978. Section 641A(a) directs the Secretary to issue regulations establishing performance standards and minimum requirements with respect to health, education, parent involvement, nutrition, social, transition, and other Head Start services as well as administrative and financial management, facilities, and other appropriate program areas. Sections 644(a) and (c) require the issuance of regulations setting standards for the organization, management, and administration of Head Start programs. Section 645A(h) requires that the Secretary develop and publish performance standards for the newly authorized program for low-income pregnant women and families with infants and toddlers, entitled ''Early Head Start.'' The following regulations respond to these provisions in the Head Start Act, as amended, for new or revised Head Start Program Performance Standards. These new regulations define standards and minimum requirements for the entire range of Early Head Start and Head Start services, including those specified in the authorizing legislation. They are applicable to both Head Start and Early Head Start programs, with the exceptions noted, and are to be used in conjunction with the regulations at 45 CFR parts 1301, 1302, 1303, 1305, 1306, and 1308.

§ 1304.2 Effective date.

Early Head Start and Head Start grantee and delegate agencies must comply with these requirements on January 1, 1998. Nothing in this part

prohibits grantee or delegate agencies from voluntarily complying with these regulations prior to the effective date.

§ 1304.3 Definitions.

(a) As used in this part:

(1) *Assessment* means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility to identify:

(i) The child's unique strengths and needs and the services appropriate to meet those needs; and

(ii) The resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their child.

(2) *Children with disabilities* means, for children ages 3 to 5, those with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities, and who, by reason thereof, need special education and related services. The term ''children with disabilities'' for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services. Infants and toddlers with disabilities are those from birth to three years, as identified under the Part H Program (Individuals with Disabilities Education Act) in their State.

(3) *Collaboration and collaborative relationships:*

(i) With other agencies, means planning and working with them in order to improve, share and augment services, staff, information and funds; and

(ii) With parents, means working in partnership with them.

(4) *Contagious* means capable of being transmitted from one person to another.

(5) *Curriculum* means a written plan that includes:

(i) The goals for children's development and learning;

(ii) The experiences through which they will achieve these goals;

(iii) What staff and parents do to help children achieve these goals; and

(iv) The materials needed to support the implementation of the curriculum. The curriculum is consistent with the Head Start Program Performance Standards and is based on sound child development principles about how children grow and learn.

(6) *Deficiency* means:

(i) An area or areas of performance in which an Early Head Start or Head Start grantee agency is not in compliance with State or Federal requirements, including but not limited to, the Head Start Act or one or more of the regulations under parts 1301, 1304, 1305, 1306 or 1308 of this title and which involves:

(A) A threat to the health, safety, or civil rights of children or staff;

(B) A denial to parents of the exercise of their full roles and responsibilities related to program governance;

(C) A failure to perform substantially the requirements related to Early Childhood Development and Health Services, Family and Community Partnerships, or Program Design and Management; or

(D) The misuse of Head Start grant funds.

(ii) The loss of legal status or financial viability, as defined in part 1302 of this title, loss of permits, debarment from receiving Federal grants or contracts or the improper use of Federal funds; or

(iii) Any other violation of Federal or State requirements including, but not limited to, the Head Start Act or one or more of the regulations under parts 1301, 1304, 1305, 1306 or 1308 of this title, and which the grantee has shown an unwillingness or inability to correct within the period specified by the responsible HHS official, of which the responsible HHS official has given the grantee written notice of pursuant to section 1304.61.

(7) *Developmentally appropriate* means any behavior or experience that is appropriate for the age span of the children and is implemented with attention to the different needs, interests, and developmental levels and cultural backgrounds of individual children.

(8) *Early Head Start* program means a program that provides low-income pregnant women and families with children from birth to age 3 with family-centered services that facilitate child development, support parental roles, and promote self-sufficiency.

(9) *Family* means for the purposes of the regulations in this part all persons:

(i) Living in the same household who are:

(A) Supported by the income of the parent(s) or guardian(s) of the child enrolling or participating in the program; or

(B) Related to the child by blood, marriage, or adoption; or

(ii) Related to the child enrolling or participating in the program as parents or siblings, by blood, marriage, or adoption.

(10) *Guardian* means a person legally responsible for a child.

(11) *Health* means medical, dental, and mental well-being.

(12) *Home visitor* means the staff member in the home-based program option assigned to work with parents to provide comprehensive services to children and their families through home visits and group socialization activities.

(13) *Individualized Family Service Plan (IFSP)* means a written plan for providing early intervention services to a child eligible under Part H of the Individuals with Disabilities Education Act (IDEA). (See 34 CFR 303.340–303.346 for regulations concerning IFSPs.)

(14) *Minimum requirements* means that each Early Head Start and Head Start grantee must demonstrate a level of compliance with Federal and State requirements such that no deficiency, as defined in this part, exists in its program.

(15) *Policy group* means the formal group of parents and community representatives required to be established by the agency to assist in decisions about the planning and operation of the program.

(16) *Program attendance* means the actual presence and participation in the program of a child enrolled in an Early Head Start or Head Start program.

(17) *Referral* means directing an Early Head Start or Head Start child or family member(s) to an appropriate source or resource for help, treatment or information.

(18) *Staff* means paid adults who have responsibilities related to children and their families who are enrolled in Early Head Start or Head Start programs.

(19) *Teacher* means an adult who has direct responsibility for the care and development of children from birth to 5 years of age in a center-based setting.

(20) *Volunteer* means an unpaid person who is trained to assist in implementing ongoing program activities on a regular basis under the supervision of a staff person in areas such as health, education, transportation, nutrition, and management.

(b) In addition to the definitions in this section, the definitions as set forth in 45 CFR 1301.2, 1302.2, 1303.2, 1305.2, 1306.3, and 1308.3 also apply, as used in this part.

Subpart B—Early Childhood Development and Health Services

§ 1304.20 Child health and developmental services.

(a) *Determining child health status.* (1) In collaboration with the parents and as quickly as possible, but no later than 90 calendar days (with the exception noted in paragraph (a)(2) of this section) from the child's entry into the program (for the purposes of 45 CFR 1304.20(a)(1), 45 CFR 1304.20(a)(2), and 45 CFR 1304.20(b)(1), ''entry'' means the first day that Early Head Start or Head Start services are provided to the child), grantee and delegate agencies must:

(i) Make a determination as to whether or not each child has an ongoing source of continuous, accessible health care. If a child does not have a source of ongoing health care, grantee and delegate agencies must assist the parents in accessing a source of care;

(ii) Obtain from a health care professional a determination as to whether the child is up-to-date on a schedule of

age appropriate preventive and primary health care which includes medical, dental and mental health. Such a schedule must incorporate the requirements for a schedule of well child care utilized by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program of the Medicaid agency of the State in which they operate, and the latest immunization recommendations issued by the Centers for Disease Control and Prevention, as well as any additional recommendations from the local Health Services Advisory Committee that are based on prevalent community health problems:

(A) For children who are not up-to-date on an age-appropriate schedule of well child care, grantee and delegate agencies must assist parents in making the necessary arrangements to bring the child up-to-date;

(B) For children who are up-to-date on an age-appropriate schedule of well child care, grantee and delegate agencies must ensure that they continue to follow the recommended schedule of well child care; and

(C) Grantee and delegate agencies must establish procedures to track the provision of health care services.

(iii) Obtain or arrange further diagnostic testing, examination, and treatment by an appropriate licensed or certified professional for each child with an observable, known or suspected health or developmental problem; and

(iv) Develop and implement a follow-up plan for any condition identified in 45 CFR 1304.20(a)(1)(ii) and (iii) so that any needed treatment has begun.

(2) Grantee and delegate agencies operating programs of shorter durations (90 days or less) must complete the above processes and those in 45 CFR 1304.20(b)(1) within 30 calendar days from the child's entry into the program.

(b) *Screening for developmental, sensory, and behavioral concerns.* (1) In collaboration with each child's parent, and within 45 calendar days of the child's entry into the program, grantee and delegate agencies must perform or obtain linguistically and age appropriate screening procedures to identify concerns regarding a child's developmental, sensory (visual and auditory), behavioral, motor, language, social, cognitive, perceptual, and emotional skills (see 45 CFR 1308.6(b)(3) for additional information). To the greatest extent possible, these screening procedures must be sensitive to the child's cultural background.

(2) Grantee and delegate agencies must obtain direct guidance from a mental health or child development professional on how to use the findings to address identified needs.

(3) Grantee and delegate agencies must utilize multiple sources of information on all aspects of each child's development and behavior, including input from family members, teachers, and other relevant staff who are familiar with the child's typical behavior.

(c) *Extended follow-up and treatment.* (1) Grantee and delegate agencies must establish a system of ongoing communication with the parents of children with identified health needs to facilitate the implementation of the follow-up plan.

(2) Grantee and delegate agencies must provide assistance to the parents, as needed, to enable them to learn how to obtain any prescribed medications, aids or equipment for medical and dental conditions.

(3) Dental follow-up and treatment must include:

(i) Fluoride supplements and topical fluoride treatments as recommended by dental professionals in communities where a lack of adequate fluoride levels has been determined or for every child with moderate to severe tooth decay; and

(ii) Other necessary preventive measures and further dental treatment as recommended by the dental professional.

(4) Grantee and delegate agencies must assist with the provision of related services addressing health concerns in accordance with the Individualized Education Program (IEP) and the Individualized Family Service Plan (IFSP).

(5) Early Head Start and Head Start funds may be used for professional medical and dental services when no other source of funding is available. When Early Head Start or Head Start funds are used for such services, grantee and delegate agencies must have written documentation of their efforts

to access other available sources of funding.

(d) *Ongoing care.* In addition to assuring children's participation in a schedule of well child care, as described in § 1304.20(a) of this part, grantee and delegate agencies must implement ongoing procedures by which Early Head Start and Head Start staff can identify any new or recurring medical, dental, or developmental concerns so that they may quickly make appropriate referrals. These procedures must include: periodic observations and recordings, as appropriate, of individual children's developmental progress, changes in physical appearance (e.g., signs of injury or illness) and emotional and behavioral patterns. In addition, these procedures must include observations from parents and staff.

(e) *Involving parents.* In conducting the process, as described in §§ 1304.20 (a), (b), and (c), and in making all possible efforts to ensure that each child is enrolled in and receiving appropriate health care services, grantee and delegate agencies must:

(1) Consult with parents immediately when child health or developmental problems are suspected or identified;

(2) Familiarize parents with the use of and rationale for all health and developmental procedures administered through the program or by contract or agreement, and obtain advance parent or guardian authorization for such procedures. Grantee and delegate agencies also must ensure that the results of diagnostic and treatment procedures and ongoing care are shared with and understood by the parents;

(3) Talk with parents about how to familiarize their children in a developmentally appropriate way and in advance about all of the procedures they will receive while enrolled in the program;

(4) Assist parents in accordance with 45 CFR 1304.40(f)(2) (i) and (ii) to enroll and participate in a system of ongoing family health care and encourage parents to be active partners in their children's health care process; and

(5) If a parent or other legally responsible adult refuses to give authorization for health services, grantee and delegate agencies must maintain written documentation of the refusal.

(f) *Individualization of the program.* (1) Grantee and delegate agencies must use the information from the screening for developmental, sensory, and behavioral concerns, the ongoing observations, medical and dental evaluations and treatments, and insights from the child's parents to help staff and parents determine how the program can best respond to each child's individual characteristics, strengths and needs.

(2) To support individualization for children with disabilities in their programs, grantee and delegate agencies must assure that:

(i) Services for infants and toddlers with disabilities and their families support the attainment of the expected outcomes contained in the Individualized Family Service Plan (IFSP) for children identified under the infants and toddlers with disabilities program (Part H) of the Individuals with Disabilities Education Act, as implemented by their State or Tribal government;

(ii) Enrolled families with infants and toddlers suspected of having a disability are promptly referred to the local early intervention agency designated by the State Part H plan to coordinate any needed evaluations, determine eligibility for Part H services, and coordinate the development of an IFSP for children determined to be eligible under the guidelines of that State's program. Grantee and delegate agencies must support parent participation in the evaluation and IFSP development process for infants and toddlers enrolled in their program;

(iii) They participate in and support efforts for a smooth and effective transition for children who, at age three, will need to be considered for services for preschool age children with disabilities; and

(iv) They participate in the development and implementation of the Individualized Education Program (IEP)

for preschool age children with disabilities, consistent with the requirements of 45 CFR 1308.19.

(The information and collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraphs (a), (c) and (d).)

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2313, Jan. 15, 1998]

§ 1304.21 Education and early childhood development.

(a) *Child development and education approach for all children.* (1) In order to help children gain the skills and confidence necessary to be prepared to succeed in their present environment and with later responsibilities in school and life, grantee and delegate agencies' approach to child development and education must:

(i) Be developmentally and linguistically appropriate, recognizing that children have individual rates of development as well as individual interests, temperaments, languages, cultural backgrounds, and learning styles;

(ii) Be inclusive of children with disabilities, consistent with their Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP) (see 45 CFR 1308.19);

(iii) Provide an environment of acceptance that supports and respects gender, culture, language, ethnicity and family composition;

(iv) Provide a balanced daily program of child-initiated and adult-directed activities, including individual and small group activities; and

(v) Allow and enable children to independently use toilet facilities when it is developmentally appropriate and when efforts to encourage toilet training are supported by the parents.

(2) Parents must be:

(i) Invited to become integrally involved in the development of the program's curriculum and approach to child development and education;

(ii) Provided opportunities to increase their child observation skills and to share assessments with staff that will help plan the learning experiences; and

(iii) Encouraged to participate in staff-parent conferences and home visits to discuss their child's development and education (see 45 CFR 1304.40(e)(4) and 45 CFR 1304.40(i)(2)).

(3) Grantee and delegate agencies must support social and emotional development by:

(i) Encouraging development which enhances each child's strengths by:

(A) Building trust;

(B) Fostering independence;

(C) Encouraging self-control by setting clear, consistent limits, and having realistic expectations;

(D) Encouraging respect for the feelings and rights of others; and

(E) Supporting and respecting the home language, culture, and family composition of each child in ways that support the child's health and well-being; and

(ii) Planning for routines and transitions so that they occur in a timely, predictable and unrushed manner according to each child's needs.

(4) Grantee and delegate agencies must provide for the development of each child's cognitive and language skills by:

(i) Supporting each child's learning, using various strategies including experimentation, inquiry, observation, play and exploration;

(ii) Ensuring opportunities for creative self-expression through activities such as art, music, movement, and dialogue;

(iii) Promoting interaction and language use among children and between children and adults; and

(iv) Supporting emerging literacy and numeracy development through materials and activities according to the developmental level of each child.

(5) In center-based settings, grantee and delegate agencies must promote each child's physical development by:

(i) Providing sufficient time, indoor and outdoor space, equipment, materials and adult guidance for active play and movement that support the development of gross motor skills;

(ii) Providing appropriate time, space, equipment, materials and adult guidance for the development of fine motor skills according to each child's developmental level; and

(iii) Providing an appropriate environment and adult guidance for the participation of children with special needs.

(6) In home-based settings, grantee and delegate agencies must encourage parents to appreciate the importance of physical development, provide opportunities for children's outdoor and indoor active play, and guide children in the safe use of equipment and materials.

(b) *Child development and education approach for infants and toddlers.* (1) Grantee and delegate agencies' program of services for infants and toddlers must encourage (see 45 CFR 1304.3(a)(5) for a definition of curriculum):

(i) The development of secure relationships in out-of-home care settings for infants and toddlers by having a limited number of consistent teachers over an extended period of time. Teachers must demonstrate an understanding of the child's family culture and, whenever possible, speak the child's language (see 45 CFR 1304.52(g)(2));

(ii) Trust and emotional security so that each child can explore the environment according to his or her developmental level; and

(iii) Opportunities for each child to explore a variety of sensory and motor experiences with support and stimulation from teachers and family members.

(2) Grantee and delegate agencies must support the social and emotional development of infants and toddlers by promoting an environment that:

(i) Encourages the development of self-awareness, autonomy, and self-expression; and

(ii) Supports the emerging communication skills of infants and toddlers by providing daily opportunities for each child to interact with others and to express himself or herself freely.

(3) Grantee and delegate agencies must promote the physical development of infants and toddlers by:

(i) Supporting the development of the physical skills of infants and toddlers including gross motor skills, such as grasping, pulling, pushing, crawling, walking, and climbing; and

(ii) Creating opportunities for fine motor development that encourage the control and coordination of small, specialized motions, using the eyes, mouth, hands, and feet.

(c) *Child development and education approach for preschoolers.* (1) Grantee and delegate agencies, in collaboration with the parents, must implement a curriculum (see 45 CFR 1304.3(a)(5)) that:

(i) Supports each child's individual pattern of development and learning;

(ii) Provides for the development of cognitive skills by encouraging each child to organize his or her experiences, to understand concepts, and to develop age appropriate literacy, numeracy, reasoning, problem solving and decision-making skills which form a foundation for school readiness and later school success;

(iii) Integrates all educational aspects of the health, nutrition, and mental health services into program activities;

(iv) Ensures that the program environment helps children develop emotional security and facility in social relationships;

(v) Enhances each child's understanding of self as an individual and as a member of a group;

(vi) Provides each child with opportunities for success to help develop feelings of competence, self-esteem, and positive attitudes toward learning; and

(vii) Provides individual and small group experiences both indoors and outdoors.

(2) Staff must use a variety of strategies to promote and support children's learning and developmental progress based on the observations and ongoing assessment of each child (see 45 CFR 1304.20(b), 1304.20(d), and 1304.20(e)).

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2313, Jan. 15, 1998]

§ 1304.22 Child health and safety.

(a) *Health emergency procedures.* Grantee and delegate agencies operating center-based programs must establish and implement policies and procedures to respond to medical and dental health emergencies with which all staff are familiar and trained. At a minimum, these policies and procedures must include:

(1) Posted policies and plans of action for emergencies that require rapid response on the part of staff (e.g., a child choking) or immediate medical or dental attention;

(2) Posted locations and telephone numbers of emergency response systems. Up-to-date family contact information and authorization for emergency care for each child must be readily available;

(3) Posted emergency evacuation routes and other safety procedures for emergencies (e.g., fire or weather-related) which are practiced regularly (see 45 CFR 1304.53 for additional information);

(4) Methods of notifying parents in the event of an emergency involving their child; and

(5) Established methods for handling cases of suspected or known child abuse and neglect that are in compliance with applicable Federal, State, or Tribal laws.

(b) *Conditions of short-term exclusion and admittance.* (1) Grantee and delegate agencies must temporarily exclude a child with a short-term injury or an acute or short-term contagious illness, that cannot be readily accommodated, from program participation in center-based activities or group experiences, but only for that generally short-term period when keeping the child in care poses a significant risk to the health or safety of the child or anyone in contact with the child.

(2) Grantee and delegate agencies must not deny program admission to any child, nor exclude any enrolled child from program participation for a long-term period, solely on the basis of his or her health care needs or medication requirements unless keeping the child in care poses a significant risk to the health or safety of the child or anyone in contact with the child and the risk cannot be eliminated or reduced to an acceptable level through reasonable modifications in the grantee or delegate agency's policies, practices or procedures or by providing appropriate auxiliary aids which would enable the child to participate without fundamentally altering the nature of the program.

(3) Grantee and delegate agencies must request that parents inform them of any health or safety needs of the child that the program may be required to address. Programs must share information, as necessary, with appropriate staff regarding accommodations needed in accordance with the program's confidentiality policy.

(c) *Medication administration.* Grantee and delegate agencies must establish and maintain written procedures regarding the administration, handling, and storage of medication for every child. Grantee and delegate agencies may modify these procedures as necessary to satisfy State or Tribal laws, but only where such laws are consistent with Federal laws. The procedures must include:

(1) Labeling and storing, under lock and key, and refrigerating, if necessary, all medications, including those required for staff and volunteers;

(2) Designating a trained staff member(s) or school nurse to administer, handle and store child medications;

(3) Obtaining physicians' instructions and written parent or guardian authorizations for all medications administered by staff;

(4) Maintaining an individual record of all medications dispensed, and reviewing the record regularly with the child's parents;

(5) Recording changes in a child's behavior that have implications for drug dosage or type, and assisting parents in communicating with their physician regarding the effect of the medication on the child; and

(6) Ensuring that appropriate staff members can demonstrate proper techniques for administering, handling, and storing medication, including the use of any necessary equipment to administer medication.

(d) *Injury prevention.* Grantee and delegate agencies must:

(1) Ensure that staff and volunteers can demonstrate safety practices; and

(2) Foster safety awareness among children and parents by incorporating it into child and parent activities.

(e) *Hygiene.* (1) Staff, volunteers, and children must wash their hands with soap and running water at least at the following times:

(i) After diapering or toilet use;

(ii) Before food preparation, handling, consumption, or any other food-related activity (e.g., setting the table);

(iii) Whenever hands are contaminated with blood or other bodily fluids; and

(iv) After handling pets or other animals.

(2) Staff and volunteers must also wash their hands with soap and running water:

(i) Before and after giving medications;

(ii) Before and after treating or bandaging a wound (nonporous gloves should be worn if there is contact with blood or blood-containing body fluids); and

(iii) After assisting a child with toilet use.

(3) Nonporous (e.g., latex) gloves must be worn by staff when they are in contact with spills of blood or other visibly bloody bodily fluids.

(4) Spills of bodily fluids (e.g., urine, feces, blood, saliva, nasal discharge, eye discharge or any fluid discharge) must be cleaned and disinfected immediately in keeping with professionally established guidelines (e.g., standards of the Occupational Safety Health Administration, U.S. Department of Labor). Any tools and equipment used to clean spills of bodily fluids must be cleaned and disinfected immediately. Other blood-contaminated materials must be disposed of in a plastic bag with a secure tie.

(5) Grantee and delegate agencies must adopt sanitation and hygiene procedures for diapering that adequately protect the health and safety of children served by the program and staff. Grantee and delegate agencies must ensure that staff properly conduct these procedures.

(6) Potties that are utilized in a center-based program must be emptied into the toilet and cleaned and disinfected after each use in a utility sink used for this purpose.

(7) Grantee and delegate agencies operating programs for infants and toddlers must space cribs and cots at least three feet apart to avoid spreading contagious illness and to allow for easy access to each child.

(f) *First aid kits.* (1) Readily available, well-supplied first aid kits appropriate for the ages served and the program size must be maintained at each facility and available on outings away from the site. Each kit must be accessible to staff members at all times, but must be kept out of the reach of children.

(2) First aid kits must be restocked after use, and an inventory must be conducted at regular intervals.

(The information collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraph (c).)

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2313, Jan. 15, 1998]

§ 1304.23 Child nutrition.

(a) *Identification of nutritional needs.* Staff and families must work together to identify each child's nutritional needs, taking into account staff and family discussions concerning:

(1) Any relevant nutrition-related assessment data (height, weight, hemoglobin/hematocrit) obtained under 45 CFR 1304.20(a);

(2) Information about family eating patterns, including cultural preferences, special dietary requirements for each child with nutrition-related health problems, and the feeding requirements of infants and toddlers and each child with disabilities (see 45 CFR 1308.20);

(3) For infants and toddlers, current feeding schedules and amounts and types of food provided, including whether breast milk or formula and baby food is used; meal patterns; new foods introduced; food intolerances and preferences; voiding patterns; and observations related to developmental changes in feeding and nutrition. This information must be shared with parents and updated regularly; and

(4) Information about major community nutritional issues, as identified through the Community Assessment or by the Health Services Advisory Committee or the local health department.

(b) *Nutritional services.* (1) Grantee and delegate agencies must design and implement a nutrition program that meets the nutritional needs and feeding requirements of each child, including those with special dietary needs and children with disabilities. Also, the nutrition program must serve a variety of foods which consider cultural and ethnic preferences and which broaden the child's food experience.

(i) All Early Head Start and Head Start grantee and delegate agencies must use funds from USDA Food and Consumer Services Child Nutrition

Programs as the primary source of payment for meal services. Early Head Start and Head Start funds may be used to cover those allowable costs not covered by the USDA.

(ii) Each child in a part-day center-based setting must receive meals and snacks that provide at least ⅓ of the child's daily nutritional needs. Each child in a center-based full-day program must receive meals and snacks that provide ½ to ⅔ of the child's daily nutritional needs, depending upon the length of the program day.

(iii) All children in morning center-based settings who have not received breakfast at the time they arrive at the Early Head Start or Head Start program must be served a nourishing breakfast.

(iv) Each infant and toddler in center-based settings must receive food appropriate to his or her nutritional needs, developmental readiness, and feeding skills, as recommended in the USDA meal pattern or nutrient standard menu planning requirements outlined in 7 CFR parts 210, 220, and 226.

(v) For 3- to 5-year-olds in center-based settings, the quantities and kinds of food served must conform to recommended serving sizes and minimum standards for meal patterns recommended in the USDA meal pattern or nutrient standard menu planning requirements outlined in 7 CFR parts 210, 220, and 226.

(vi) For 3- to 5-year-olds in center-based settings or other Head Start group experiences, foods served must be high in nutrients and low in fat, sugar, and salt.

(vii) Meal and snack periods in center-based settings must be appropriately scheduled and adjusted, where necessary, to ensure that individual needs are met. Infants and young toddlers who need it must be fed ''on demand'' to the extent possible or at appropriate intervals.

(2) Grantee and delegate agencies operating home-based program options must provide appropriate snacks and meals to each child during group socialization activities (see 45 CFR 1306.33 for information regarding home-based group socialization).

(3) Staff must promote effective dental hygiene among children in conjunction with meals.

(4) Parents and appropriate community agencies must be involved in planning, implementing, and evaluating the agencies' nutritional services.

(c) *Meal service.* Grantee and delegate agencies must ensure that nutritional services in center-based settings contribute to the development and socialization of enrolled children by providing that:

(1) A variety of food is served which broadens each child's food experiences;

(2) Food is not used as punishment or reward, and that each child is encouraged, but not forced, to eat or taste his or her food;

(3) Sufficient time is allowed for each child to eat;

(4) All toddlers and preschool children and assigned classroom staff, including volunteers, eat together family style and share the same menu to the extent possible;

(5) Infants are held while being fed and are not laid down to sleep with a bottle;

(6) Medically-based diets or other dietary requirements are accommodated; and

(7) As developmentally appropriate, opportunity is provided for the involvement of children in food-related activities.

(d) *Family assistance with nutrition.* Parent education activities must include opportunities to assist individual families with food preparation and nutritional skills.

(e) *Food safety and sanitation.* (1) Grantee and delegate agencies must post evidence of compliance with all applicable Federal, State, Tribal, and local food safety and sanitation laws, including those related to the storage, preparation and service of food and the health of food handlers. In addition, agencies must contract only with food service vendors that are licensed in accordance with State, Tribal or local laws.

(2) For programs serving infants and toddlers, facilities must be available

for the proper storage and handling of breast milk and formula.

(The information collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraph (a).)

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2313, Jan. 15, 1998]

§ 1304.24 Child mental health.

(a) *Mental health services.* (1) Grantee and delegate agencies must work collaboratively with parents (see 45 CFR 1304.40(f) for issues related to parent education) by:

(i) Soliciting parental information, observations, and concerns about their child's mental health;

(ii) Sharing staff observations of their child and discussing and anticipating with parents their child's behavior and development, including separation and attachment issues;

(iii) Discussing and identifying with parents appropriate responses to their child's behaviors;

(iv) Discussing how to strengthen nurturing, supportive environments and relationships in the home and at the program;

(v) Helping parents to better understand mental health issues; and

(vi) Supporting parents' participation in any needed mental health interventions.

(2) Grantee and delegate agencies must secure the services of mental health professionals on a schedule of sufficient frequency to enable the timely and effective identification of and intervention in family and staff concerns about a child's mental health; and

(3) Mental health program services must include a regular schedule of onsite mental health consultation involving the mental health professional, program staff, and parents on how to:

(i) Design and implement program practices responsive to the identified behavioral and mental health concerns of an individual child or group of children;

(ii) Promote children's mental wellness by providing group and individual staff and parent education on mental health issues;

(iii) Assist in providing special help for children with atypical behavior or development; and

(iv) Utilize other community mental health resources, as needed.

Subpart C—Family and Community Partnerships

§ 1304.40 Family partnerships.

(a) *Family goal setting.* (1) Grantee and delegate agencies must engage in a process of collaborative partnership-building with parents to establish mutual trust and to identify family goals, strengths, and necessary services and other supports. This process must be initiated as early after enrollment as possible and it must take into consideration each family's readiness and willingness to participate in the process.

(2) As part of this ongoing partnership, grantee and delegate agencies must offer parents opportunities to develop and implement individualized family partnership agreements that describe family goals, responsibilities, timetables and strategies for achieving these goals as well as progress in achieving them. In home-based program options, this agreement must include the above information as well as the specific roles of parents in home visits and group socialization activities (see 45 CFR 1306.33(b)).

(3) To avoid duplication of effort, or conflict with, any preexisting family plans developed between other programs and the Early Head Start or Head Start family, the family partnership agreement must take into account, and build upon as appropriate, information obtained from the family and other community agencies concerning preexisting family plans. Grantee and delegate agencies must coordinate, to the extent possible, with families and other agencies to support the accomplishment of goals in the preexisting plans.

(4) A variety of opportunities must be created by grantee and delegate agencies for interaction with parents throughout the year.

(5) Meetings and interactions with families must be respectful of each family's diversity and cultural and ethnic background.

(b) *Accessing community services and resources.* (1) Grantee and delegate agencies must work collaboratively with all participating parents to identify and continually access, either directly or through referrals, services and resources that are responsive to each family's interests and goals, including:

(i) Emergency or crisis assistance in areas such as food, housing, clothing, and transportation;

(ii) Education and other appropriate interventions, including opportunities for parents to participate in counseling programs or to receive information on mental health issues that place families at risk, such as substance abuse, child abuse and neglect, and domestic violence; and

(iii) Opportunities for continuing education and employment training and other employment services through formal and informal networks in the community.

(2) Grantee and delegate agencies must follow-up with each family to determine whether the kind, quality, and timeliness of the services received through referrals met the families' expectations and circumstances.

(c) *Services to pregnant women who are enrolled in programs serving pregnant women, infants, and toddlers.* (1) Early Head Start grantee and delegate agencies must assist pregnant women to access comprehensive prenatal and postpartum care, through referrals, immediately after enrollment in the program. This care must include:

(i) Early and continuing risk assessments, which include an assessment of nutritional status as well as nutrition counseling and food assistance, if necessary;

(ii) Health promotion and treatment, including medical and dental examinations on a schedule deemed appropriate by the attending health care providers as early in the pregnancy as possible; and

(iii) Mental health interventions and follow-up, including substance abuse prevention and treatment services, as needed.

(2) Grantee and delegate agencies must provide pregnant women and other family members, as appropriate, with prenatal education on fetal development (including risks from smoking and alcohol), labor and delivery, and postpartum recovery (including maternal depression).

(3) Grantee and delegate agencies must provide information on the benefits of breast feeding to all pregnant and nursing mothers. For those who choose to breast feed in center-based programs, arrangements must be provided as necessary.

(d) *Parent involvement—general.* (1) In addition to involving parents in program policy-making and operations (see 45 CFR 1304.50), grantee and delegate agencies must provide parent involvement and education activities that are responsive to the ongoing and expressed needs of the parents, both as individuals and as members of a group. Other community agencies should be encouraged to assist in the planning and implementation of such programs.

(2) Early Head Start and Head Start settings must be open to parents during all program hours. Parents must be welcomed as visitors and encouraged to observe children as often as possible and to participate with children in group activities. The participation of parents in any program activity must be voluntary, and must not be required as a condition of the child's enrollment.

(3) Grantee and delegate agencies must provide parents with opportunities to participate in the program as employees or volunteers (see 45 CFR 1304.52(b)(3) for additional requirements about hiring parents).

(e) *Parent involvement in child development and education.* (1) Grantee and delegate agencies must provide opportunities to include parents in the development of the program's curriculum and approach to child development and education (see 45 CFR 1304.3(a)(5) for a definition of curriculum).

(2) Grantees and delegate agencies operating home-based program options must build upon the principles of adult learning to assist, encourage, and support parents as they foster the growth and development of their children.

(3) Grantee and delegate agencies must provide opportunities for parents to enhance their parenting skills, knowledge, and understanding of the educational and developmental needs

and activities of their children and to share concerns about their children with program staff (see 45 CFR 1304.21 for additional requirements related to parent involvement).

(4) Grantee and delegate agencies must provide, either directly or through referrals to other local agencies, opportunities for children and families to participate in family literacy services by:

(i) Increasing family access to materials, services, and activities essential to family literacy development; and

(ii) Assisting parents as adult learners to recognize and address their own literacy goals.

(5) In addition to the two home visits, teachers in center-based programs must conduct staff-parent conferences, as needed, but no less than two per program year, to enhance the knowledge and understanding of both staff and parents of the educational and developmental progress and activities of children in the program (see 45 CFR 1304.21(a)(2)(iii) and 45 CFR 1304.40(i) for additional requirements about staff-parent conferences and home visits).

(f) *Parent involvement in health, nutrition, and mental health education.* (1) Grantee and delegate agencies must provide medical, dental, nutrition, and mental health education programs for program staff, parents, and families.

(2) Grantee and delegate agencies must ensure that, at a minimum, the medical and dental health education program:

(i) Assists parents in understanding how to enroll and participate in a system of ongoing family health care.

(ii) Encourages parents to become active partners in their children's medical and dental health care process and to accompany their child to medical and dental examinations and appointments; and

(iii) Provides parents with the opportunity to learn the principles of preventive medical and dental health, emergency first-aid, occupational and environmental hazards, and safety practices for use in the classroom and in the home. In addition to information on general topics (e.g., maternal and child health and the prevention of Sudden Infant Death Syndrome), information specific to the health needs of individual children must also be made available to the extent possible.

(3) Grantee and delegate agencies must ensure that the nutrition education program includes, at a minimum:

(i) Nutrition education in the selection and preparation of foods to meet family needs and in the management of food budgets; and

(ii) Parent discussions with program staff about the nutritional status of their child.

(4) Grantee and delegate agencies must ensure that the mental health education program provides, at a minimum (see 45 CFR 1304.24 for issues related to mental health education):

(i) A variety of group opportunities for parents and program staff to identify and discuss issues related to child mental health;

(ii) Individual opportunities for parents to discuss mental health issues related to their child and family with program staff; and

(iii) The active involvement of parents in planning and implementing any mental health interventions for their children.

(g) *Parent involvement in community advocacy.* (1) Grantee and delegate agencies must:

(i) Support and encourage parents to influence the character and goals of community services in order to make them more responsive to their interests and needs; and

(ii) Establish procedures to provide families with comprehensive information about community resources (see 45 CFR 1304.41(a)(2) for additional requirements).

(2) Parents must be provided regular opportunities to work together, and with other community members, on activities that they have helped develop and in which they have expressed an interest.

(h) *Parent involvement in transition activities.* (1) Grantee and delegate agencies must assist parents in becoming their children's advocate as they transition both into Early Head Start or Head Start from the home or other child care setting, and from Head Start to elementary school, a Title I of the Elementary and Secondary Education

Act preschool program, or a child care setting.

(2) Staff must work to prepare parents to become their children's advocate through transition periods by providing that, at a minimum, a staff-parent meeting is held toward the end of the child's participation in the program to enable parents to understand the child's progress while enrolled in Early Head Start or Head Start.

(3) To promote the continued involvement of Head Start parents in the education and development of their children upon transition to school, grantee and delegate agencies must:

(i) Provide education and training to parents to prepare them to exercise their rights and responsibilities concerning the education of their children in the school setting; and

(ii) Assist parents to communicate with teachers and other school personnel so that parents can participate in decisions related to their children's education.

(4) See 45 CFR 1304.41(c) for additional standards related to children's transition to and from Early Head Start or Head Start.

(i) *Parent involvement in home visits.* (1) Grantee and delegate agencies must not require that parents permit home visits as a condition of the child's participation in Early Head Start or Head Start center-based program options. Every effort must be made to explain the advantages of home visits to the parents.

(2) The child's teacher in center-based programs must make no less than two home visits per program year to the home of each enrolled child, unless the parents expressly forbid such visits, in accordance with the requirements of 45 CFR 1306.32(b)(8). Other staff working with the family must make or join home visits, as appropriate.

(3) Grantee and delegate agencies must schedule home visits at times that are mutually convenient for the parents or primary caregivers and staff.

(4) In cases where parents whose children are enrolled in the center-based program option ask that the home visits be conducted outside the home, or in cases where a visit to the home presents significant safety hazards for staff, the home visit may take place at an Early Head Start or Head Start site or at another safe location that affords privacy. Home visits in home-based program options must be conducted in the family's home. (See 45 CFR 1306.33 regarding the home-based program option.)

(5) In addition, grantee and delegate agencies operating home-based program options must meet the requirements of 45 CFR 1306.33(a)(1) regarding home visits.

(6) Grantee and delegate agencies serving infants and toddlers must arrange for health staff to visit each newborn within two weeks after the infant's birth to ensure the well-being of both the mother and the child.

(The information and collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraph (a).

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2313, 2314, Jan. 15, 1998]

§ 1304.41 Community partnerships.

(a) *Partnerships.* (1) Grantee and delegate agencies must take an active role in community planning to encourage strong communication, cooperation, and the sharing of information among agencies and their community partners and to improve the delivery of community services to children and families in accordance with the agency's confidentiality policies. Documentation must be maintained to reflect the level of effort undertaken to establish community partnerships (see 45 CFR 1304.51 for additional planning requirements).

(2) Grantee and delegate agencies must take affirmative steps to establish ongoing collaborative relationships with community organizations to promote the access of children and families to community services that are responsive to their needs, and to ensure that Early Head Start and Head Start programs respond to community needs, including:

(i) Health care providers, such as clinics, physicians, dentists, and other health professionals;

(ii) Mental health providers;

(iii) Nutritional service providers;

(iv) Individuals and agencies that provide services to children with disabilities and their families (see 45 CFR 1308.4 for specific service requirements);

(v) Family preservation and support services;

(vi) Child protective services and any other agency to which child abuse must be reported under State or Tribal law;

(vii) Local elementary schools and other educational and cultural institutions, such as libraries and museums, for both children and families;

(viii) Providers of child care services; and

(ix) Any other organizations or businesses that may provide support and resources to families.

(3) Grantee and delegate agencies must perform outreach to encourage volunteers from the community to participate in Early Head Start and Head Start programs.

(4) To enable the effective participation of children with disabilities and their families, grantee and delegate agencies must make specific efforts to develop interagency agreements with local education agencies (LEAs) and other agencies within the grantee and delegate agency's service area (see 45 CFR 1308.4(h) for specific requirements concerning interagency agreements).

(b) *Advisory committees.* Each grantee directly operating an Early Head Start or Head Start program, and each delegate agency, must establish and maintain a Health Services Advisory Committee which includes Head Start parents, professionals, and other volunteers from the community. Grantee and delegate agencies also must establish and maintain such other service advisory committees as they deem appropriate to address program service issues such as community partnerships and to help agencies respond to community needs.

(c) *Transition services.* (1) Grantee and delegate agencies must establish and maintain procedures to support successful transitions for enrolled children and families from previous child care programs into Early Head Start or Head Start and from Head Start into elementary school, a Title I of the Elementary and Secondary Education Act preschool program, or other child care settings. These procedures must include:

(i) Coordinating with the schools or other agencies to ensure that individual Early Head Start or Head Start children's relevant records are transferred to the school or next placement in which a child ill enroll or from earlier placements to Early Head Start or Head Start;

(ii) Outreach to encourage communication between Early Head Start or Head Start staff and their counterparts in the schools and other child care settings including principals, teachers, social workers and health staff to facilitate continuity of programming;

(iii) Initiating meetings involving Head Start teachers and parents and kindergarten or elementary school teachers to discuss the developmental progress and abilities of individual children; and

(iv) Initiating joint transition-related training for Early Head Start or Head Start staff and school or other child development staff.

(2) To ensure the most appropriate placement and services following participation in Early Head Start, transition planning must be undertaken for each child and family at least six months prior to the child's third birthday. The process must take into account: The child's health status and developmental level, progress made by the child and family while in Early Head Start, current and changing family circumstances, and the availability of Head Start and other child development or child care services in the community. As appropriate, a child may remain in Early Head Start, following his or her third birthday, for additional months until he or she can transition into Head Start or another program.

(3) See 45 CFR 1304.40(h) for additional requirements related to parental participation in their child's transition to and from Early Head Start or Head Start.

(The information collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraph (a).)

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2314, Jan. 15, 1998]

Subpart D—Program Design and Management

§ 1304.50 Program governance.

(a) *Policy Council, Policy Committee, and Parent Committee structure.* (1) Grantee and delegate agencies must establish and maintain a formal structure of shared governance through which parents can participate in policy making or in other decisions about the program. This structure must consist of the following groups, as required:

(i) Policy Council. This Council must be established at the grantee level.

(ii) Policy Committee. This Committee must be established at the delegate agency level when the program is administered in whole or in part by such agencies (see 45 CFR 1301.2 for a definition of a delegate agency).

(iii) Parent Committee. For center-based programs, this Committee must be established at the center level. For other program options, an equivalent Committee must be established at the local program level. When programs operate more than one option from the same site, the Parent Committee membership is combined unless parents choose to have a separate Committee for each option.

(2) Parent Committees must be comprised exclusively of the parents of children currently enrolled at the center level for center-based programs or at the equivalent level for other program options (see 45 CFR 1306.3(h) for a definition of a Head Start parent).

(3) All Policy Councils, Policy Committees, and Parent Committees must be established as early in the program year as possible. Grantee Policy Councils and delegate Policy Committees may not be dissolved until successor Councils or Committees are elected and seated.

(4) When a grantee has delegated the entire Head Start program to one delegate agency, it is not necessary to have a Policy Committee in addition to a grantee agency Policy Council.

(5) The governing body (the group with legal and fiscal responsibility for administering the Early Head Start or Head Start program) and the Policy Council or Policy Committee must not have identical memberships and functions.

(b) *Policy group composition and formation.* (1) Each grantee and delegate agency governing body operating an Early Head Start or Head Start program must (except where such authority is ceded to the Policy Council or Policy Committee) propose, within the framework of these regulations, the total size of their respective policy groups (based on the number of centers, classrooms or other program option units, and the number of children served by their Early Head Start or Head Start program), the procedures for the election of parent members, and the procedure for the selection of community representatives. These proposals must be approved by the Policy Council or Policy Committee.

(2) Policy Councils and Policy Committees must be comprised of two types of representatives: parents of currently enrolled children and community representatives. At least 51 percent of the members of these policy groups must be the parents of currently enrolled children (see 45 CFR 1306.3(h) for a definition of a Head Start parent).

(3) Community representatives must be drawn from the local community: businesses; public or private community, civic, and professional organizations; and others who are familiar with resources and services for low-income children and families, including for example the parents of formerly enrolled children.

(4) All parent members of Policy Councils or Policy Committees must stand for election or re-election annually. All community representatives also must be selected annually.

(5) Policy Councils and Policy Committees must limit the number of one-year terms any individual may serve on either body to a combined total of three terms.

(6) No grantee or delegate agency staff (or members of their immediate families) may serve on Policy Councils or Policy Committees except parents who occasionally substitute for regular Early Head Start or Head Start staff. In the case of Tribal grantees, this exclusion applies only to Tribal staff who work in areas directly related to or which directly impact upon any Early

Head Start or Head Start administrative, fiscal or programmatic issues.

(7) Parents of children currently enrolled in all program options must be proportionately represented on established policy groups.

(c) *Policy group responsibilities—general.* At a minimum policy groups must be charged with the responsibilities described in paragraphs (d), (f), (g), and (h) of this section and repeated in appendix A of this section.

(d) *The Policy Council or Policy Committee.* (1) Policy Councils and Policy Committees must work in partnership with key management staff and the governing body to develop, review, and approve or disapprove the following policies and procedures:

(i) All funding applications and amendments to funding applications for Early Head Start and Head Start, including administrative services, prior to the submission of such applications to the grantee (in the case of Policy Committees) or to HHS (in the case of Policy Councils);

(ii) Procedures describing how the governing body and the appropriate policy group will implement shared decision-making;

(iii) Procedures for program planning in accordance with this part and the requirements of 45 CFR 1305.3;

(iv) The program's philosophy and long- and short-range program goals and objectives (see 45 CFR 1304.51(a) and 45 CFR 1305.3 for additional requirements regarding program planning);

(v) The selection of delegate agencies and their service areas (this regulation is binding on Policy Councils exclusively) (see 45 CFR 1301.33 and 45 CFR 1305.3(a) for additional requirements about delegate agency and service area selection, respectively);

(vi) The composition of the Policy Council or the Policy Committee and the procedures by which policy group members are chosen;

(vii) Criteria for defining recruitment, selection, and enrollment priorities, in accordance with the requirements of 45 CFR part 1305;

(viii) The annual self-assessment of the grantee or delegate agency's progress in carrying out the programmatic and fiscal intent of its grant application, including planning or other actions that may result from the review of the annual audit and findings from the Federal monitoring review (see 45 CFR 1304.51(i)(1) for additional requirements about the annual self-assessment);

(ix) Program personnel policies and subsequent changes to those policies, in accordance with 45 CFR 1301.31, including standards of conduct for program staff, consultants, and volunteers;

(x) Decisions to hire or terminate the Early Head Start or Head Start director of the grantee or delegate agency; and

(xi) Decisions to hire or terminate any person who works primarily for the Early Head Start or Head Start program of the grantee or delegate agency.

(2) In addition, Policy Councils and Policy Committees must perform the following functions directly:

(i) Serve as a link to the Parent Committees, grantee and delegate agency governing bodies, public and private organizations, and the communities they serve;

(ii) Assist Parent Committees in communicating with parents enrolled in all program options to ensure that they understand their rights, responsibilities, and opportunities in Early Head Start and Head Start and to encourage their participation in the program;

(iii) Assist Parent Committees in planning, coordinating, and organizing program activities for parents with the assistance of staff, and ensuring that funds set aside from program budgets are used to support parent activities;

(iv) Assist in recruiting volunteer services from parents, community residents, and community organizations, and assist in the mobilization of community resources to meet identified needs; and

(v) Establish and maintain procedures for working with the grantee or delegate agency to resolve community complaints about the program.

(e) *Parent Committee.* The Parent Committee must carry out at least the following minimum responsibilities:

(1) Advise staff in developing and implementing local program policies, activities, and services;

(2) Plan, conduct, and participate in informal as well as formal programs and activities for parents and staff; and

(3) Within the guidelines established by the governing body, Policy Council, or Policy Committee, participate in the recruitment and screening of Early Head Start and Head Start employees.

(f) *Policy Council, Policy Committee, and Parent Committee reimbursement.* Grantee and delegate agencies must enable low-income members to participate fully in their group responsibilities by providing, if necessary, reimbursements for reasonable expenses incurred by the members.

(g) *Governing body responsibilities.* (1) Grantee and delegate agencies must have written policies that define the roles and responsibilities of the governing body members and that inform them of the management procedures and functions necessary to implement a high quality program.

(2) Grantee and delegate agencies must ensure that appropriate internal controls are established and implemented to safeguard Federal funds in accordance with 45 CFR 1301.13.

(h) *Internal dispute resolution.* Each grantee and delegate agency and Policy Council or Policy Committee jointly must establish written procedures for resolving internal disputes, including impasse procedures, between the governing body and policy group.

APPENDIX A—GOVERNANCE AND MANAGEMENT RESPONSIBILITIES

[A=General responsibility; B=Operating responsibility; C=Must approve or disapprove; D=Determined locally]

Function	Grantee Agency		Delegate Agency		Grantee or Delegate Management Staff	
	Governing Body	Policy Council	Governing Body	Policy Cmte.	HS* Program Director	Agency Director
I. Planning						
(a) 1304.50(d)(1)(iii) Procedures for program planning in accordance with this Part and the requirements of 45 CFR 1305.3.	A & C	C	C	C	B	D
(b) 1304.50(d)(1)(iv) The program's philosophy and long- and short-range program goals and objectives (see 45 CFR 1304.51(a) and 45 CFR 1305.3 for additional requirements regarding program planning).	A & C	C	C	C	B	D
(c) 1304.50(d)(1)(v) The selection of delegate agencies and their service areas (this regulation is binding on Policy Councils exclusively) (see 45 CFR 1301.33 and 45 CFR 1305.3(a) for additional requirements about delegate agency and service area selection, respectively).	A & C	C	—	—	B (Grantee only)	D (Grantee only)
(d) 1304.50(d)(1)(vii) Criteria for defining recruitment, selection, and enrollment priorities, in accordance with the requirements of 45 CFR Part 1305.	A	C	A	C	B	D
(e) 1304.50(d)(1)(i) All funding applications and amendments to funding applications for Early Head Start and Head Start, including administrative services, prior to the submission of such applications to the grantee (in the case of Policy Committees) or to HHS (in the case of Policy Councils).	A & C	C	A & C	C	B	D

APPENDIX A—GOVERNANCE AND MANAGEMENT RESPONSIBILITIES—Continued

[A=General responsibility; B=Operating responsibility; C=Must approve or disapprove; D=Determined locally]

Function	Grantee Agency		Delegate Agency		Grantee or Delegate Management Staff	
	Governing Body	Policy Council	Governing Body	Policy Cmte.	HS* Program Director	Agency Director
(f) 1304.50(f) Policy Council, Policy Committee, and Parent Committee reimbursement. Grantee and delegate agencies must enable low-income members to participate fully in their group responsibilities by providing, if necessary, reimbursements for reasonable expenses incurred by the members.	A	C	A	C	B	D
(g) 1304.50(d)(1)(viii) The annual self-assessment of the grantee or delegate agency's progress in carrying out the programmatic and fiscal intent of its grant application, including planning or other actions that may result from the review of the annual audit and findings from the Federal monitoring review (see 45 CFR 1304.51(i)(1) for additional requirements about the annual self-assessment).	A	C	A	C	B	D
II. General Procedures						
(a) 1304.50(d)(1)(vi) The composition of the Policy Council or the Policy Committee and the procedures by which policy group members are chosen.	A & C	C	A & C	C	B	D
(b) 1304.50(g)(1) Grantee and delegate agencies must have written policies that define the roles and responsibilities of the governing body members and that inform them of the management procedures and functions necessary to implement a high quality program.	A & C	—	A & C	—	—	D
(c) 1304.50(d)(1)(ii) Procedures describing how the governing body and the appropriate policy group will implement shared decision-making.	A & C	C	A & C	C	D	D
(d) 1304.50(h) Internal dispute resolution. Each grantee and delegate agency and Policy Council or Policy Committee jointly must establish written procedures for resolving internal disputes, including impasse procedures, between the governing body and policy group.	A & C	C	A & C	C	D	D
(e) 1304.50(d)(2)(v) Establish and maintain procedures for hearing and working with the grantee or delegate agency to resolve community complaints about the program.	B	B	B	B	D	D

APPENDIX A—GOVERNANCE AND MANAGEMENT RESPONSIBILITIES—Continued

[A=General responsibility; B=Operating responsibility; C=Must approve or disapprove; D=Determined locally]

Function	Grantee Agency		Delegate Agency		Grantee or Delegate Management Staff	
	Governing Body	Policy Council	Governing Body	Policy Cmte.	HS* Program Director	Agency Director
(f) 1304.50(g)(2) Grantee and delegate agencies must ensure that appropriate internal controls are established and implemented to safeguard Federal funds in accordance with 45 CFR 1301.13.	A	—	A	—	D	D
(g) The annual independent audit that must be conducted in accordance with 45 CFR 1301.12.	A	—	A	—	D	D
III. Human Resources Management						
(a) 1304.50(d)(1)(ix) Program personnel policies and subsequent changes to those policies, in accordance with 45 CFR 1301.31, including standards of conduct for program staff, consultants, and volunteers.	A & C	C	A & C	C	D	D
(b) 1304.50(d)(1)(x) Decisions to hire or terminate the Early Head Start or Head Start director of the grantee agency.	A & C	C	—	—	—	D
(c) 1304.50(d)(1)(xi) Decisions to hire or terminate any person who works primarily for the Early Head Start or Head Start program of the grantee agency.	A	C	—	—	B (Grantee only)	D
(d) 1304.50(d)(1)(x) Decisions to hire or terminate the Early Head Start or Head Start director of the delegate agency.	—	—	A & C	C	—	D
(e) 1304.50(d)(1)(xi) Decisions to hire or terminate any person who works primarily for the Early Head Start or Head Start program of the delegate agency.	—	—	A	C	B (Delegate only)	D

KEY AND DEFINITIONS AS USED IN CHART

*When a grantee or delegate agency operates an Early Head Start program only and not an Early Head Start and a Head Start program, these responsibilities apply to the Early Head Start Director.

A. General Responsibility. The group with legal and fiscal responsibility that guides and oversees the carrying out of the functions described through the individual or group given operating responsibility.

B. Operating Responsibility. The individual or group that is directly responsible for carrying out or performing the functions consistent with the general guidance and oversight from the group holding general responsibility.

C. Must Approve or Disapprove. The group that must be involved in the decision-making process prior to the point of seeking approval. If it does not approve, a proposal cannot be adopted, or the proposed action taken, until agreement is reached between the disagreeing groups.

D. Determined locally. Management staff functions as determined by the local governing body and in accordance with all Head Start regulations.

(The information and collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraphs (f), (g), and (h).)

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2314, Jan. 15, 1998]

§ 1304.51 Management systems and procedures.

(a) *Program planning.* (1) Grantee and delegate agencies must develop and implement a systematic, ongoing process of program planning that includes consultation with the program's governing body, policy groups, and program staff, and with other community organizations that serve Early Head Start and

Head Start or other low-income families with young children. Program planning must include:

(i) An assessment of community strengths, needs and resources through completion of the Community Assessment, in accordance with the requirements of 45 CFR 1305.3;

(ii) The formulation of both multi-year (long-range) program goals and short-term program and financial objectives that address the findings of the Community Assessment, are consistent with the philosophy of Early Head Start and Head Start, and reflect the findings of the program's annual self-assessment; and

(iii) The development of written plan(s) for implementing services in each of the program areas covered by this part (e.g., Early Childhood Development and Health Services, Family and Community Partnerships, and Program Design and Management). See the requirements of 45 CFR parts 1305, 1306, and 1308.

(2) All written plans for implementing services, and the progress in meeting them, must be reviewed by the grantee or delegate agency staff and reviewed and approved by the Policy Council or Policy Committee at least annually, and must be revised and updated as needed.

(b) *Communications—general.* Grantee and delegate agencies must establish and implement systems to ensure that timely and accurate information is provided to parents, policy groups, staff, and the general community.

(c) *Communication with families.* (1) Grantee and delegate agencies must ensure that effective two-way comprehensive communications between staff and parents are carried out on a regular basis throughout the program year.

(2) Communication with parents must be carried out in the parents' primary or preferred language or through an interpreter, to the extent feasible.

(d) *Communication with governing bodies and policy groups.* Grantee and delegate agencies must ensure that the following information is provided regularly to their grantee and delegate governing bodies and to members of their policy groups:

(1) Procedures and timetables for program planning;

(2) Policies, guidelines, and other communications from HHS;

(3) Program and financial reports; and

(4) Program plans, policies, procedures, and Early Head Start and Head Start grant applications.

(e) *Communication among staff.* Grantee and delegate agencies must have mechanisms for regular communication among all program staff to facilitate quality outcomes for children and families.

(f) *Communication with delegate agencies.* Grantees must have a procedure for ensuring that delegate agency governing bodies, Policy Committees, and all staff receive all regulations, policies, and other pertinent communications in a timely manner.

(g) *Record-keeping systems.* Grantee and delegate agencies must establish and maintain efficient and effective record-keeping systems to provide accurate and timely information regarding children, families, and staff and must ensure appropriate confidentiality of this information.

(h) *Reporting systems.* Grantee and delegate agencies must establish and maintain efficient and effective reporting systems that:

(1) Generate periodic reports of financial status and program operations in order to control program quality, maintain program accountability, and advise governing bodies, policy groups, and staff of program progress; and

(2) Generate official reports for Federal, State, and local authorities, as required by applicable law.

(i) *Program self-assessment and monitoring.* (1) At least once each program year, with the consultation and participation of the policy groups and, as appropriate, other community members, grantee and delegate agencies must conduct a self-assessment of their effectiveness and progress in meeting program goals and objectives and in implementing Federal regulations.

(2) Grantees must establish and implement procedures for the ongoing monitoring of their own Early Head Start and Head Start operations, as well as those of each of their delegate agencies, to ensure that these operations effectively implement Federal regulations.

(3) Grantees must inform delegate agency governing bodies of any deficiencies in delegate agency operations identified in the monitoring review and must help them develop plans, including timetables, for addressing identified problems.

(The information and collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraphs (a) and (i).)

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2314, Jan. 15, 1998]

§ 1304.52 Human resources management.

(a) *Organizational structure.* (1) Grantee and delegate agencies must establish and maintain an organizational structure that supports the accomplishment of program objectives. This structure must address the major functions and responsibilities assigned to each staff position and must provide evidence of adequate mechanisms for staff supervision and support.

(2) At a minimum, grantee and delegate agencies must ensure that the following program management functions are formally assigned to and adopted by staff within the program:

(i) Program management (the Early Head Start or Head Start director);

(ii) Management of early childhood development and health services, including child development and education; child medical, dental, and mental health; child nutrition; and, services for children with disabilities; and

(iii) Management of family and community partnerships, including parent activities.

(b) *Staff qualifications—general.* (1) Grantee and delegate agencies must ensure that staff and consultants have the knowledge, skills, and experience they need to perform their assigned functions responsibly.

(2) In addition, grantee and delegate agencies must ensure that only candidates with the qualifications specified in this part and in 45 CFR 1306.21 are hired.

(3) Current and former Early Head Start and Head Start parents must receive preference for employment vacancies for which they are qualified.

(4) Staff and program consultants must be familiar with the ethnic background and heritage of families in the program and must be able to serve and effectively communicate, to the extent feasible, with children and families with no or limited English proficiency.

(c) *Early Head Start or Head Start director qualifications.* The Early Head Start or Head Start director must have demonstrated skills and abilities in a management capacity relevant to human services program management.

(d) *Qualifications of content area experts.* Grantee and delegate agencies must hire staff or consultants who meet the qualifications listed below to provide content area expertise and oversight on an ongoing or regularly scheduled basis. Agencies must determine the appropriate staffing pattern necessary to provide these functions.

(1) Education and child development services must be supported by staff or consultants with training and experience in areas that include: The theories and principles of child growth and development, early childhood education, and family support. In addition, staff or consultants must meet the qualifications for classroom teachers, as specified in section 648A of the Head Start Act and any subsequent amendments regarding the qualifications of teachers.

(2) Health services must be supported by staff or consultants with training and experience in public health, nursing, health education, maternal and child health, or health administration. In addition, when a health procedure must be performed only by a licensed/certified health professional, the agency must assure that the requirement is followed.

(3) Nutrition services must be supported by staff or consultants who are registered dietitians or nutritionists.

(4) Mental health services must be supported by staff or consultants who are licensed or certified mental health professionals with experience and expertise in serving young children and their families.

(5) Family and community partnership services must be supported by staff or consultants with training and experience in field(s) related to social, human, or family services.

(6) Parent involvement services must be supported by staff or consultants

with training, experience, and skills in assisting the parents of young children in advocating and decision-making for their families.

(7) Disabilities services must be supported by staff or consultants with training and experience in securing and individualizing needed services for children with disabilities.

(8) Grantee and delegate agencies must secure the regularly scheduled or ongoing services of a qualified fiscal officer.

(e) *Home visitor qualifications.* Home visitors must have knowledge and experience in child development and early childhood education; the principles of child health, safety, and nutrition; adult learning principles; and family dynamics. They must be skilled in communicating with and motivating people. In addition, they must have knowledge of community resources and the skills to link families with appropriate agencies and services.

(f) *Infant and toddler staff qualifications.* Early Head Start and Head Start staff working as teachers with infants and toddlers must obtain a Child Development Associate (CDA) credential for Infant and Toddler Caregivers or an equivalent credential that addresses comparable competencies within one year of the effective date of the final rule or, thereafter, within one year of hire as a teacher of infants and toddlers. In addition, infants and toddler teachers must have the training and experience necessary to develop consistent, stable, and supportive relationships with very young children. The training must develop knowledge of infant and toddler development, safety issues in infant and toddler care (e.g., reducing the risk of Sudden Infant Death Syndrome), and methods for communicating effectively with infants and toddlers, their parents, and other staff members.

(g) *Classroom staffing and home visitors.* (1) Grantee and delegate agencies must meet the requirements of 45 CFR 1306.20 regarding classroom staffing.

(2) When a majority of children speak the same language, at least one classroom staff member or home visitor interacting regularly with the children must speak their language.

(3) For center-based programs, the class size requirements specified in 45 CFR 1306.32 must be maintained through the provision of substitutes when regular classroom staff are absent.

(4) Grantee and delegate agencies must ensure that each teacher working exclusively with infants and toddlers has responsibility for no more than four infants and toddlers and that no more than eight infants and toddlers are placed in any one group. However, if State, Tribal or local regulations specify staff:child ratios and group sizes more stringent than this requirement, the State, Tribal or local regulations must apply.

(5) Staff must supervise the outdoor and indoor play areas in such a way that children's safety can be easily monitored and ensured.

(h) *Family child care providers.* (1) Head Start and Early Head Start grantee and delegate agencies must ensure that family child care providers have previous early child care experience and, at a minimum, enroll in a Child Development Associate (CDA) program or an Associates or Bachelor's degree program in child development or early childhood education within six months of beginning service provision. In addition, such grantee and delegate agencies must ensure that family child care providers acquire the CDA credential or Associate's or Bachelor's degree within two years of February 7, 2008 or, thereafter, within two years of beginning service provision.

(2) Family child care providers who enroll Head Start children must have the knowledge and skill necessary to develop consistent, stable, and supportive relationships with young children and their families, and sufficient knowledge to implement the Head Start Performance Standards and other applicable regulations.

(3) Grantee and delegate agencies offering the family child care option must ensure that closures of the family child care setting for reasons of emergency are minimized and that providers work with parents to establish alternate plans when emergencies do occur. Grantees and delegates must also ensure that the family child care

home advises parents of planned closures due to vacation, routine maintenance, or other reason well in advance.

(4) Substitute staff and assistant providers used in family child care must have necessary training and experience to ensure the continuous provision of quality services to children.

(5) At the time of hire, the child development specialist must have, at a minimum, an Associate degree in child development or early childhood education.

(6) Child development specialists must have knowledge and experience in areas that include the theories and principles of child growth and development, early childhood education (birth to age five), and family support. Child development specialists must have previous early childhood experience, familiarity with the Child Development Associate (CDA) competency standards and knowledge and understanding of the Head Start Program Performance Standards and other applicable regulations.

(i) *Standards of conduct.* (1) Grantee and delegate agencies must ensure that all staff, consultants, and volunteers abide by the program's standards of conduct. These standards must specify that:

(i) They will respect and promote the unique identity of each child and family and refrain from stereotyping on the basis of gender, race, ethnicity, culture, religion, or disability;

(ii) They will follow program confidentiality policies concerning information about children, families, and other staff members;

(iii) No child will be left alone or unsupervised while under their care; and

(iv) They will use positive methods of child guidance and will not engage in corporal punishment, emotional or physical abuse, or humiliation. In addition, they will not employ methods of discipline that involve isolation, the use of food as punishment or reward, or the denial of basic needs.

(2) Grantee and delegate agencies must ensure that all employees engaged in the award and administration of contracts or other financial awards sign statements that they will not solicit or accept personal gratuities, favors, or anything of significant monetary value from contractors or potential contractors.

(3) Personnel policies and procedures must include provision for appropriate penalties for violating the standards of conduct.

(j) *Staff performance appraisals.* Grantee and delegate agencies must, at a minimum, perform annual performance reviews of each Early Head Start and Head Start staff member and use the results of these reviews to identify staff training and professional development needs, modify staff performance agreements, as necessary, and assist each staff member in improving his or her skills and professional competencies.

(k) *Staff and volunteer health.* (1) Grantee and delegate agencies must assure that each staff member has an initial health examination (that includes screening for tuberculosis) and a periodic re-examination (as recommended by their health care provider or as mandated by State, Tribal, or local laws) so as to assure that they do not, because of communicable diseases, pose a significant risk to the health or safety of others in the Early Head Start or Head Start program that cannot be eliminated or reduced by reasonable accommodation. This requirement must be implemented consistent with the requirements of the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

(2) Regular volunteers must be screened for tuberculosis in accordance with State, Tribal or local laws. In the absence of State, Tribal or local law, the Health Services Advisory Committee must be consulted regarding the need for such screenings (see 45 CFR 1304.3(20) for a definition of volunteer).

(3) Grantee and delegate agencies must make mental health and wellness information available to staff with concerns that may affect their job performance.

(l) *Training and development.* (1) Grantee and delegate agencies must provide an orientation to all new staff, consultants, and volunteers that includes, at a minimum, the goals and underlying philosophy of Early Head Start and/or Head Start and the ways in which they are implemented by the program.

(2) Grantee and delegate agencies must establish and implement a structured approach to staff training and development, attaching academic credit whenever possible. This system should be designed to help build relationships among staff and to assist staff in acquiring or increasing the knowledge and skills needed to fulfill their job responsibilities, in accordance with the requirements of 45 CFR 1306.23.

(3) At a minimum, this system must include ongoing opportunities for staff to acquire the knowledge and skills necessary to implement the content of the Head Start Program Performance Standards. This program must also include:

(i) Methods for identifying and reporting child abuse and neglect that comply with applicable State and local laws using, so far as possible, a helpful rather than a punitive attitude toward abusing or neglecting parents and other caretakers; and

(ii) Methods for planning for successful child and family transitions to and from the Early Head Start or Head Start program.

(4) Grantee and delegate agencies must provide training or orientation to Early Head Start and Head Start governing body members. Agencies must also provide orientation and ongoing training to Early Head Start and Head Start Policy Council and Policy Committee members to enable them to carry out their program governance responsibilities effectively.

(5) In addition, grantee and delegate agencies offering the family child care program option must make available to family child care providers training on:

(i) Infant, toddler, and preschool age child development;

(ii) Implementation of curriculum (see §1304.3(a)(5) for the definition of curriculum);

(iii) Skill development for working with children with disabilities;

(iv) Effective communication with infants, toddlers, and preschoolers and with their families;

(v) Safety, sanitation, hygiene, health practices and certification in, at minimum, infant and child cardiopulmonary resuscitation (CPR);

(vi) Identifying and reporting suspected child abuse or neglect;

(vii) United States Department of Agriculture's Child and Adult Care Food Program; and

(viii) Other areas necessary to increase the knowledge and skills of the family child care providers.

(Approved by the Office of Management and Budget under control number 0970–0148 for paragraph (j))

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2314, Jan. 15, 1998; 73 FR 1295, Jan. 8, 2008]

§1304.53 Facilities, materials, and equipment.

(a) *Head Start physical environment and facilities.* (1) Grantee and delegate agencies must provide a physical environment and facilities conducive to learning and reflective of the different stages of development of each child.

(2) Grantee and delegate agencies must provide appropriate space for the conduct of all program activities (see 45 CFR 1308.4 for specific access requirements for children with disabilities).

(3) The center space provided by grantee and delegate agencies must be organized into functional areas that can be recognized by the children and that allow for individual activities and social interactions.

(4) The indoor and outdoor space in Early Head Start or Head Start centers in use by mobile infants and toddlers must be separated from general walkways and from areas in use by preschoolers.

(5) Centers must have at least 35 square feet of usable indoor space per child available for the care and use of children (i.e., exclusive of bathrooms, halls, kitchen, staff rooms, and storage places) and at least 75 square feet of usable outdoor play space per child.

(6) Facilities owned or operated by Early Head Start and Head Start grantee or delegate agencies must meet the licensing requirements of 45 CFR 1306.30.

(7) Grantee and delegate agencies must provide for the maintenance, repair, safety, and security of all Early Head Start and Head Start facilities, materials and equipment.

(8) Grantee and delegate agencies must provide a center-based environment free of toxins, such as cigarette smoke, lead, pesticides, herbicides, and other air pollutants as well as soil and water contaminants. Agencies must ensure that no child is present during the spraying of pesticides or herbicides. Children must not return to the affected area until it is safe to do so.

(9) Outdoor play areas at center-based programs must be arranged so as to prevent any child from leaving the premises and getting into unsafe and unsupervised areas. Enroute to play areas, children must not be exposed to vehicular traffic without supervision.

(10) Grantee and delegate agencies must conduct a safety inspection, at least annually, to ensure that each facility's space, light, ventilation, heat, and other physical arrangements are consistent with the health, safety and developmental needs of children. At a minimum, agencies must ensure that:

(i) In climates where such systems are necessary, there is a safe and effective heating and cooling system that is insulated to protect children and staff from potential burns;

(ii) No highly flammable furnishings, decorations, or materials that emit highly toxic fumes when burned are used;

(iii) Flammable and other dangerous materials and potential poisons are stored in locked cabinets or storage facilities separate from stored medications and food and are accessible only to authorized persons. All medications, including those required for staff and volunteers, are labeled, stored under lock and key, refrigerated if necessary, and kept out of the reach of children;

(iv) Rooms are well lit and provide emergency lighting in the case of power failure;

(v) Approved, working fire extinguishers are readily available;

(vi) An appropriate number of smoke detectors are installed and tested regularly;

(vii) Exits are clearly visible and evacuation routes are clearly marked and posted so that the path to safety outside is unmistakable (see 45 CFR 1304.22 for additional emergency procedures);

(viii) Indoor and outdoor premises are cleaned daily and kept free of undesirable and hazardous materials and conditions;

(ix) Paint coatings on both interior and exterior premises used for the care of children do not contain hazardous quantities of lead;

(x) The selection, layout, and maintenance of playground equipment and surfaces minimize the possibility of injury to children;

(xi) Electrical outlets accessible to children prevent shock through the use of child-resistant covers, the installation of child-protection outlets, or the use of safety plugs;

(xii) Windows and glass doors are constructed, adapted, or adjusted to prevent injury to children;

(xiii) Only sources of water approved by the local or State health authority are used;

(xiv) Toilets and handwashing facilities are adequate, clean, in good repair, and easily reached by children. Toileting and diapering areas must be separated from areas used for cooking, eating, or children's activities;

(xv) Toilet training equipment is provided for children being toilet trained;

(xvi) All sewage and liquid waste is disposed of through a locally approved sewer system, and garbage and trash are stored in a safe and sanitary manner; and

(xvii) Adequate provisions are made for children with disabilities to ensure their safety, comfort, and participation.

(b) *Head Start equipment, toys, materials, and furniture.* (1) Grantee and delegate agencies must provide and arrange sufficient equipment, toys, materials, and furniture to meet the needs and facilitate the participation of children and adults. Equipment, toys, materials, and furniture owned or operated by the grantee or delegate agency must be:

(i) Supportive of the specific educational objectives of the local program;

(ii) Supportive of the cultural and ethnic backgrounds of the children;

(iii) Age-appropriate, safe, and supportive of the abilities and developmental level of each child served, with

adaptations, if necessary, for children with disabilities;

(iv) Accessible, attractive, and inviting to children;

(v) Designed to provide a variety of learning experiences and to encourage each child to experiment and explore;

(vi) Safe, durable, and kept in good condition; and

(vii) Stored in a safe and orderly fashion when not in use.

(2) Infant and toddler toys must be made of non-toxic materials and must be sanitized regularly.

(3) To reduce the risk of Sudden Infant Death Syndrome (SIDS), all sleeping arrangements for infants must use firm mattresses and avoid soft bedding materials such as comforters, pillows, fluffy blankets or stuffed toys.

Subpart E—Implementation and Enforcement

§ 1304.60 Deficiencies and quality improvement plans.

(a) Early Head Start and Head Start grantee and delegate agencies must comply with the requirements of this part in accordance with the effective date set forth in 45 CFR 1304.2.

(b) If the responsible HHS official, as a result of information obtained from a review of an Early Head Start or a Head Start grantee, determines that the grantee has one or more deficiencies, as defined in § 1304.3(a)(6) of this part, and therefore also is in violation of the minimum requirements as defined in § 1304.3(a)(14) of this part, he or she will notify the grantee promptly, in writing, of the finding, identifying the deficiencies to be corrected and, with respect to each identified deficiency, will inform the grantee that it must correct the deficiency either immediately or pursuant to a Quality Improvement Plan.

(c) An Early Head Start or Head Start grantee with one or more deficiencies to be corrected under a Quality Improvement Plan must submit to the responsible HHS official a Quality Improvement Plan specifying, for each identified deficiency, the actions that the grantee will take to correct the deficiency and the timeframe within which it will be corrected. In no case can the timeframes proposed in the Quality Improvement Plan exceed one year from the date that the grantee received official notification of the deficiencies to be corrected.

(d) Within 30 days of the receipt of the Quality Improvement Plan, the responsible HHS official will notify the Early Head Start or Head Start grantee, in writing, of the Plan's approval or specify the reasons why the Plan is disapproved.

(e) If the Quality Improvement Plan is disapproved, the Early Head Start or Head Start grantee must submit a revised Quality Improvement Plan, making the changes necessary to address the reasons that the initial Plan was disapproved.

(f) If an Early Head Start or Head Start grantee fails to correct a deficiency, either immediately, or within the timeframe specified in the approved Quality Improvement Plan, the responsible HHS official will issue a letter of termination or denial of refunding. Head Start grantees may appeal terminations and denials of refunding under 45 CFR part 1303, while Early Head Start grantees may appeal terminations and denials of refunding only under 45 CFR part 74 or part 92. A deficiency that is not timely corrected shall be a material failure of a grantee to comply with the terms and conditions of an award within the meaning of 45 CFR 74.61(a)(1), 45 CFR 74.62 and 45 CFR 92.43(a).

(The information and collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraphs (b) and (c).)

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2314, Jan. 15, 1998]

§ 1304.61 Noncompliance.

(a) If the responsible HHS official, as a result of information obtained from a review of an Early Head Start or Head Start grantee, determines that the grantee is not in compliance with Federal or State requirements (including, but not limited to, the Head Start Act or one or more of the regulations under parts 1301, 1304, 1305, 1306 or 1308 of this title) in ways that do not constitute a deficiency, he or she will notify the grantee promptly, in writing, of the finding, identifying the area or areas of noncompliance to be corrected and

specifying the period in which they must corrected.

(b) Early Head Start or Head Start grantees which have received written notification of an area of noncompliance to be corrected must correct the area of noncompliance within the time period specified by the responsible HHS official. A grantee which is unable or unwilling to correct the specified areas of noncompliance within the prescribed time period will be judged to have a deficiency which must be corrected, either immediately or pursuant to a Quality Improvement Plan (see 45 CFR 1304.3(a)(6)(iii) and 45 CFR 1304.60).

PART 1305—ELIGIBILITY, RECRUITMENT, SELECTION, ENROLLMENT AND ATTENDANCE IN HEAD START

Sec.

1305.1 Purpose and scope.
1305.2 Definitions.
1305.3 Determining community strengths and needs.
1305.4 Age of children and family income eligibility.
1305.5 Recruitment of children.
1305.6 Selection process.
1305.7 Enrollment and re-enrollment.
1305.8 Attendance.
1305.9 Policy on fees.
1305.10 Compliance.

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

SOURCE: 57 FR 46725, Oct. 9, 1992, unless otherwise noted.

§ 1305.1 Purpose and scope.

This part prescribes requirements for determining community needs and recruitment areas. It contains requirements and procedures for the eligibility determination, recruitment, selection, enrollment and attendance of children in Head Start programs and explains the policy concerning the charging of fees by Head Start programs. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR part 1304, as applicable.

[57 FR 46725, Oct. 9, 1992, as amended at 61 FR 57226, Nov. 5, 1996]

§ 1305.2 Definitions.

(a) *Children with disabilities* means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities who, by reason thereof need special education and related services. The term ''children with disabilities'' for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

(b) *Enrollment* means the official acceptance of a family by a Head Start program and the completion of all procedures necessary for a child and family to begin receiving services.

(c) *Enrollment opportunities* mean vacancies that exist at the beginning of the enrollment year, or during the year because of children who leave the program, that must be filled for a program to achieve and maintain its funded enrollment.

(d) *Enrollment year* means the period of time, not to exceed twelve months, during which a Head Start program provides center or home-based services to a group of children and their families.

(e) *Family* means all persons living in the same household who are:

(1) Supported by the income of the parent(s) or guardian(s) of the child enrolling or participating in the program, and (2) related to the parent(s) or guardian(s) by blood, marriage, or adoption.

(f) *Funded enrollment* means the number of children which the Head Start grantee is to serve, as indicated on the grant award.

(g) *Head Start eligible* means a child that meets the requirements for age and family income as established in this regulation or, if applicable, as established by grantees that meet the requirements of section 645(a)(2) of the Head Start Act. Up to ten percent of

the children enrolled may be from families that exceed the low-income guidelines. Indian Tribes meeting the conditions specified in 45 CFR 1305.4(b)(3) are excepted from this limitation.

(h) *Head Start program* means a Head Start grantee or its delegate agency(ies).

(i) *Income* means gross cash income and includes earned income, military income (including pay and allowances), veterans benefits, Social Security benefits, unemployment compensation, and public assistance benefits. Additional examples of gross cash income are listed in the definition of ''income'' which appears in U.S. Bureau of the Census, Current Population Reports, Series P–60–185.

(j) *Income guidelines* means the official poverty line specified in section 652 of the Head Start Act.

(k) *Indian Tribe* means any Tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)) or established pursuant to such Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(l) *Low-income family* means a family whose total annual income before taxes is equal to, or less than, the income guidelines. For the purpose of eligibility, a child from a family that is receiving public assistance or a child in foster care is eligible even if the family income exceeds the income guidelines.

(m) *Migrant family* means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who changed their residence by moving from one geographic location to another, either intrastate or interstate, within the preceding two years for the purpose of engaging in agricultural work that involves the production and harvesting of tree and field crops and whose family income comes primarily from this activity.

(n) *Recruitment* means the systematic ways in which a Head Start program identifies families whose children are eligible for Head Start services, informs them of the services available, and encourages them to apply for enrollment in the program.

(o) *Recruitment area* means that geographic locality within which a Head Start program seeks to enroll Head Start children and families. The recruitment area can be the same as the service area or it can be a smaller area or areas within the service area.

(p) *Responsible HHS official* means the official of the U.S. Department of Health and Human Services having authority to make Head Start grant awards, or his or her designee.

(q) *Selection* means the systematic process used to review all applications for Head Start services and to identify those children and families that are to be enrolled in the program.

(r) *Service area* means the geographic area identified in an approved grant application within which a grantee may provide Head Start services.

(s) *Vacancy* means an unfilled enrollment opportunity for a child and family in the Head Start program.

[57 FR 46725, Oct. 9, 1992, as amended at 58 FR 5518, Jan. 21, 1993; 63 FR 12657, Mar. 16, 1998]

§ 1305.3 Determining community strengths and needs.

(a) Each Early Head Start grantee and Head Start grantee must identify its proposed service area in its Head Start grant application and define it by county or sub-county area, such as a municipality, town or census tract or a federally-recognized Indian reservation. With regard to Indian Tribes, the service area may include areas designated as near-reservation by the Bureau of Indian Affairs (BIA) or, in the absence of such a designation, a Tribe may propose to define its service area to include nearby areas where Indian children and families native to the reservation reside, provided that the service area is approved by the Tribe's governing council. Where the service area of a Tribe includes a non-reservation area, and that area is also served by another Head Start grantee, the Tribe will be authorized to serve children from families native to the reservation residing in the non-reservation area as well as children from families residing on the reservation.

(b) The grantee's service area must be approved, in writing, by the responsible HHS official in order to assure that the service area is of reasonable size and, except in situations where a near-reservation designation or other expanded service area has been approved for a Tribe, does not overlap with that of other Head Start grantees.

(c) Each Early Head Start and Head Start grantee must conduct a Community Assessment within its service area once every three years. The Community Assessment must include the collection and analysis of the following information about the grantee's Early Head Start or Head Start area:

(1) The demographic make-up of Head Start eligible children and families, including their estimated number, geographic location, and racial and ethnic composition;

(2) Other child development and child care programs that are serving Head Start eligible children, including publicly funded State and local preschool programs, and the approximate number of Head Start eligible children served by each;

(3) The estimated number of children with disabilities four years old or younger, including types of disabilities and relevant services and resources provided to these children by community agencies;

(4) Data regarding the education, health, nutrition and social service needs of Head Start eligible children and their families;

(5) The education, health, nutrition and social service needs of Head Start eligible children and their families as defined by families of Head Start eligible children and by institutions in the community that serve young children;

(6) Resources in the community that could be used to address the needs of Head Start eligible children and their families, including assessments of their availability and accessibility.

(d) The Early Head Start and Head Start grantee and delegate agency must use information from the Community Assessment to:

(1) Help determine the grantee's philosophy, and its long-range and short-range program objectives;

(2) Determine the type of component services that are most needed and the program option or options that will be implemented;

(3) Determine the recruitment area that will be served by the grantee, if limitations in the amount of resources make it impossible to serve the entire service area.

(4) If there are delegate agencies, determine the recruitment area that will be served by the grantee and the recruitment area that will be served by each delegate agency.

(5) Determine appropriate locations for centers and the areas to be served by home-based programs; and

(6) Set criteria that define the types of children and families who will be given priority for recruitment and selection.

(e) In each of the two years following completion of the Community Assessment the grantee must conduct a review to determine whether there have been significant changes in the information described in paragraph (b) of this section. If so, the Community Assessment must be updated and the decisions described in paragraph (c) of this section must be reconsidered.

(f) The recruitment area must include the entire service area, unless the resources available to the Head Start grantee are inadequate to serve the entire service area.

(g) In determining the recruitment area when it does not include the entire service area, the grantee must:

(1) Select an area or areas that are among those having the greatest need for Early Head Start or Head Start services as determined by the Community Assessment; and

(2) Include as many Head Start eligible children as possible within the recruitment area, so that:

(i) The greatest number of Head Start eligible children can be recruited and have an opportunity to be considered for selection and enrollment in the Head Start program, and

(ii) The Head Start program can enroll the children and families with the greatest need for its services.

(The information collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0124 for paragraphs (b) and (d))

[57 FR 46725, Oct. 9, 1992, as amended at 61 FR 57226, Nov. 5, 1996; 63 FR 2314, Jan. 15, 1998; 63 FR 12657, Mar. 16, 1998]

§ 1305.4 Age of children and family income eligibility.

(a) To be eligible for Head Start services, a child must be at least three years old by the date used to determine eligibility for public school in the community in which the Head Start program is located, except in cases where the Head Start program's approved grant provides specific authority to serve younger children. Examples of such exceptions are programs serving children of migrant families and Early Head Start programs.

(b)(1) At least 90 percent of the children who are enrolled in each Head Start program must be from low-income families.

(2) Except as provided in paragraph (b)(3) of this section, up to ten percent of the children who are enrolled may be children from families that exceed the low-income guidelines but who meet the criteria that the program has established for selecting such children and who would benefit from Head Start services.

(3) A Head Start program operated by an Indian Tribe may enroll more than ten percent of its children from families whose incomes exceed the low-income guidelines when the following conditions are met:

(i) All children from Indian and non-Indian families living on the reservation that meet the low-income guidelines who wish to be enrolled in Head Start are served by the program;

(ii) All children from income-eligible Indian families native to the reservation living in non-reservation areas, approved as part of the Tribe's service area, who wish to be enrolled in Head Start are served by the program. In those instances in which the non-reservation area is not served by another Head Start program, the Tribe must serve all of the income-eligible Indian and non-Indian children whose families wish to enroll them in Head Start prior to serving over-income children.

(iii) The Tribe has the resources within its Head Start grant or from other non-Federal sources to enroll children from families whose incomes exceed the low-income guidelines without using additional funds from HHS intended to expand Head Start services; and

(iv) At least 51 percent of the children to be served by the program are from families that meet the income-eligibility guidelines.

(4) Programs which meet the conditions of paragraph (b)(3) of this section must annually set criteria that are approved by the Policy Council and the Tribal Council for selecting over-income children who would benefit from such a program.

(c) The family income must be verified by the Head Start program before determining that a child is eligible to participate in the program.

(d) Verification must include examination of any of the following: Individual Income Tax Form 1040, W-2 forms, pay stubs, pay envelopes, written statements from employers, or documentation showing current status as recipients of public assistance.

(e) A signed statement by an employee of the Head Start program, identifying which of these documents was examined and stating that the child is eligible to participate in the program, must be maintained to indicate that income verification has been made.

[57 FR 46725, Oct. 9, 1992, as amended at 63 FR 12658, Mar. 16, 1998]

§ 1305.5 Recruitment of children.

(a) In order to reach those most in need of Head Start services, each Head Start grantee and delegate agency must develop and implement a recruitment process that is designed to actively inform all families with Head Start eligible children within the recruitment area of the availability of services and encourage them to apply for admission to the program. This process may include canvassing the local community, use of news releases

and advertising, and use of family referrals and referrals from other public and private agencies.

(b) During the recruitment process that occurs prior to the beginning of the enrollment year, a Head Start program must solicit applications from as many Head Start eligible families within the recruitment area as possible. If necessary, the program must assist families in filling out the application form in order to assure that all information needed for selection is completed.

(c) Each program, except migrant programs, must obtain a number of applications during the recruitment process that occurs prior to the beginning of the enrollment year that is greater than the enrollment opportunities that are anticipated to be available over the course of the next enrollment year in order to select those with the greatest need for Head Start services.

§ 1305.6 Selection process.

(a) Each Head Start program must have a formal process for establishing selection criteria and for selecting children and families that considers all eligible applicants for Head Start services. The selection criteria must be based on those contained in paragraphs (b) and (c) of this section.

(b) In selecting the children and families to be served, the Head Start program must consider the income of eligible families, the age of the child, the availability of kindergarten or first grade to the child, and the extent to which a child or family meets the criteria that each program is required to establish in § 1305.3(c)(6). Migrant programs must also give priority to children from families whose pursuit of agricultural work required them to relocate most frequently within the previous two-year period.

(c) At least 10 percent of the total number of enrollment opportunities in each grantee and each delegate agency during an enrollment year must be made available to children with disabilities who meet the definition for children with disabilities in § 1305.2(a). An exception to this requirement will be granted only if the responsible HHS official determines, based on such supporting evidence he or she may require, that the grantee made a reasonable effort to comply with this requirement but was unable to do so because there was an insufficient number of children with disabilities in the recruitment area who wished to attend the program and for whom the program was an appropriate placement based on their Individual Education Plans (IEP) or Individualized Family Service Plans (IFSP), with services provided directly by Head Start or Early Head Start in conjunction with other providers.

(d) Each Head Start program must develop at the beginning of each enrollment year and maintain during the year a waiting list that ranks children according to the program's selection criteria to assure that eligible children enter the program as vacancies occur.

[57 FR 46725, Oct. 9, 1992, as amended at 63 FR 12658, Mar. 16, 1998]

§ 1305.7 Enrollment and re-enrollment.

(a) Each child enrolled in a Head Start program, except those enrolled in a migrant program, must be allowed to remain in Head Start until kindergarten or first grade is available for the child in the child's community, except that the Head Start program may choose not to enroll a child when there are compelling reasons for the child not to remain in Head Start, such as when there is a change in the child's family income and there is a child with a greater need for Head Start services.

(b) A Head Start grantee must maintain its funded enrollment level. When a program determines that a vacancy exists, no more than 30 calendar days may elapse before the vacancy is filled. A program may elect not to fill a vacancy when 60 calendar days or less remain in the program's enrollment year.

(c) If a child has been found income eligible and is participating in a Head Start program, he or she remains income eligible through that enrollment year and the immediately succeeding enrollment year. Children who are enrolled in a program receiving funds under the authority of section 645A of the Head Start Act (programs for families with infants and toddlers, or Early Head Start) remain income eligible while they are participating in the program. When a child moves from a program serving infants and toddlers to a

Head Start program serving children age three and older, the family income must be reverified. If one agency operates both an Early Head Start and a Head Start program, and the parents wish to enroll their child who has been enrolled in the agency's Early Head Start program, the agency must ensure, whenever possible, that the child receives Head Start services until enrolled in school.

[57 FR 46725, Oct. 9, 1992, as amended at 63 FR 12658, Mar. 16, 1998]

§ 1305.8 Attendance.

(a) When the monthly average daily attendance rate in a center-based program falls below 85 percent, a Head Start program must analyze the causes of absenteeism. The analysis must include a study of the pattern of absences for each child, including the reasons for absences as well as the number of absences that occur on consecutive days.

(b) If the absences are a result of illness or if they are well documented absences for other reasons, no special action is required. If, however, the absences result from other factors, including temporary family problems that affect a child's regular attendance, the program must initiate appropriate family support procedures for all children with four or more consecutive unexcused absences. These procedures must include home visits or other direct contact with the child's parents. Contacts with the family must emphasize the benefits of regular attendance, while at the same time remaining sensitive to any special family circumstances influencing attendance patterns. All contacts with the child's family as well as special family support service activities provided by program staff must be documented.

(c) In circumstances where chronic absenteeism persists and it does not seem feasible to include the child in either the same or a different program option, the child's slot must be considered an enrollment vacancy.

§ 1305.9 Policy on fees.

A Head Start program must not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in the program. If the family of a child determined to be eligible for participation by a Head Start program volunteers to pay part or all of the costs of the child's participation, the Head Start program may accept the voluntary payments and record the payments as program income.

Under no circumstances shall a Head Start program solicit, encourage, or in any other way condition a child's enrollment or participation in the program upon the payment of a fee.

§ 1305.10 Compliance.

A grantee's failure to comply with the requirements of this Part may result in a denial of refunding or termination in accordance with 45 CFR part 1303.

PART 1306—HEAD START STAFFING REQUIREMENTS AND PROGRAM OPTIONS

Subpart A—General

Sec.
1306.1 Purpose and scope.
1306.2 Effective dates.
1306.3 Definitions.

Subpart B—Head Start Program Staffing Requirements

1306.20 Program staffing patterns.
1306.21 Staff qualification requirements.
1306.22 Volunteers.
1306.23 Training.

Subpart C—Head Start Program Options

1306.30 Provision of comprehensive child development services.
1306.31 Choosing a Head Start program option.
1306.32 Center-based program option.
1306.33 Home-based program option.
1306.34 Combination program option.
1306.35 Family child care program option.
1306.36 Additional Head Start program option variations.
1306.37 Compliance waiver.

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

SOURCE: 57 FR 58092, Dec. 8, 1992, unless otherwise noted.

Subpart A—General

§ 1306.1 Purpose and scope.

This Part sets forth requirements for Early Head Start and Head Start program staffing and program options that all Early Head Start and Head Start grantee and delegate agencies, with the exception of Parent Child Center programs, must meet. The exception for Parent Child Centers is for fiscal years 1995, 1996, and 1997 as consistent with section 645A(e)(2) of the Head Start Act, as amended. These requirements, including those pertaining to staffing patterns, the choice of the program options to be implemented and the acceptable ranges in the implementation of those options, have been developed to help maintain and improve the quality of Early Head Start and Head Start and to help promote lasting benefits to the children and families being served. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR Part 1304, as applicable.

[61 FR 57226, Nov. 5, 1996]

§ 1306.2 Effective dates.

(a) Except as provided in paragraph (b) of this section, Head Start grantees funded or refunded after June 7, 1993, must comply with these requirements by such times in their grant cycles as new groups of children begin receiving services. This does not preclude grantees from voluntarily coming into compliance with these regulations prior to the effective date.

(b) With respect to the requirements of § 1306.32(b)(2), grantees that are currently operating classes in double session center-based options for less than three and a half hours per day, but for at least three hours per day, may continue to do so until September 1, 1995, at which time they must comply with the three and one-half hour minimum class time requirement.

§ 1306.3 Definitions.

(a) *Center-based program option* means Head Start services provided to children primarily in classroom settings.

(b) *Combination program option* means Head Start services provided to children in both a center setting and through intensive work with the child's parents and family at home.

(c) *Days of operation* means the planned days during which children will be receiving direct Head Start component services in a classroom, on a field trip or on trips for health-related activities, in group socialization or when parents are receiving a home visit.

(d) *Double session variation* means a variation of the center-based program option that operates with one teacher who works with one group of children in a morning session and a different group of children in an afternoon session.

(e) *Full-day variation* means a variation of the center-based program option in which program operations continue for longer than six hours per day.

(f) *Group socialization activities* means the sessions in which children and parents enrolled in the home-based or combination program option interact with other home-based or combination children and parents in a Head Start classroom, community facility, home, or on a field trip.

(g) *Head Start class* means a group of children supervised and taught by two paid staff members (a teacher and a teacher aide or two teachers) and, where possible, a volunteer.

(h) *Head Start parent* means a Head Start child's mother or father, other family member who is a primary caregiver, foster parent, guardian or the person with whom the child has been placed for purposes of adoption pending a final adoption decree.

(i) *Head Start program* is one operated by a Head Start grantee or delegate agency.

(j) *Home-based program option* means Head Start services provided to children, primarily in the child's home, through intensive work with the child's parents and family as the primary factor in the growth and development of the child.

(k) *Home visits* means the visits made to a child's home by the class teacher in a center-based program option, or home visitors in a home-based program option, for the purpose of assisting parents in fostering the growth and development of their child.

(l) *Hours of operation* means the planned hours per day during which children and families will be receiving direct Head Start component services in a classroom, on a field trip, while receiving medical or dental services, or during a home visit or group socialization activity. Hours of operation do not include travel time to and from the center at the beginning and end of a session.

(m) *Parent-teacher conference* means the meeting held at the Head Start center between the child's teacher and the child's parents during which the child's progress and accomplishments are discussed.

(n) *Family child care* is care and education provided to children in a private home or other family-like setting. *Head Start family child care* means Head Start and Early Head Start comprehensive services provided to a small group of children through their enrollment in family child care.

(o) *Family child care program option* means Head Start and Early Head Start and child care services provided to children receiving child care primarily in the home of a family child care provider or other family-like setting, such as space in a public housing complex which has been licensed by the state and set aside specifically for the provision of or purpose of providing family child care.

(p) *Family child care provider* means the provider of Early Head Start or Head Start services in his or her place of residence or in another family-like setting.

[57 FR 58092, Dec. 8, 1992, as amended at 73 FR 1296, Jan. 8, 2008]

Subpart B—Head Start Program Staffing Requirements

§ 1306.20 Program staffing patterns.

(a) Grantees must meet the requirements of 45 CFR 1304.52(g), Classroom staffing and home visitors, in addition to the requirements of this Section.

(b) Grantees must provide adequate supervision of their staff.

(c) Grantees operating center-based program options must employ two paid staff persons (a teacher and a teacher aide or two teachers) for each class. Whenever possible, there should be a third person in the classroom who is a volunteer.

(d) Grantees operating home-based program options must employ home visitors responsible for home visits and group socialization activities.

(e) Grantees operating a combination program option must employ, for their classroom operations, two paid staff persons, a teacher and a teacher aide or two teachers, for each class. Whenever possible, there should be a third person in the classroom who is a volunteer. They must employ staff for home visits who meet the qualifications the grantee requires for home visitors.

(f) Classroom staff and home visitors must be able to communicate with the families they serve either directly or through a translator. They should also be familiar with the ethnic background of these families.

(g) Grantee and delegate agencies offering the family child care program option must ensure that in each family child care home where Head Start children are enrolled, the group size does not exceed the limits specified in this paragraph. Whenever present, not at school or with another care provider, the family child care provider's own children under the age of six years must be included in the count.

(1) When there is one family child care provider, the maximum group size is six children and no more than two of the six may be under two years of age. When there is a provider and an assistant, the maximum group size is twelve children with no more than four of the twelve children under two years of age.

(2) One family child care provider may care for up to four infants and toddlers, with no more than two of the four children under the age of 18 months.

(3) Additional assistance or smaller group size may be necessary when serving children with special needs who require additional care.

(h)(1) Grantee and delegate agencies offering the family child care program option must provide support for family child care providers through a child development specialist or other Head Start or delegate agency staff member

with responsibilities related to the provision of comprehensive Head Start and Early Head Start services.

(2) The grantee or delegate agency will assign responsibilities to the child development specialist and other agency staff to support and ensure the provision of quality Head Start services at each family child care home. These responsibilities must include both regular announced and unannounced visits to each home. The duration and timing of such visits will be planned in accordance with the needs of each home but shall occur not less than once every two weeks.

(3) During visits to family child care homes the child development specialist will periodically verify compliance with either contract requirements or agency policy depending on the nature of the relationship; facilitate ongoing communication between grantee or delegate agency staff, family child care providers, and Head Start and Early Head Start families; provide recommendations for technical assistance; and support the family child care provider in developing collegial or mentoring relationships with other child care professionals.

(i) Head Start, Early Head Start and delegate agencies must ensure that children in the Head Start family child care option receive comprehensive services as specified in 45 CFR parts 1304 and 1308.

[57 FR 58092, Dec. 8, 1992, as amended at 61 FR 57226, Nov. 5, 1996; 73 FR 1296, Jan. 8, 2008]

§ 1306.21 Staff qualification requirements.

Head Start programs must comply with section 648A of the Head Start Act and any subsequent amendments regarding the qualifications of classroom teachers.

[61 FR 57226, Nov. 5, 1996]

§ 1306.22 Volunteers.

(a) Head Start programs must use volunteers to the fullest extent possible. Head Start grantees must develop and implement a system to actively recruit, train and utilize volunteers in the program.

(b) Special efforts must be made to have volunteer participation, especially parents, in the classroom and during group socialization activities.

§ 1306.23 Training.

(a) Head Start grantees must provide pre-service training and in-service training opportunities to program staff and volunteers to assist them in acquiring or increasing the knowledge and skills they need to fulfill their job responsibilities. This training must be directed toward improving the ability of staff and volunteers to deliver services required by Head Start regulations and policies.

(b) Head Start grantees must provide staff with information and training about the underlying philosophy and goals of Head Start and the program options being implemented.

Subpart C—Head Start Program Options

§ 1306.30 Provisions of comprehensive child development services.

(a) All Head Start grantees must provide comprehensive child development services, as defined in the Head Start Performance Standards.

(b) All Head Start grantees must provide classroom or group socialization activities for the child as well as home visits to the parents. The major purpose of the classroom or socialization activities is to help meet the child's development needs and to foster the child's social competence. The major purpose of the home visits is to enhance the parental role in the growth and development of the child.

(c) The facilities used by Early Head Start and Head Start grantee and delegate agencies for regularly scheduled center-based and combination program option classroom activities or home-based group socialization activities must comply with State and local requirements concerning licensing. In cases where these licensing standards are less comprehensive or less stringent than the Head Start regulations, or where no State or local licensing standards are applicable, grantee and delegate agencies are required to assure that their facilities are in compliance with the Head Start Program Performance Standards related to health

and safety as found in 45 CFR 1304.53(a), Physical environment and facilities.

(d) All grantees must identify, secure and use community resources in the provision of services to Head Start children and their families prior to using Head Start funds for these services.

[57 FR 58092, Dec. 8, 1992, as amended at 61 FR 57226, Nov. 5, 1996; 63 FR 2314, Jan. 15, 1998]

§ 1306.31 Choosing a Head Start program option.

(a) Grantees may choose to implement one or more than one of four program options: a center-based option, a home-based program option, a combination program option, or a family child care option.

(b) The program option chosen must meet the needs of the children and families as indicated by the community needs assessment conducted by the grantee.

(c) When assigning children to a particular program option, Head Start grantees that operate more than one program option must consider such factors as the child's age, developmental level, disabilities, health or learning problems, previous preschool experiences and family situation. Grantees must also consider parents' concerns and wishes prior to making final assignments.

[57 FR 58092, Dec. 8, 1992, as amended at 73 FR 1296, Jan. 8, 2008]

§ 1306.32 Center-based program option.

(a) *Class size*. (1) Head Start classes must be staffed by a teacher and an aide or two teachers and, whenever possible, a volunteer.

(2) Grantees must determine their class size based on the predominant age of the children who will participate in the class and whether or not a center-based double session variation is being implemented.

(3) For classes serving predominantly four or five-year-old children, the average class size of that group of classes must be between 17 and 20 children, with no more than 20 children enrolled in any one class.

(4) When double session classes serve predominantly four or five-year-old-children, the average class size of that group of classes must be between 15 and 17 children. A double session class for four or five-year old children may have no more than 17 children enrolled. (See paragraph (c) of this section for other requirements regarding the double session variation.)

(5) For classes serving predominantly three-year-old children, the average class size of that group of classes must be between 15 and 17 children, with no more than 17 children enrolled in any one class.

(6) When double session classes serve predominantly three-year-old children, the average class size of that group of classes must be between 13 and 15 children. A double session class for three-year-old children may have no more than 15 children enrolled. (See paragraph (c) of this section for other requirements regarding the double session variation.)

(7) It is recommended that at least 13 children be enrolled in each center-based option class where feasible.

(8) A class is considered to serve predominantly four- or five-year-old children if more than half of the children in the class will be four or five years old by whatever date is used by the State or local jurisdiction in which the Head Start program is located to determine eligibility for public school.

(9) A class is considered to serve predominantly three-year-old children if more than half of the children in the class will be three years old by whatever date is used by the State or local jurisdiction in which Head Start is located to determine eligibility for public school.

(10) Head Start grantees must determine the predominant age of children in the class at the start of the year. There is no need to change that determination during the year.

(11) In some cases, State or local licensing requirements may be more stringent than these class requirements, preventing the required minimum numbers of children from being enrolled in the facility used by Head Start. Where this is the case, Head Start grantees must try to find alternative facilities that satisfy licensing

requirements for the numbers of children cited above. If no alternative facilities are available, the responsible HHS official has the discretion to approve enrollment of fewer children than required above.

(12) The chart below may be used for easy reference:

Predominant age of children in the class	Funded class size [Funded enrollment]
4 and 5 year olds	Program average of 17–20 children enrolled per class in these classes. No more than 20 children enrolled in any class.
4 and 5 year olds in double session classes.	Program average of 15–17 children enrolled per class in these classes. No more than 17 children enrolled in any class.
3 year olds	Program average of 15–17 children enrolled per class in these classes. No more than 17 children enrolled in any class.
3 year olds in double session classes.	Program average of 13–15 children enrolled per class in these classes. No more than 15 children enrolled in any class.

(b) *Center-based program option requirements.* (1) Classes must operate for four or five days per week or some combination of four and five days per week.

(2) Classes must operate for a minimum of three and one-half to a maximum of six hours per day with four hours being optimal.

(3) The annual number of required days of planned class operations (days when children are scheduled to attend) is determined by the number of days per week each program operates. Programs that operate for four days per week must provide at least 128 days per year of planned class operations. Programs that operate for five days per week must provide at least 160 days per year of planned class operations. Grantees implementing a combination of four and five days per week must plan to operate between 128 and 160 days per year. The minimum number of planned days of service per year can be determined by computing the relative number of four and five day weeks that the program is in operation. All center-based program options must provide a minimum of 32 weeks of scheduled days of class operations over an eight or nine month period. Every effort should be made to schedule makeup classes using existing resources if planned class days fall below the number required per year.

(4) Programs must make a reasonable estimate of the number of days during a year that classes may be closed due to problems such as inclement weather or illness, based on their experience in previous years. Grantees must make provisions in their budgets and program plans to operate makeup classes and provide these classes, when needed, to prevent the number of days of service available to the children from falling below 128 days per year.

(5) Each individual child is not required to receive the minimum days of service, although this is to be encouraged in accordance with Head Start policies regarding attendance. The minimum number of days also does not apply to children with disabilities whose individualized education plan may require fewer planned days of service in the Head Start program.

(6) Head Start grantees operating migrant programs are not subject to the requirement for a minimum number of planned days, but must make every effort to provide as many days of service as possible to each migrant child and family.

(7) Staff must be employed for sufficient time to allow them to participate in pre-service training, to plan and set up the program at the start of the year, to close the program at the end of the year, to conduct home visits, to conduct health examinations, screening and immunization activities, to maintain records, and to keep service component plans and activities current and relevant. These activities should take place outside of the time scheduled for classes in center-based programs or home visits in home-based programs.

(8) Head Start grantees must develop and implement a system that actively encourages parents to participate in two home visits annually for each child enrolled in a center-based program option. These visits must be initiated and carried out by the child's teacher. The child may not be dropped from the program if the parents will not participate in the visits.

(9) Head Start grantees operating migrant programs are required to plan for

a minimum of two parent-teacher conferences for each child during the time they serve that child. Should time and circumstance allow, migrant programs must make every effort to conduct home visits.

(c) *Double session variation.* (1) A center-based option with a double session variation employs a single teacher to work with one group of children in the morning and a different group of children in the afternoon. Because of the larger number of children and families to whom the teacher must provide services, double session program options must comply with the requirements regarding class size explained in paragraph (a) of this section and with all other center-based requirements in paragraph (b) of this section with the exceptions and additions noted in paragraphs (c) (2) and (3) of this section.

(2) Each program must operate classes for four days per week.

(3) Each double session classroom staff member must be provided adequate break time during the course of the day. In addition, teachers, aides and volunteers must have appropriate time to prepare for each session together, to set up the classroom environment and to give individual attention to children entering and leaving the center.

(d) *Full day variation.* (1) A Head Start grantee implementing a center-based program option may operate a full day variation and provide more than six hours of class operations per day using Head Start funds. These programs must comply with all the requirements regarding the center-based program option found in paragraphs (a) and (b) of this section with the exception of paragraph (b)(2) regarding the hours of service per day.

(2) Programs are encouraged to meet the needs of Head Start families for full day services by securing funds from other agencies. Before implementing a full day variation of a center-based option, a Head Start grantee should demonstrate that alternative enrollment opportunities or funding from non-Head Start sources are not available for Head Start families needing full-day child care services.

(3) Head Start grantees may provide full day services only to those children and families with special needs that justify full day services or to those children whose parents are employed or in job training with no caregiver present in the home. The records of each child receiving services for more than six hours per day must show how each child meets the criteria stated above.

(e) Non-Head Start services. Grantees may charge for services which are provided outside the hours of the Head Start program.

§ 1306.33 Home-based program option.

(a) Grantees implementing a home-based program option must:

(1) Provide one home visit per week per family (a minimum of 32 home visits per year) lasting for a minimum of 1 and ½ hours each.

(2) Provide, at a minimum, two group socialization activities per month for each child (a minimum of 16 group socialization activities each year).

(3) Make up planned home visits or scheduled group socialization activities that were canceled by the grantee or by program staff when this is necessary to meet the minimums stated above. Medical or social service appointments may not replace home visits or scheduled group socialization activities.

(4) Allow staff sufficient employed time to participate in pre-service training, to plan and set up the program at the start of the year, to close the program at the end of the year, to maintain records, and to keep component and activities plans current and relevant. These activities should take place when no home visits or group socialization activities are planned.

(5) Maintain an average caseload of 10 to 12 families per home visitor with a maximum of 12 families for any individual home visitor.

(b) Home visits must be conducted by trained home visitors with the content of the visit jointly planned by the home visitor and the parents. Home visitors must conduct the home visit with the participation of parents. Home visits may not be conducted by the home visitor with only babysitters or other temporary caregivers in attendance.

(1) The purpose of the home visit is to help parents improve their parenting skills and to assist them in the use of the home as the child's primary learning environment. The home visitor must work with parents to help them provide learning opportunities that enhance their child's growth and development.

(2) Home visits must, over the course of a month, contain elements of all Head Start program components. The home visitor is the person responsible for introducing, arranging and/or providing Head Start services.

(c) Group socialization activities must be focused on both the children and parents. They may not be conducted by the home visitor with babysitters or other temporary caregivers.

(1) The purpose of these socialization activities for the children is to emphasize peer group interaction through age appropriate activities in a Head Start classroom, community facility, home, or on a field trip. The children are to be supervised by the home visitor with parents observing at times and actively participating at other times.

(2) These activities must be designed so that parents are expected to accompany their children to the group socialization activities at least twice each month to observe, to participate as volunteers or to engage in activities designed specifically for the parents.

(3) Grantees must follow the nutrition requirements specified in 45 CFR 1304.23(b)(2) and provide appropriate snacks and meals to the children during group socialization activities.

[57 FR 58092, Dec. 8, 1992, as amended at 61 FR 57227, Nov. 5, 1996]

§ 1306.34 Combination program option.

(a) *Combination program option requirements:* (1) Grantees implementing a combination program option must provide class sessions and home visits that result in an amount of contact with children and families that is, at a minimum, equivalent to the services provided through the center-based program option or the home-based program option.

(2) Acceptable combinations of minimum number of class sessions and corresponding number of home visits are shown below. Combination programs must provide these services over a period of 8 to 12 months.

Number of class sessions	Number of home visits
96	8
92–95	9
88–91	10
84–87	11
80–83	12
76–79	13
72–75	14
68–71	15
64–67	16
60–63	17
56–59	18
52–55	19
48–51	20
44–47	21
40–43	22
36–39	23
32–35	24

(3) The following are examples of various configurations that are possible for a program that operates for 32 weeks:

- A program operating classes three days a week and providing one home visit a month (96 classes and 8 home visits a year);
- A program operating classes two days a week and providing two home visits a month (64 classes and 16 home visits a year);
- A program operating classes one day a week and providing three home visits a month (32 classes and 24 home visits a year).

(4) Grantees operating the combination program option must make a reasonable estimate of the number of days during a year that centers may be closed due to problems such as inclement weather or illness, based on their experience in previous years. Grantees must make provisions in their budgets and program plans to operate make-up classes up to the estimated number, and provide these classes, when necessary, to prevent the number of days of classes from falling below the number required by paragraph (a)(2) of this section. Grantees must make up planned home visits that were canceled by the program or by the program staff if this is necessary to meet the minimums required by paragraph (a)(2) of this section. Medical or social service appointments may not replace home visits.

(b) *Requirements for class sessions:* (1) Grantees implementing the combination program option must comply with the class size requirements contained in § 1306.32(a).

(2) The provisions of the following sections apply to grantees operating the combination program option: § 1306.32(b) (2), (5), (6), (7) and (9).

(3) If a grantee operates a double session or a full day variation, it must meet the provisions concerning double-sessions contained in § 1306.32(c)(1) and (3) and the provisions for the center-based program option's full day variation found in § 1306.32(d).

(c) *Requirements for home visits:* (1) Home visits must last for a minimum of 1 and ½ hours each.

(2) The provisions of the following section, concerning the home-based program option, must be adhered to by grantees implementing the combination program option: § 1306.33(a) (4) and (5); and § 1306.33(b).

§ 1306.35 Family child care program option.

(a) *Grantee and delegate agency implementation.* Grantee and delegate agencies offering the family child care program option must:

(1) *Hours of operation.* Ensure that the family child care option, whether provided directly or via contractual arrangement, operates sufficient hours to meet the child care needs of families.

(2) *Serving children with disabilities.* (i) Ensure the availability of family child care homes capable of serving children and families with disabilities affecting mobility as appropriate; and

(ii) Ensure that children with disabilities enrolled in family child care are provided services which support their participation in the early intervention, special education, and related services required by their individual family service plan (IFSP) or individual education plan (IEP) and that the child's teacher has appropriate knowledge, training, and support.

(3) *Program Space-indoor and outdoor.* Ensure that each family child care home has sufficient indoor and outdoor space which is usable and available to children. This space must be adequate to allow children to be supervised and safely participate in developmentally appropriate activities and routines that foster their cognitive, socio-emotional, and physical development, including both gross and fine motor. Family child care settings must meet State family child care regulations.

(4) *Policy Council role.* The Policy Council must approve or disapprove the addition of family child care as a Head Start or Early Head Start program option. When families are enrolled in the Head Start or Early Head Start family child care program option, they must have proportionate representation on the Policy Council or policy committee.

(b)*Facilities.*—(1) *Safety plan.* Grantees and delegate agencies offering the family child care program option must ensure the health and safety of children enrolled. The family child care home must have a written description of its health, safety, and emergency policies and procedures, and a system for routine inspection to ensure ongoing safety.

(2) *Injury prevention.* Grantee and delegate agencies must ensure that:

(i) Children enrolled in the Head Start family child care program option are protected from potentially hazardous situations. Providers must ensure that children are safe from the potential hazards posed by appliances (stove, refrigerator, microwave, etc). Premises must be free from pests and the use of chemicals or other potentially harmful materials for controlling pests must not occur while children are on premises.

(ii) Grantee and delegate agencies must ensure that all sites attended by children enrolled in Head Start and Early Head Start are equipped with functioning and properly located smoke and carbon monoxide detectors.

(iii) Radon detectors are installed in family child care homes where there is a basement and such detectors are recommended by local health officials;

(iv) Children are supervised at all times. Providers must have systems for assuring the safety of any child not within view for any period (e.g. the provider needs to use the bathroom or an infant is napping in one room while toddlers play in another room);

(v) Providers ensure the safety of children whenever any body of water, road, or other potential hazard is present and when children are being transported;

(vi) Unsupervised access by children to all water hazards, such as pools or other bodies of water, are prevented by a fence;

(vii) There are no firearms or other weapons kept in areas occupied or accessible to children;

(viii) Alcohol and other drugs are not consumed while children are present or accessible to children at any time; and

(ix) Providers secure health certificates for pets to document up to date immunizations and freedom from any disease or condition that poses a threat to children's health. Family child care providers must ensure that pets are appropriately managed to ensure child safety at all times.

(c) *Emergency plans.* Grantee and delegate agencies offering the family child care option must ensure that providers have made plans to notify parents in the event of any emergency or unplanned interruption of service. The provider and parent together must develop contingency plans for emergencies. Such plans may include, but are not limited to, the use of alternate providers or the availability of substitute providers. Parents must be informed that they may need to pick the child up and arrange care if the child becomes ill or if an emergency arises.

(d) *Licensing requirements.* Head Start programs offering the family child care option must ensure that family child care providers meet State, Tribal, and local licensing requirements and possess a license or other document certifying that those requirements have been met. When State, Tribal, or local requirements vary from Head Start requirements, the most stringent provision takes precedence.

[73 FR 1296, Jan. 8, 2008]

§ 1306.36 Additional Head Start program option variations.

In addition to the center-based, home-based, combination programs, and family child care options defined in this part, the Director of the Office of Head Start retains the right to fund alternative program variations to meet the unique needs of communities or to demonstrate or test alternative approaches for providing Head Start services.

[73 FR 1296, Jan. 8, 2008]

§ 1306.37 Compliance waiver.

An exception to one or more of the requirements contained in §§ 1306.32, 1306.33, 1306.34, and 1306.35 will be granted only if the Director of the Office of Head Start determines, on the basis of supporting evidence, that the grantee made a reasonable effort to comply with the requirement but was unable to do so because of limitations or circumstances of a specific community or communities served by the grantee.

[73 FR 1296, Jan. 8, 2008]

PART 1308—HEAD START PROGRAM PERFORMANCE STANDARDS ON SERVICES FOR CHILDREN WITH DISABILITIES

Subpart A—General

Sec.
1308.1 Purpose.
1308.2 Scope.
1308.3 Definitions.

Subpart B—Disabilities Service Plan

1308.4 Purpose and scope of disabilities service plan.

Subpart C—Social Services Performance Standards

1308.5 Recruitment and enrollment of children with disabilities.

Subpart D—Health Services Performance Standards

1308.6 Assessment of children.
1308.7 Eligibility criteria: Health impairment.
1308.8 Eligibility criteria: Emotional/behavioral disorders.
1308.9 Eligibility criteria: Speech or language impairments.
1308.10 Eligibility criteria: Mental retardation.
1308.11 Eligibility criteria: Hearing impairment including deafness.
1308.12 Eligibility criteria: Orthopedic impairment.
1308.13 Eligibility criteria: Visual impairment including blindness.
1308.14 Eligibility criteria: Learning disabilities.
1308.15 Eligibility criteria: Autism.

1308.16 Eligibility criteria: Traumatic brain injury.
1308.17 Eligibility criteria: Other impairments.
1308.18 Disabilities/health services coordination.

Subpart E—Education Services Performance Standards

1308.19 Developing individualized education programs (IEPs).

Subpart F—Nutrition Performance Standards

1308.20 Nutrition services.

Subpart G—Parent Involvement Performance Standards

1308.21 Parent participation and transition of children into Head Start and from Head Start to public school.

APPENDIX TO PART 1308—HEAD START PROGRAM PERFORMANCE STANDARDS ON SERVICES TO CHILDREN WITH DISABILITIES

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

SOURCE: 58 FR 5501, Jan. 21, 1993, unless otherwise noted.

Subpart A—General

§ 1308.1 Purpose.

This rule sets forth the requirements for providing special services for 3- through 5-year-old children with disabilities enrolled in Head Start programs. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR part 1304. The purpose of this part is to ensure that children with disabilities enrolled in Head Start programs receive all the services to which they are entitled under the Head Start Program Performance Standards at 45 CFR part 1304, as amended.

§ 1308.2 Scope.

This rule applies to all Head Start grantees and delegate agencies.

§ 1308.3 Definitions.

As used in this part:

(a) The term *ACYF* means the Administration on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services, and includes appropriate Regional Office staff.

(b) The term *children with disabilities* means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities; and who, by reason thereof, need special education and related services. The term *children with disabilities* for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

(c) The term *Commissioner* means the Commissioner of the Administration on Children, Youth and Families.

(d) The term *day* means a calendar day.

(e) The term *delegate agency* means a public or private non-profit agency to which a grantee has delegated the responsibility for operating all or part of its Head Start program.

(f) The term *disabilities coordinator* means the person on the Head Start staff designated to manage on a full or part-time basis the services for children with disabilities described in part 1308.

(g) The term *eligibility criteria* means the criteria for determining that a child enrolled in Head Start requires special education and related services because of a disability.

(h) The term *grantee* means the public or private non-profit agency which has been granted financial assistance by ACYF to administer a Head Start program.

(i) The term *individualized education program* (IEP) means a written statement for a child with disabilities, developed by the public agency responsible for providing free appropriate public education to a child, and contains the special education and related

services to be provided to an individual child.

(j) The term *least restrictive environment* means an environment in which services to children with disabilities are provided:

(1) to the maximum extent appropriate, with children who are not disabled and in which;

(2) special classes or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(k) The term *Performance Standards* means the Head Start program functions, activities and facilities required and necessary to meet the objectives and goals of the Head Start program as they relate directly to children and their families.

(l) The term *related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services, and parent counseling and training. It includes other developmental, corrective or supportive services if they are required to assist a child with a disability to benefit from special education, including assistive technology services and devices.

(1) The term *assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(2) The term *assistive technology service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: The evaluation of the needs of an individual with a disability; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and training or technical assistance to professionals who employ or provide services involved in the major life functions of individuals with disabilities.

(m) The term *responsible HHS official* means the official who is authorized to make the grant of assistance in question or his or her designee.

(n) The term *special education* means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability. These services include classroom or home-based instruction, instruction in hospitals and institutions, and specially designed physical education if necessary.

Subpart B—Disabilities Service Plan

§ 1308.4 Purpose and scope of disabilities service plan.

(a) A Head Start grantee, or delegate agency, if appropriate, must develop a disabilities service plan providing strategies for meeting the special needs of children with disabilities and their parents. The purposes of this plan are to assure:

(1) That all components of Head Start are appropriately involved in the integration of children with disabilities and their parents; and

(2) That resources are used efficiently.

(b) The plan must be updated annually.

(c) The plan must include provisions for children with disabilities to be included in the full range of activities

and services normally provided to all Head Start children and provisions for any modifications necessary to meet the special needs of the children with disabilities.

(d) The Head Start grantee and delegate agency must use the disabilities service plan as a working document which guides all aspects of the agency's effort to serve children with disabilities. This plan must take into account the needs of the children for small group activities, for modifications of large group activities and for any individual special help.

(e) The grantee or delegate agency must designate a coordinator of services for children with disabilities (disabilities coordinator) and arrange for preparation of the disabilities service plan and of the grantee application budget line items for services for children with disabilities. The grantee or delegate must ensure that all relevant coordinators, other staff and parents are consulted.

(f) The disability service plan must contain:

(1) Procedures for timely screening;

(2) Procedures for making referrals to the LEA for evaluation to determine whether there is a need for special education and related services for a child, as early as the child's third birthday;

(3) Assurances of accessibility of facilities; and

(4) Plans to provide appropriate special furniture, equipment and materials if needed.

(g) The plan, when appropriate, must address strategies for the transition of children into Head Start from infant/toddler programs (0–3 years), as well as the transition from Head Start into the next placement. The plan must include preparation of staff and parents for the entry of children with severe disabilities into the Head Start program.

(h) The grantee or delegate agency must arrange or provide special education and related services necessary to foster the maximum development of each child's potential and to facilitate participation in the regular Head Start program unless the services are being provided by the LEA or other agency. The plan must specify the services to be provided directly by Head Start and those provided by other agencies. The grantee or delegate agency must arrange for, provide, or procure services which may include, but are not limited to special education and these related services:

(1) Audiology services, including identification of children with hearing loss and referral for medical or other professional attention; provision of needed rehabilitative services such as speech and language therapy and auditory training to make best use of remaining hearing; speech conservation; lip reading; determination of need for hearing aids and fitting of appropriate aids; and programs for prevention of hearing loss;

(2) Physical therapy to facilitate gross motor development in activities such as walking prevent or slow orthopedic problems and improve posture and conditioning;

(3) Occupational therapy to improve, develop or restore fine motor functions in activities such as using a fork or knife;

(4) Speech or language services including therapy and use of assistive devices necessary for a child to develop or improve receptive or expressive means of communication;

(5) Psychological services such as evaluation of each child's functioning and interpreting the results to staff and parents; and counseling and guidance services for staff and parents regarding disabilities;

(6) Transportation for children with disabilities to and from the program and to special clinics or other service providers when the services cannot be provided on-site. Transportation includes adapted buses equipped to accommodate wheelchairs or other such devices if required; and

(7) Assistive technology services or devices necessary to enable a child to improve functions such as vision, mobility or communication to meet the objectives in the IEP.

(i) The disabilities service plan must include options to meet the needs and take into consideration the strengths of each child based upon the IEP so that a continuum of services available from various agencies is considered.

(j) The options may include:

(1) Joint placement of children with other agencies;

(2) Shared provision of services with other agencies;

(3) Shared personnel to supervise special education services, when necessary to meet State requirements on qualifications;

(4) Administrative accommodations such as having two children share one enrollment slot when each child's IEP calls for part-time service because of their individual needs; and

(5) Any other strategies to be used to insure that special needs are met. These may include:

(i) Increased staff;

(ii) Use of volunteers; and

(iii) Use of supervised students in such fields as child development, special education, child psychology, various therapies and family services to assist the staff.

(k) The grantee must ensure that the disabilities service plan addresses grantee efforts to meet State standards for personnel serving children with disabilities by the 1994–95 program year. Special education and related services must be provided by or under the supervision of personnel meeting State qualifications by the 1994–95 program year.

(l) The disabilities service plan must include commitment to specific efforts to develop interagency agreements with the LEAs and other agencies within the grantee's service area. If no agreement can be reached, the grantee must document its efforts and inform the Regional Office. The agreements must address:

(1) Head Start participation in the public agency's Child Find plan under Part B of IDEA;

(2) Joint training of staff and parents;

(3) Procedures for referral for evaluations, IEP meetings and placement decisions;

(4) Transition;

(5) Resource sharing;

(6) Head Start commitment to provide the number of children receiving services under IEPs to the LEA for the LEA Child Count report by December 1 annually; and

(7) Any other items agreed to by both parties. Grantees must make efforts to update the agreements annually.

(m) The disabilities coordinator must work with the director in planning and budgeting of grantee funds to assure that the special needs identified in the IEP are fully met; that children most in need of an integrated placement and of special assistance are served; and that the grantee maintains the level of fiscal support to children with disabilities consistent with the Congressional mandate to meet their special needs.

(n) The grant application budget form and supplement submitted with applications for funding must reflect requests for adequate resources to implement the objectives and activities in the disability services plan and fulfill the requirements of these Performance Standards.

(o) The budget request included with the application for funding must address the implementation of the disabilities service plan. Allowable expenditures include:

(1) *Salaries.* Allowable expenditures include salaries of a full or part-time coordinator of services for children with disabilities (disabilities coordinator), who is essential to assure that programs have the core capability to recruit, enroll, arrange for the evaluation of children, provide or arrange for services to children with disabilities and work with Head Start coordinators and staff of other agencies which are working cooperatively with the grantee. Salaries of special education resource teachers who can augment the work of the regular teacher are an allowable expenditure.

(2) *Evaluation of children.* When warranted by screening or rescreening results, teacher observation or parent request, arrangements must be made for evaluation of the child's development and functioning. If, after referral for evaluation to the LEA, evaluations are not provided by the LEA, they are an allowable expenditure.

(3) *Services.* Program funds may be used to pay for services which include special education, related services, and summer services deemed necessary on an individual basis and to prepare for serving children with disabilities in advance of the program year.

(4) *Making services accessible.* Allowable costs include elimination of architectural barriers which affect the participation of children with disabilities, in conformance with 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Program and Activities Receiving or Benefiting from Federal Financial Assistance and with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101). The Americans with Disabilities Act requires that public accommodations including private schools and day care centers may not discriminate on the basis of disability. Physical barriers in existing facilities must be removed if removal is readily achievable (i.e., easily accomplishable and able to be carried out without much difficulty or expense). If not, alternative methods of providing the services must be offered, if those methods are readily achievable. Alterations must be accessible. When alterations to primary function areas are made, an accessible path of travel to the altered areas (and the bathrooms, telephones and drinking fountains serving that area) must be provided to the extent that the added accessibility costs are not disproportionate to the overall cost of the alterations. Program funds may be used for ramps, remodeling or modifications such as grab bars or railings. Grantees must meet new statutory and regulatory requirements that are enacted.

(5) *Transportation.* Transportation is a related service to be provided to children with disabilities. When transportation to the program site and to special services can be accessed from other agencies, it should be used. When it is not available, program funds are to be used to provide it. Special buses or use of taxis are allowable expenses if there are no alternatives available and they are necessary to enable a child to be served.

(6) *Special Equipment and Materials.* Purchase or lease of special equipment and materials for use in the program and home is an allowable program expense. Grantees must make available assistive devices necessary to make it possible for a child to move, communicate, improve functioning or address objectives which are listed in the child's IEP.

(7) *Training and Technical Assistance.* Increasing the abilities of staff to meet the special needs of children with disabilities is an allowable expense. Appropriate expenditures may include but are not limited to:

(i) Travel and per diem expenses for disabilities coordinators, teachers and parents to attend training and technical assistance events related to special services for children with disabilities;

(ii) The provision of substitute teaching staff to enable staff to attend training and technical assistance events;

(iii) Fees for courses specifically related to the requirements of the disabilities service plan, a child's IEP or State certification to serve children with disabilities; and

(iv) Fees and expenses for training/technical assistance consultants if such help is not available from another provider at no cost.

Subpart C—Social Services Performance Standards

§ 1308.5 Recruitment and enrollment of children with disabilities.

(a) The grantee or delegate agency outreach and recruitment activities must incorporate specific actions to actively locate and recruit children with disabilities.

(b) A grantee must insure that staff engaged in recruitment and enrollment of children are knowledgable about the provisions of 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, and of the Americans with Disabilities Act of 1990, (42 U.S.C. 12101).

(c) A grantee must not deny placement on the basis of a disability or its severity to any child when:

(1) The parents wish to enroll the child,

(2) The child meets the Head Start age and income eligibility criteria,

(3) Head Start is an appropriate placement according to the child's IEP, and

(4) The program has space to enroll more children, even though the program has made ten percent of its enrollment opportunities available to

children with disabilities. In that case children who have a disability and non-disabled children would compete for the available enrollment opportunities.

(d) The grantee must access resources and plan for placement options, such as dual placement, use of resource staff and training so that a child with a disability for whom Head Start is an appropriate placement according to the IEP is not denied enrollment because of:

(1) Staff attitudes and/or apprehensions;

(2) Inaccessibility of facilities;

(3) Need to access additional resources to serve a specific child;

(4) Unfamiliarity with a disabling condition or special equipment, such as a prosthesis; and

(5) Need for personalized special services such as feeding, suctioning, and assistance with toileting, including catheterization, diapering, and toilet training.

(e) The same policies governing Head Start program eligibility for other children, such as priority for those most in need of the services, apply to children with disabilities. Grantees also must take the following factors into account when planning enrollment procedures:

(1) The number of children with disabilities in the Head Start service area including types of disabilities and their severity;

(2) The services and resources provided by other agencies; and

(3) State laws regarding immunization of preschool children. Grantees must observe applicable State laws which usually require that children entering State preschool programs complete immunizations prior to or within thirty days after entering to reduce the spread of communicable diseases.

(f) The recruitment effort of a Head Start grantee must include recruiting children who have severe disabilities, including children who have been previously identified as having disabilities.

Subpart D—Health Services Performance Standards

§ 1308.6 Assessment of children.

(a) The disabilities coordinator must be involved with other program staff throughout the full process of assessment of children, which has three steps:

(1) All children enrolled in Head Start are screened as the first step in the assessment process;

(2) Staff also carry out on-going developmental assessment for all enrolled children throughout the year to determine progress and to plan program activities;

(3) Only those children who need further specialized assessment to determine whether they have a disability and may require special education and related services proceed to the next step, evaluation. The disabilities coordinator has primary responsibility for this third step, evaluation, only.

(b) *Screening, the first step in the assessment process,* consists of standardized health screening and developmental screening which includes speech, hearing and vision. It is a brief process, which can be repeated, and is never used to determine that a child has a disability. It only indicates that a child may need further evaluation to determine whether the child has a disability. Rescreening must be provided as needed.

(1) Grantees must provide for developmental, hearing and vision screenings of all Early Head Start and Head Start children within 45 days of the child's entry into the program. This does not preclude starting screening in the spring, before program services begin in the fall.

(2) Grantees must make concerted efforts to reach and include the most in need and hardest to reach in the screening effort, providing assistance but urging parents to complete screening before the start of the program year.

(3) Developmental screening is a brief check to identify children who need further evaluation to determine whether they may have disabilities. It provides information in three major developmental areas: visual/motor, language and cognition, and gross motor/body

awareness for use along with observation data, parent reports and home visit information. When appropriate standardized developmental screening instruments exist, they must be used. The disabilities coordinator must coordinate with the health coordinator and staff who have the responsibility for implementing health screening and with the education staff who have the responsibility for implementing developmental screening.

(c) Staff must inform parents of the types and purposes of the screening well in advance of the screening, the results of these screenings and the purposes and results of any subsequent evaluations.

(d) *Developmental assessment, the second step,* is the collection of information on each child's functioning in these areas: gross and fine motor skills, perceptual discrimination, cognition, attention skills, self-help, social and receptive skills and expressive language. The disabilities coordinator must coordinate with the education coordinator in the on-going assessment of each Head Start child's functioning in all developmental areas by including this developmental information in later diagnostic and program planning activities for children with disabilities.

(e) *The disabilities coordinator must arrange for further, formal, evaluation of a child who has been identified as possibly having a disability, the third step.* (1) The disabilities coordinator must refer a child to the LEA for evaluation as soon as the need is evident, starting as early as the child's third birthday.

(2) If the LEA does not evaluate the child, Head Start is responsible for arranging or providing for an evaluation, using its own resources and accessing others. In this case, the evaluation must meet the following requirements:

(i) Testing and evaluation procedures must be selected and administered so as not to be racially or culturally discriminatory, administered in the child's native language or mode of communication, unless it clearly is not feasible to do so.

(ii) Testing and evaluation procedures must be administered by trained (State certified or licensed) personnel.

(iii) No single procedure may be the sole criterion for determining an appropriate educational program for a child.

(iv) The evaluation must be made by a multidisciplinary team or group of persons including at least one teacher or specialist with knowledge in the area of suspected disability.

(v) Evaluators must use only assessment materials which have been validated for the specific purpose for which they are used.

(vi) Tests used with children with impaired sensory, manual or communication skills must be administered so that they reflect the children's aptitudes and achievement levels and not just the disabilities.

(vii) Tests and materials must assess all areas related to the suspected disability.

(viii) In the case of a child whose primary disability appears to be a speech or language impairment, the team must assure that enough tests are used to determine that the impairment is not a symptom of another disability and a speech or language pathologist should be involved in the evaluation.

(3) Parental consent in writing must be obtained before a child can have an initial evaluation to determine whether the child has a disability.

(4) Confidentiality must be maintained in accordance with grantee and State requirements. Parents must be given the opportunity to review their child's records in a timely manner and they must be notified and give permission if additional evaluations are proposed. Grantees must explain the purpose and results of the evaluation and make concerted efforts to help the parents understand them.

(5) The multidisciplinary team provides the results of the evaluation, and its professional opinion that the child does or does not need special education and related services, to the disabilities coordinator. If it is their professional opinion that a child has a disability, the team is to state which of the eligibility criteria applies and provide recommendations for programming, along with their findings. Only children whom the evaluation team determines need special education and related

services may be counted as children with disabilities.

[58 FR 5501, Jan. 21, 1993, as amended at 61 FR 57227, Nov. 5, 1996]

§ 1308.7 Eligibility criteria: Health impairment.

(a) A child is classified as health impaired who has limited strength, vitality or alertness due to a chronic or acute health problem which adversely affects learning.

(b) The health impairment classification may include, but is not limited to, cancer, some neurological disorders, rheumatic fever, severe asthma, uncontrolled seizure disorders, heart conditions, lead poisoning, diabetes, AIDS, blood disorders, including hemophilia, sickle cell anemia, cystic fibrosis, heart disease and attention deficit disorder.

(c) This category includes medically fragile children such as ventilator dependent children who are in need of special education and related services.

(d) A child may be classified as having an attention deficit disorder under this category who has chronic and pervasive developmentally inappropriate inattention, hyperactivity, or impulsivity. To be considered a disorder, this behavior must affect the child's functioning severely. To avoid overuse of this category, grantees are cautioned to assure that only the enrolled children who most severely manifest this behavior must be classified in this category.

(1) The condition must severely affect the performance of a child who is trying to carry out a developmentally appropriate activity that requires orienting, focusing, or maintaining attention during classroom instructions and activities, planning and completing activities, following simple directions, organizing materials for play or other activities, or participating in group activities. It also may be manifested in overactivity or impulsive acts which appear to be or are interpreted as physical aggression. The disorder must manifest itself in at least two different settings, one of which must be the Head Start program site.

(2) Children must not be classified as having attention deficit disorders based on:

(i) Temporary problems in attention due to events such as a divorce, death of a family member or post-traumatic stress reactions to events such as sexual abuse or violence in the neighborhood;

(ii) Problems in attention which occur suddenly and acutely with psychiatric disorders such as depression, anxiety and schizophrenia;

(iii) Behaviors which may be caused by frustration stemming from inappropriate programming beyond the child's ability level or by developmentally inappropriate demands for long periods of inactive, passive activity;

(iv) Intentional noncompliance or opposition to reasonable requests that are typical of good preschool programs; or

(v) Inattention due to cultural or language differences.

(3) An attention deficit disorder must have had its onset in early childhood and have persisted through the course of child development when children normally mature and become able to operate in a socialized preschool environment. Because many children younger than four have difficulty orienting, maintaining and focussing attention and are highly active, when Head Start is responsible for the evaluation, attention deficit disorder applies to four and five year old children in Head Start but not to three year olds.

(4) Assessment procedures must include teacher reports which document the frequency and nature of indications of possible attention deficit disorders and describe the specific situations and events occurring just before the problems manifested themselves. Reports must indicate how the child's functioning was impaired and must be confirmed by independent information from a second observer.

§ 1308.8 Eligibility criteria: Emotional/behavioral disorders.

(a) An emotional/behavioral disorder is a condition in which a child's behavioral or emotional responses are so different from those of the generally accepted, age-appropriate norms of children with the same ethnic or cultural background as to result in significant impairment in social relationships,

self-care, educational progress or classroom behavior. A child is classified as having an emotional/behavioral disorder who exhibits one or more of the following characteristics with such frequency, intensity, or duration as to require intervention:

(1) Seriously delayed social development including an inability to build or maintain satisfactory (age appropriate) interpersonal relationships with peers or adults (e.g., avoids playing with peers);

(2) Inappropriate behavior (e.g., dangerously aggressive towards others, self-destructive, severely withdrawn, non-communicative);

(3) A general pervasive mood of unhappiness or depression, or evidence of excessive anxiety or fears (e.g., frequent crying episodes, constant need for reassurance); or

(4) Has a professional diagnosis of serious emotional disturbance.

(b) The eligibility decision must be based on multiple sources of data, including assessment of the child's behavior or emotional functioning in multiple settings.

(c) The evaluation process must include a review of the child's regular Head Start physical examination to eliminate the possibility of misdiagnosis due to an underlying physical condition.

§ 1308.9 Eligibility criteria: Speech or language impairments.

(a) A speech or language impairment means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's learning.

(b) A child is classified as having a speech or language impairment whose speech is unintelligible much of the time, or who has been professionally diagnosed as having speech impairments which require intervention or who is professionally diagnosed as having a delay in development in his or her primary language which requires intervention.

(c) A language disorder may be receptive or expressive. A language disorder may be characterized by difficulty in understanding and producing language, including word meanings (semantics), the components of words (morphology), the components of sentences (syntax), or the conventions of conversation (pragmatics).

(d) A speech disorder occurs in the production of speech sounds (articulation), the loudness, pitch or quality of voice (voicing), or the rhythm of speech (fluency).

(e) A child should not be classified as having a speech or language impairment whose speech or language differences may be attributed to:

(1) Cultural, ethnic, bilingual, or dialectical differences or being non-English speaking; or

(2) Disorders of a temporary nature due to conditions such as a dental problem; or

(3) Delays in developing the ability to articulate only the most difficult consonants or blends of sounds within the broad general range for the child's age.

§ 1308.10 Eligibility criteria: Mental retardation.

(a) A child is classified as mentally retarded who exhibits significantly sub-average intellectual functioning and exhibits deficits in adaptive behavior which adversely affect learning. Adaptive behavior refers to age-appropriate coping with the demands of the environment through independent skills in self-care, communication and play.

(b) Measurement of adaptive behavior must reflect objective documentation through the use of an established scale and appropriate behavioral/anecdotal records. An assessment of the child's functioning must also be made in settings outside the classroom.

(c) Valid and reliable instruments appropriate to the age range must be used. If they do not exist for the language and cultural group to which the child belongs, observation and professional judgement are to be used instead.

(d) Determination that a child is mentally retarded is never to be made on the basis of any one test alone.

§ 1308.11 Eligibility criteria: Hearing impairment including deafness.

(a) A child is classified as deaf if a hearing impairment exists which is so severe that the child is impaired in

processing linguistic information through hearing, with or without amplification, and learning is affected. A child is classified as hard of hearing who has a permanent or fluctuating hearing impairment which adversely affects learning; or

(b) Meets the legal criteria for being hard of hearing established by the State of residence; or

(c) Experiences recurrent temporary or fluctuating hearing loss caused by otitis media, allergies, or eardrum perforations and other outer or middle ear anomalies over a period of three months or more. Problems associated with temporary or fluctuating hearing loss can include impaired listening skills, delayed language development, and articulation problems. Children meeting these criteria must be referred for medical care, have their hearing checked frequently, and receive speech, language or hearing services as indicated by the IEPs. As soon as special services are no longer needed, these children must no longer be classified as having a disability.

§ 1308.12 Eligibility criteria: Orthopedic impairment.

(a) A child is classified as having an orthopedic impairment if the condition is severe enough to adversely affect a child's learning. An orthopedic impairment involves muscles, bones, or joints and is characterized by impaired ability to maneuver in educational or non-educational settings, to perform fine or gross motor activities, or to perform self-help skills and by adversely affected educational performance.

(b) An orthopedic impairment includes, but is not limited to, spina bifida, cerebral palsy, loss of or deformed limbs, contractures caused by burns, arthritis, or muscular dystrophy.

§ 1308.13 Eligibility criteria: Visual impairment including blindness.

(a) A child is classified as visually impaired when visual impairment, with correction, adversely affects a child's learning. The term includes both blind and partially seeing children. A child is visually impaired if:

(1) The vision loss meets the definition of legal blindness in the State of residence; or

(2) Central acuity does not exceed 20/200 in the better eye with corrective lenses, or visual acuity is greater than 20/200, but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) A child is classified as having a visual impairment if central acuity with corrective lenses is between 20/70 and 20/200 in either eye, or if visual acuity is undetermined, but there is demonstrated loss of visual function that adversely affects the learning process, including faulty muscular action, limited field of vision, cataracts, etc.

§ 1308.14 Eligibility criteria: Learning disabilities.

(a) A child is classified as having a learning disability who has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in imperfect ability to listen, think, speak or, for preschool age children, acquire the precursor skills for reading, writing, spelling or doing mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, and aphasia.

(b) An evaluation team may recommend that a child be classified as having a learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in (a) above when provided with appropriate learning experiences for the age and ability; or

(2) The child has a severe discrepancy between achievement of developmental milestones and intellectual ability in one or more of these areas: oral expression, listening comprehension, pre-reading, pre-writing and pre-mathematics; or

(3) The child shows deficits in such abilities as memory, perceptual and perceptual-motor skills, thinking, language and non-verbal activities which are not due to visual, motor, hearing or

emotional disabilities, mental retardation, cultural or language factors, or lack of experiences which would help develop these skills.

(c) This definition for learning disabilities applies to four and five year old children in Head Start. It may be used at a program's discretion for children younger than four or when a three year old child is referred with a professional diagnosis of learning disability. But because of the difficulty of diagnosing learning disabilities for three year olds, when Head Start is responsible for the evaluation it is not a requirement to use this category for three year olds.

§ 1308.15 Eligibility criteria: Autism.

A child is classified as having autism when the child has a developmental disability that significantly affects verbal and non-verbal communication and social interaction, that is generally evident before age three and that adversely affects educational performance.

§ 1308.16 Eligibility criteria: Traumatic brain injury.

A child is classified as having traumatic brain injury whose brain injuries are caused by an external physical force, or by an internal occurrence such as stroke or aneurysm, with resulting impairments that adversely affect educational performance. The term includes children with open or closed head injuries, but does not include children with brain injuries that are congenital or degenerative or caused by birth trauma.

§ 1308.17 Eligibility criteria: Other impairments.

(a) The purposes of this classification, ''Other impairments,'' are:

(1) To further coordination with LEAs and reduce problems of recordkeeping;

(2) To assist parents in making the transition from Head Start to other placements; and

(3) To assure that no child enrolled in Head Start is denied services which would be available to other preschool children who are considered to have disabilities in their State.

(b) If the State Education Agency eligibility criteria for preschool children include an additional category which is appropriate for a Head Start child, children meeting the criteria for that category must receive services as children with disabilities in Head Start programs. Examples are ''preschool disabled,'' ''in need of special education,'' ''educationally handicapped,'' and ''non-categorically handicapped.''

(c) Children ages three to five, inclusive, who are experiencing developmental delays, as defined by their State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, and who by reason thereof need special education and related services may receive services as children with disabilities in Head Start programs.

(d) Children who are classified as deaf-blind, whose concomitant hearing and visual impairments cause such severe communication and other developmental problems that they cannot be accommodated in special education programs solely for deaf or blind children are eligible for services under this category.

(e) Children classified as having multiple disabilities whose concomitant impairments (such as mental retardation and blindness), in combination, cause such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments are eligible for services under this category. The term does not include deaf-blind children, for recordkeeping purposes.

§ 1308.18 Disabilities/health services coordination.

(a) The grantee must ensure that the disabilities coordinator and the health coordinator work closely together in the assessment process and follow up to assure that the special needs of each child with disabilities are met.

(b) The grantee must ensure coordination between the disabilities coordinator and the staff person responsible for the mental health component to help teachers identify children who

show signs of problems such as possible serious depression, withdrawal, anxiety or abuse.

(c) Each Head Start director or designee must supervise the administration of all medications, including prescription and over-the-counter drugs, to children with disabilities in accordance with State requirements.

(d) The health coordinator under the supervision of the Head Start director or designee must:

(1) Obtain the doctor's instructions and parental consent before any medication is administered.

(2) Maintain an individual record of all medications dispensed and review the record regularly with the child's parents.

(3) Record changes in a child's behavior which have implications for drug dosage or type and share this information with the staff, parents and the physician.

(4) Assure that all medications, including those required by staff and volunteers, are adequately labeled, stored under lock and key and out of reach of children, and refrigerated, if necessary.

Subpart E—Education Services Performance Standards

§ 1308.19 Developing individualized education programs (IEPs)

(a) When Head Start provides for the evaluation, the multidisciplinary evaluation team makes the determination whether the child meets the Head Start eligibility criteria. The multidisciplinary evaluation team must assure that the evaluation findings and recommendations, as well as information from developmental assessment, observations and parent reports, are considered in making the determination whether the child meets Head Start eligibility criteria.

(b) Every child receiving services in Head Start who has been evaluated and found to have a disability and in need of special education must have an IEP before special education and related services are provided to ensure that comprehensive information is used to develop the child's program.

(c) When the LEA develops the IEP, a representative from Head Start must attempt to participate in the IEP meeting and placement decision for any child meeting Head Start eligibility requirements.

(d) If Head Start develops the IEP, the IEP must take into account the child's unique needs, strengths, developmental potential and the family strengths and circumstances as well as the child's disabilities.

(e) The IEP must include:

(1) A statement of the child's present level of functioning in the social-emotional, motor, communication, self-help, and cognitive areas of development, and the identification of needs in those areas requiring specific programming.

(2) A statement of annual goals, including short term objectives for meeting these goals.

(3) A statement of services to be provided by each Head Start component that are in addition to those services provided for all Head Start children, including transition services.

(4) A statement of the specific special education services to be provided to the child and those related services necessary for the child to participate in a Head Start program. This includes services provided by Head Start and services provided by other agencies and non-Head Start professionals.

(5) The identification of the personnel responsible for the planning and supervision of services and for the delivery of services.

(6) The projected dates for initiation of services and the anticipated duration of services.

(7) A statement of objective criteria and evaluation procedures for determining at least annually whether the short-term objectives are being achieved or need to be revised.

(8) Family goals and objectives related to the child's disabilities when they are essential to the child's progress.

(f) When Head Start develops the IEP, the team must include:

(1) The Head Start disabilities coordinator or a representative who is qualified to provide or supervise the provision of special education services;

(2) The child's teacher or home visitor;

(3) One or both of the child's parents or guardians; and

(4) At least one of the professional members of the multidisciplinary team which evaluated the child.

(g) An LEA representative must be invited in writing if Head Start is initiating the request for a meeting.

(h) The grantee may also invite other individuals at the request of the parents and other individuals at the discretion of the Head Start program, including those component staff particularly involved due to the nature of the child's disability.

(i) A meeting must be held at a time convenient for the parents and staff to develop the IEP within 30 calendar days of a determination that the child needs special education and related services. Services must begin as soon as possible after the development of the IEP.

(j) Grantees and their delegates must make vigorous efforts to involve parents in the IEP process. The grantee must:

(1) Notify parents in writing and, if necessary, also verbally or by other appropriate means of the purpose, attendees, time and location of the IEP meeting far enough in advance so that there is opportunity for them to participate;

(2) Make every effort to assure that the parents understand the purpose and proceedings and that they are encouraged to provide information about their child and their desires for the child's program;

(3) Provide interpreters, if needed, and offer the parents a copy of the IEP in the parents' language of understanding after it has been signed;

(4) Hold the meeting without the parents only if neither parent can attend, after repeated attempts to establish a date or facilitate their participation. In that case, document its efforts to secure the parents' participation, through records of phone calls, letters in the parents' native language or visits to parents' homes or places of work, along with any responses or results; and arrange an opportunity to meet with the parents to review the results of the meeting and secure their input and signature.

(k) Grantees must initiate the implementation of the IEP as soon as possible after the IEP meeting by modifying the child's program in accordance with the IEP and arranging for the provision of related services. If a child enters Head Start with an IEP completed within two months prior to entry, services must begin within the first two weeks of program attendance.

Subpart F—Nutrition Performance Standards

§ 1308.20 Nutrition services.

(a) The disabilities coordinator must work with staff to ensure that provisions to meet special needs are incorporated into the nutrition program.

(b) Appropriate professionals, such as physical therapists, speech therapists, occupational therapists, nutritionists or dietitians must be consulted on ways to assist Head Start staff and parents of children with severe disabilities with problems of chewing, swallowing and feeding themselves.

(c) The plan for services for children with disabilities must include activities to help children with disabilities participate in meal and snack times with classmates.

(d) The plan for services for children with disabilities must address prevention of disabilities with a nutrition basis.

Subpart G—Parent Involvement Performance Standards

§ 1308.21 Parent participation and transition of children into Head Start and from Head Start to public school.

(a) In addition to the many references to working with parents throughout these standards, the staff must carry out the following tasks:

(1) Support parents of children with disabilities entering from infant/toddler programs.

(2) Provide information to parents on how to foster the development of their child with disabilities.

(3) Provide opportunities for parents to observe large group, small group and individual activities describe in their child's IEP.

(4) Provide follow-up assistance and activities to reinforce program activities at home.

(5) Refer parents to groups of parents of children with similar disabilities who can provide helpful peer support.

(6) Inform parents of their rights under IDEA.

(7) Inform parents of resources which may be available to them from the Supplemental Security Income (SSI) Program, the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program and other sources and assist them with initial efforts to access such resources.

(8) Identify needs (caused by the disability) of siblings and other family members.

(9) Provide information in order to prevent disabilities among younger siblings.

(10) build parent confidence, skill and knowledge in accessing resources and advocating to meet the special needs of their children.

(b) Grantees must plan to assist parents in the transition of children from Head Start to public school or other placement, beginning early in the program year.

(c) Head Start grantees, in cooperation with the child's parents, must notify the school of the child's planned enrollment prior to the date of enrollment.

APPENDIX TO PART 1308—HEAD START PROGRAM PERFORMANCE STANDARDS ON SERVICES TO CHILDREN WITH DISABILITIES

This appendix sets forth guidance for the implementation of the requirements in part 1308. This guidance provides explanatory material and includes recommendations and suggestions for meeting the requirements. This guidance is not binding on Head Start grantees or delegate agencies. It provides assistance and possible strategies which a grantee may wish to consider. In instances where a permissible course of action is provided, the grantee or delegate agency may rely upon this guidance or may take another course of action that meets the applicable requirement. This programmatic guidance is included as an aid to grantees because of the complexity of providing special services to meet the needs of children with various disabilities.

Section 1308.4 Purpose and scope of disabilities service plan

Guidance for Paragraph (a)

In order to develop an effective disabilities service plan the responsible staff members need to understand the context in which a grantee operates. The Head Start program has operated under a Congressional mandate, since 1972, to make available, at a minimum, ten percent of its enrollment opportunities to children with disabilities. Head Start has exceeded this mandate and serves children in integrated, developmentally appropriate programs. The passage of the Individuals With Disabilities Education Act, formerly the Education of the Handicapped Act, and its amendments, affects Head Start, causing a shift in the nature of Head Start's responsibilities for providing services for children with disabilities relative to the responsibilities of State Education Agencies (SEA) and Local Education Agencies (LEA).

Grantees need to be aware that under the IDEA the State Education Agency has the responsibility for assuring the availability of a free appropriate public education for all children with disabilities within the legally required age range in the State. This responsibility includes general supervision of educational programs in all agencies, including monitoring and evaluating the special education and related services to insure that they meet State standards, developing a comprehensive State plan for services for children with disabilities (including a description of interagency coordination among these agencies), and providing a Comprehensive System for Personnel Development related to training needs of all special education and related service personnel involved in the education of children with disabilities served by these agencies, including Head Start programs.

Each State has in effect under IDEA a policy assuring all children with disabilities beginning at least at age three, including those in public or private institutions or other care facilities, the right to a free appropriate education and to an evaluation meeting established procedures. Head Start is either:

- The agency through which the Local Education Agency can meet its obligation to make a free appropriate public education available through a contract, State or local collaborative agreement, or other arrangement; or
- The agency in which the family chooses to have the child served rather than using LEA services.

Regardless of how a child is placed in Head Start, the LEA is responsible for the identification, evaluation and provision of a free appropriate public education for a child found to be in need of special education and related services which are mandated in the State. The LEA is responsible for ensuring

that these services are provided, but not for providing them all. IDEA stresses the role of multiple agencies and requires their maintenance of effort.

The Head Start responsibility is to make available directly or in cooperation with other agencies services in the least restrictive environment in accordance with an individualized education program (IEP) for at least ten percent of enrolled children who meet the disabilities eligibility criteria. In addition, Head Start continues to provide or arrange for the full range of health, dental, nutritional, developmental, parent involvement and social services provided to all enrolled children. Head Start has a mandate to recruit and enroll income-eligible children and children with disabilities who are most in need of services and to coordinate with the LEA and other groups to benefit children with disabilities and their families. Serving children with disabilities has strengthened Head Start's ability to individualize for all children. Head Start is fully committed to the maintenance of effort as required for all agencies by the IDEA and by the Head Start Act (Section 640(a)(2)(A)). Head Start is committed to fiscal support to assure that the services which children with disabilities need to meet their special needs will be provided in full, either directly or by a combination of Head Start funds and other resources.

These Head Start regulations facilitate coordination with the IDEA by utilizing identical terms for eligibility criteria for the most part. However, Head Start has elected to use the term ''emotional/behavioral disorder'' in lieu of ''serious emotional disturbance,'' which is used in the IDEA, in response to comments and concerns of parents and professionals. Children who meet State-developed criteria under IDEA will be eligible for services from Head Start in that State.

In order to organize activities and resources to help children with disabilities overcome or lessen their disabilities and develop their potential, it is essential to involve the education, health, social services, parent involvement, mental health and nutrition components of Head Start. Parents, staff and policy group members should discuss the various strategies for ensuring that the disabilities service plan integrates needs and activities which cut across the Head Start component areas before the plan is completed.

Advance planning and scheduling of arrangements with other agencies is a key factor in assuring timely, efficient services. Local level interagency agreements can greatly facilitate the difficult tasks of locating related service providers, for example, and joint community screening programs can reduce delays and costs to each of the participating agencies.

Guidance for Paragraph (b)

The plan and the annual updates need to be specific, but not lengthy. As changes occur in the community, the plan needs to reflect the changes which affect services.

Guidance for Paragraph (c)

Grantees should ensure that the practices they use to provide special services do not result in undue attention to a child with a disability. For example, providing names and schedules of special services for children with disabilities in the classroom is useful for staff or volunteers coming into that classroom but posting them would publicize the disability of the individual children.

Guidance for Paragraph (d)

Staff should work for the children's greater independence by encouraging them to try new things and to meet appropriate goals by small steps. Grantees should help children with disabilities develop initiative by including them in opportunities to explore, to create, and to ask rather than to answer questions. The children need opportunities to use a wide variety of materials including science tools, art media and costumes in order to develop skills, imagination and originality. They should be included on field trips, as their experience may have been limited, for example, by an orthopedic impairment.

Just as a program makes available pictures and books showing children and adults from representative cultural, ethnic and occupational groups, it should provide pictures and books which show children and adults with disabilities, including those in active roles.

Staff should plan to answer questions children and adults may have about disabilities. This promotes acceptance of a child with disabilities for him or herself and leads to treating the child more normally. Effective curricula are available at low cost for helping children and adults understand disabilities and for improving attitudes and increasing knowledge about disabilities. Information on these and other materials can be obtained from resource access projects contractors, which offer training and technical assistance to Head Start programs.

There are a number of useful guides for including children with disabilities in regular group activities while providing successful experiences for children who differ widely in developmental levels and skills. Some of these describe activities around a unit theme with suggestions for activities suitable for children with different skill levels. Staff need to help some children with disabilities move into developmentally appropriate play with other children.

Research has shown the effectiveness of work in small groups for appropriately selected children with disabilities. This plan

allows for coordinating efforts to meet the needs of individual children as listed in their IEPs and can help focus resources efficiently.

If a deaf child who uses or needs sign language or another communication mode is enrolled, a parent, volunteer or aide who can use that mode of communication should be provided to help the child benefit from the program.

In order to build the language and speech capabilities of many children with disabilities who have communication problems, it has been found helpful to enlist aides, volunteers, cooks, bus drivers and parents, showing them how to provide extra repetition and model gradually more advanced language as children improve in their ability to understand and use language. Small group activities for children with similar language development needs should be provided regularly as well as large group language and listening games and individual help. Helping children with intellectual delays or emotional problems or those whose experiences have been limited by other disabilities to express their own ideas and to communicate during play and throughout the daily activities is motivating and can contribute greatly to their progress.

Guidance for Paragraph (e)

The Disabilities Service Coordinator should possess a basic understanding of the scope of the Head Start effort and skills adequate to manage the agency to serve children with disabilities including coordination with other program components and community agencies and work with parents.

Guidance for Paragraph (f)

For non-verbal children, communication boards, computers and other assistive technology devices may be helpful. Technical assistance providers have information on the Technology Related Assistance for Individuals with Disabilities Act of 1988, 29 U.S.C. 2201 *et seq*. States are funded through this legislation to plan Statewide assistive technology services, which should include services for young children. Parents should be helped to understand the necessity of including assistive technology services and devices in their child's IEP in order to obtain them.

The plan should include any renovation of space and facilities which may be necessary to ensure the safety of the children or promote learning. For example, rugs or other sound-absorbing surfaces make it easier for some children to hear stories or conversation. Different surfaces on floors and play areas affect some children's mobility.

45 CFR Part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance which implements the Rehabilitation Act of 1973 and the Americans with Disabilities Act require that all Federally assisted programs, including Head Start, be accessible to persons with disabilities including staff, parents and children. This does not mean that every building or part of a building must be physically accessible, but the program services as a whole must be accessible. Structural changes to make the program services available are required if alternatives such as reassignment of classes or moving to different rooms are not possible. Information on the accessibility standards is available from RAPs or the U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, P.O. Box 66118, Washington, DC 20035–6115.

Staff should ensure that children with physical disabilities have chairs and other pieces of furniture of the correct size and type for their individual needs as they grow. Agencies such as United Cerebral Palsy, Easter Seal Societies or SEAs can provide consultation on adapting or purchasing the appropriate furniture. The correct positioning of certain children is essential and requires expert advice. As the children grow, the furniture and equipment should be checked by an expert, such as a physical therapist, because the wrong fit can be harmful. Efforts should be made to use furniture sized and shaped to place children at the same level as their classmates whenever possible.

Guidance for Paragraph (h)

The plan should specify:

- Overall goals of the disability effort.
- Specific objectives and activities of the disability effort.
- How and when specific activities will be carried out and goals attained.
- Who will be responsible for the conduct of each element of the plan.
- How individual activities will be evaluated.

The plan should address:

- Enrollment information, including numbers of children and types of disabilities, known and estimated.
- Identification and recruitment of children with disabilities. Participation in Child Find and list of major specialized agencies approached.
- Screening.
- Developmental Assessment.
- Evaluation.
- The multidisciplinary team and its work.
- The process for developing IEPs.
- The provision of program services and related services.
- Program accessibility.
- Recordkeeping and reporting.
- Confidentiality of information.
- Any special safety needs.
- Medications.
- Transportation.

• The process for identifying and meeting training and technical assistance needs.

• Special parent involvement needs.

• Planned actions to increase the ability of staff to serve children with more severe disabilities and the number of children with more severe disabilities served.

• Transitioning of children in and out to the next program.

Particular attention should be given to addressing ways to:

• Involve parents throughout the disability effort, and

• Work with other agencies in serving children with disabilities. It should be possible for a reader to visualize how and by whom services will be delivered. Coordination with other agencies should be described, as well as the process for developing local agreements with other agencies. The RAPs can provide samples and models for the process of developing agreements with LEAs.

Guidance for Paragraph (j)

Children may spend part of the program hours in Head Start for a mainstreaming experience and part in a specialized program such as an Easter Seal Society or a local mental health center. The amount of time spent in either program should be flexible, according to the needs of the individual child. All services to be provided, including those provided by collaborating agencies, should be described in the IEP. Staff of both programs should observe each other's work with the child who is enrolled and maintain good communication.

Individual services such as occupational, physical or speech therapy, staff training, transportation, services to families or counseling may be shared by Head Start and other agencies. For example, Head Start might provide equipment and transportation while a development center might provide a facility and physical therapy for a Head Start child. Some LEAs provide resource teachers while Head Start provides a developmentally appropriate program in an integrated setting.

Hiring additional staff may be necessary to meet the needs of children with severe disabilities. Hiring an aide may be necessary on a full-time, part-time, temporary or as needed basis to assist with the increased demands of a child with a severe disability. However, aides should not be assigned the major responsibility for providing direct services. Aides and volunteers should be guided and supervised by the disabilities service coordinator or someone with special training. It is desirable to have the services of a nurse, physical therapist or licensed practical nurse available for children with severe health or physical disabilities.

Volunteers trained by professionals to work specifically with children with disabilities can provide valuable individualized support. For example, a volunteer might be trained by a physical therapist to carry out specific follow-up activities with individual children.

Guidance for Paragraph (k)

State standards for qualifications of staff to provide special education and related services affect Head Start's acceptance as a placement site for children who have been evaluated by an LEA. Head Start grantees, like LEAs, are affected by shortages of staff meeting State qualifications and are to work toward the goal of meeting the highest State standards for personnel by developing plans to train current staff and to hire new staff so that eventually the staff will meet the qualifications. Grantees should discuss their needs for pre-service and in-service training with SEAs during annual updates of interagency agreements for use in the planning of joint State level conferences and for use in preparation of Comprehensive State Personnel Development plans. They should also discuss these needs with LEAs which provide in-service training.

The program should provide training for the regular teachers on how to modify large group, small group or individual activities to meet the needs of children with disabilities. Specific training for staff should be provided when Head Start enrolls a child whose disability or condition requires a special skill or knowledge of special techniques or equipment. Examples are structuring a language activity, performing intermittent nonsterile catheterization, changing collection bags, suctioning, or operating leg braces. Joint training with other agencies is recommended to stretch resources and exchange expertise.

Staff should have access to regular ongoing training events which keep them abreast of new materials, equipment and practices related to serving children with disabilities and to preventing disabilities. Ongoing training and technical assistance in support of the disabilities effort should be planned to complement other training available to meet staff needs. Each grantee has the responsibility to identify or arrange the necessary support to carry out training for parents and staff.

The best use of training funds has resulted when programs carry out a staff training needs assessment and relate current year training plans to previous staff training with the goal of building core capability. Staff who receive special training should share new knowledge with the rest of the staff.

The core capability of the program is enhanced when speech, language and other therapy is provided in the regular site whenever possible. This allows for the specialist to demonstrate to regular staff and plan for their follow through. It also reduces costs

and time spent transporting children to clinics and other settings. When university graduate students are utilized to provide special services as part of their training, it is helpful to arrange for their supervisors to monitor their work. Grantees arranging for such assistance are providing a valuable internship site and it is to the university's advantage to have their students become familiar with programs on-site. Grantees should negotiate when developing interagency agreements to have services provided on-site to the greatest extent possible.

The Head Start Act, Section 648 (42 U.S.C. 9843) (a)(2), calls for training and technical assistance to be offered to all Head Start programs with respect to services for children with disabilities without cost through resource access projects which serve each region of the country. The technical assistance contractors contact each grantee for a needs assessment and offer training. While their staffs are small and their budgets limited, they are experienced and committed to meeting as many needs as they can and welcome inquiries. A brochure with names and addresses of the technical assistance providers is available from ACYF/HS, P.O. Box 1182, Washington, DC 20013.

The SEA is responsible for developing a Comprehensive System of Personnel Development. It is important that Head Start training needs be conveyed to this group for planning purposes so that all available resources can be brought to bear for staff training in Head Start. Grantees should take advantage of free or low-cost training provided by SEAs, LEAs, community colleges and other agencies to augment staff training.

Many agencies offer free training for staff and parents. An example is the Epilepsy Foundation of America with trained volunteers throughout the country. The Lighthouse of New York City has developed a training program on early childhood and vision which was field-tested in Head Start and is suitable for community agencies. Head Start and the American Optometric Association have signed a memorandum of understanding under which member optometrists offer eye health education and screening. State-funded adult education and training programs or community colleges make available parenting, child development and other courses at low or no cost. Grantees should consider the need for training in working with parents, in developing working collaborative relationships and in networking when planning training.

The disabilities coordinator needs to work closely with the education and health coordinators to provide or arrange training for staff and parents early in each program year on the prevention of disabilities. This should include the importance of observing signs that some children may have mild or fluctuating hearing losses due to middle ear infections. Such losses are often undetected and can cause problems in learning speech and language. Many children with hearing losses benefit from amplification and auditory training in how to use their remaining hearing most efficiently.

The disabilities coordinator should also work with the education coordinator to provide timely staff training on recognizing signs that some children may be at high risk for later learning problems as well as emotional problems resulting from failure and frustration. This training should address ways to help children develop the skills necessary for later academic learning, such as following directions calling for more than one action, sequencing, sustaining attention, and making auditory and visual discriminations.

Guidance for Paragraph (l)

The RAPS can provide information on agreements which have been developed between Head Start and SEAs and between Head Start and LEAs and other agencies. Such agreements offer possibilities to share training, equipment and other resources, smoothing the transition from Head Start to public or private school for children and their parents. Some of these agreements specify cost- and resource-sharing practices. Tribal Government Head Start programs should maximize use of Bureau of Indian Affairs, LEA and Head Start funds through cooperative agreements. Indian grantees should contact ACYF for referral to technical assistance in this regard. Grantees should bear in mind that migrant children are served in the majority of States and include consideration of their special needs, including the necessity for rapid provision of special education and related services, in agreements with LEAs and other agencies.

Guidance for Paragraph (m)

In developing the plan and the budget which is a part of the grant application process, it is important to budget adequately for the number of children with disabilities to be served and the types and severity of their disabilities. The budget should reflect resources available from other agencies as well as the special costs to be paid for from Head Start funds. The Head Start legislation requires Head Start to access resources to meet the needs of all the children enrolled, including those with disabilities.

An effective plan calls for the careful use of funds. The Disabilities Services Coordinator needs to keep current with the provisions of Part B of the IDEA and the services which may be available for three through five year-old children under this Act. Coordinators also need to utilize the expanded services under the Early and Periodic Screening,

Diagnosis and Treatment (EPSDT) program and Supplemental Security Income program.

To assist in the development of the plan, it may be helpful to establish an advisory committee for the disability effort or to expand the scope of the health advisory committee.

Guidance for Paragraph (o)

Examples of evaluation costs which can be covered include professional assessment by the multidisciplinary evaluation team, instruments, professional observation and professional consultation. If consultation fees for multidisciplinary evaluation team members to participate in IEP meetings are not available from another source, they are allowable expenditures and need to be provided to meet the performance standards.

Many children with disabilities enrolled in Head Start already receive services from other agencies, and grantees should encourage these agencies to continue to provide services. Grantees should use other community agencies and resources to supplement services for children with disabilities and their families.

By planning ahead, grantees can pool resources to schedule the periodic use of experts and consultants. Grantees can timeshare, reducing travel charges and assuring the availability of scarce expertise. Some LEAs and other agencies have enabling legislation and funds to contract for education, health, and developmental services of the type Head Start can provide. Grantees can also help increase the amount of preschool funding available to their State under the Individuals With Disabilities Education Act. The amount of the allocation to each SEA and to the public schools is affected by the number of three through five year old children with IEPs in place by December 1 of each year. By establishing good working relationships with State Public Health personnel and including them on advisory committees, health resources can be more easily utilized.

It may be helpful to explore the possibility of a cooperative agreement with the public school system to provide transportation. If the lack of transportation would prevent a child with disabilities from participating in Head Start, program funds are to be used to provide this related service before a delay occurs which would have a negative effect on the child's progress. The major emphasis is on providing the needed special help so that the child can develop to the maximum during the brief time in Head Start.

The Americans with Disabilities Act of 1990 (42 U.S.C. 12101) requires that new buses (ordered after August 26, 1990) by public bus systems must be accessible to individuals with disabilities. New over-the-road buses ordered by privately operated bus and van companies (on or after July 26, 1996 or July 26, 1997 for small companies) must be accessible. Other new vehicles, such as vans, must be accessible, unless the transportation company provides service to individuals with disabilities that is equivalent to that operated for the general public. The Justice Department enforces these requirements.

Efforts should be made to obtain expensive items such as wheelchairs or audiometers through resources such as Title V (formerly Crippled Children's Services). Cooperative arrangements can be made with LEAs and other agencies to share equipment such as tympanometers. Special equipment such as hearing aids may be obtained through EPSDT or from SSI funds for those children who have been found eligible. Some States have established libraries of assistive technology devices and rosters of expert consultants.

Section 1308.5 Recruitment and Enrollment of Children With Disabilities

Guidance for Paragraph (a)

Head Start can play an important role in Child Find by helping to locate children in need and hardest to reach, such as immigrants and non-English speakers. In cooperation with other community groups and agencies serving children with disabilities, Head Start programs should incorporate in their outreach and recruitment procedures efforts to identify and enroll children with disabilities who meet eligibility requirements and whose parents desire the child's participation.

Integrating children with severe disabilities for whom Head Start is an appropriate placement is a goal of ACYF. Grantees should bear in mind that 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance or the Rehabilitation Act of 1973 (20 U.S.C. 794) states that any program receiving Federal funds may not deny admission to a child solely on the basis of the nature or extent of a disabling condition and shall take into account the needs of the child in determining the aid, benefits, or services to be provided. Many children who appear to have serious impairments are nevertheless able to make greater gains in an integrated setting than in a segregated classroom for children with disabilities.

The key factor in selecting an appropriate placement is the IEP. The need of the individual child and the ability of the child to benefit are determining factors. Likewise, the amount of time per day or week to be spent in the regular setting and/or in other settings is determined by the IEP. The IEP of a child with a severe emotional/behavioral disorder, for example, might realistically call for less than full day attendance or for dual placement. Another factor to consider is that according to the PIR, the majority of

children with severe impairments are provided special services by both Head State staff and staff of other agencies, sharing the responsibility. Many grantees have successfully served children with moderate and severe disabilities.

The disabilities coordinator's responsibility includes providing current names of appropriate specialized agencies serving young children with disabilities and the names of LEA Child Find contact persons to the director to facilitate joint identification of children with disabilities. It also includes learning what resources other agencies have available and the eligibility criteria for support from State agencies, Supplemental Security Income (SSI), Title V, Maternal and Child Health Block Grants, Title XIX (EPSDT/Medicaid), Migrant Health Centers, Developmental Disabilities programs, Bureau of Indian Affairs, third party payers such as insurance companies and other sources.

Grantees need to develop lists of appropriate referral sources. These include hospital child life programs, SSI, early intervention programs funded by Part H of the IDEA or other sources, EPSDT providers, infant stimulation programs, Easter Seal and United Cerebral Palsy agencies, mental health agencies, Association for Retarded Citizens chapters, Developmental Disabilities Planning Councils, Protection and Advocacy Systems, University Affiliated Programs, the LEA Child Find, and the medical community.

Head Start programs are encouraged to increase the visibility of the Head Start mainstreaming effort within the community by:

• Including community child service providers on policy council health and disability advisory boards and in other relevant Head Start activities.

• Making presentations on Head Start mainstreaming experiences at local, State and Regional meetings and conferences, such as the National Association for the Education of Young Children, Council for Exceptional Children, and the Association for the Care of Children's Health.

• Participating in interagency planning activities for preschool infant and toddler programs such as the State Interagency Coordinating Councils supported under the IDEA.

Guidance for Paragraph (b)

Grantees should maintain records of outreach, recruitment, and service activities for children with disabilities and their families.

Each grantee should develop a policy on what types of information are to be included in a comprehensive file for each disabled child. The policy should outline the locations where a copy of each record will be sent. For example, while a comprehensive file will be maintained at the Head Start program central office (where the disability services coordinator and component coordinators may be based), a teacher must have access to a child's IEP and progress notes in order to plan effectively. Confidentiality needs to be maintained in a manner which allows for access to information by appropriate staff while meeting applicable Head Start and State requirements.

Guidance for Paragraph (d)

Staff should assist families who need help in obtaining immunizations before the program year begins, bearing in mind that a goal of parent involvement and social service activities is to encourage independence and develop skills in meeting timelines when seeking services for children. Care should be taken that children are not denied enrollment, but that their families receive the necessary assistance to meet entrance requirements. ''Healthy Young Children: A Manual for Programs,'' (a cooperative effort of the Administration for Children, Youth and Families, the American Academy of Pediatrics; the Division of Maternal and Child Health, U.S. Department of Health and Human Services; Georgetown University Child Development Center; Massachusetts Department of Public Health, and the National Association for the Education of Young Children, 1988, copyright, NAEYC) contains best practice guidance.

Section 1308.6 Assessment of Children

Guidance for Paragraph (b)

Early screening is essential because of the time required for the steps necessary before special services can begin. It has been very difficult for some grantees to complete health screenings in a timely manner for several reasons including the lack of resources, especially in rural areas; the need to rely on donated services from agencies whose schedules have been especially overloaded during September and October after the start of the Head Start program year; lack of summer staff in most programs; and the difficulty in reaching some families. Lack of coordination among agencies with legislative responsibility for identifying children with disabilities has resulted in duplication and unacceptable delays in providing required services for many grantees. Other grantees, however, have demonstrated the ability to complete screenings early in the program year without difficulty. Many programs already complete screening by 45 days after the first day of program operation. Some participate in spring or summer screening programs in their areas before the fall opening. Grantees are encouraged to schedule well in advance with clinics and

with such providers as EPSDT and the Indian Health Service for timely screening and any subsequent evaluations that may be needed.

Recently, a number of legislative and legal requirements have increased the resources available for the screening and evaluation of children. Title XIX, EPDST/Medicaid, has new requirements for screening and evaluation, as well as treatment; the Social Security Administration has modified eligibility requirements for children with disabilities so that more services will be available; and all States have assured that services will be provided from at least age three under IDEA so that LEAs in more States will be engaged in identifying and evaluating children from birth to age six.

In response to these changes, the Department of Health and Human Services and the Department of Education, through the Federal Interagency Coordinating Council, have developed a cooperative agreement for coordinated screening. Head Start is one of the participating agencies which will work together to plan and implement community screenings, assisting the LEAs which have the major responsibility for identifying every child with a disability under the IDEA. In addition, programs may elect to make some summer staff available for activities to close out program work in the spring and prepare for the fall.

These developments make timely screening feasible. They also make it possible to expedite immunizations. State-of-the-art coordinated screening programs make immunizations available.

This coordination can focus staff energy on assisting families to have their children immunized during the screening phase rather than making repeated follow-up efforts after the program for children has begun. Coordinated screening also provides an excellent parent education opportunity. Information on child development, realistic expectations for preschoolers and such services as WIC can be provided during the screening. Some communities have combined screening with well-received health fairs.

The staff should be involved in the planning of screening to assure that screening requirements are selected or adapted with the specific Head Start population and goals of the screening process in mind. Instruments with age-appropriate norms should be used. Children should be screened in their native language. Universities, civic organizations or organizations to aid recent immigrants may be able to locate native speakers to assist. The RAPs can provide information on the characteristics of screening instruments.

Current best practice indicates that individual pure tone audiometry be used as the first part of a screening program with children as young as three. The purpose is to identify children with hearing impairments that interfere with, or have the potential to interfere with communication. The recommended procedure is audiometric screening at 20 dB HL (re ANSI–1969) at the frequencies of 1000, 2000, and 4000 Hz, (and at 500 Hz unless acoustic immittance audiometry is included as the second part of the screening program and if the noise level in the room permits testing at that frequency.) Acoustic immittance audiometry (or impedance audiometry) is recommended as the second part of the program to identify children who have middle-ear disorders.

The audiometric screening program should be conducted or supervised by an audiologist. Nonprofessional support staff have successfully carried out audiometric screening with appropriate training and supervision.

When a child fails the initial screening, an audiometric rescreening should be administered the same day or no later than within 2 weeks. A child who fails the rescreening should be referred for an evaluation by an audiologist.

Current best practice calls for annual hearing tests. Frequent rescreening is needed for children with recurrent ear infections. Grantees who contract or arrange for hearing testing should check to assure that the testing covers the three specified frequencies and that other quality features are present. Speech, hearing and language problems are the most widespread disabilities in preschool programs and quality testing is vital for early detection and remediation.

Playing listening games prior to testing and getting use to earphones can help children learn to respond to a tone and improve the quality of the testing.

Some grantees have found it strengthens the skills of their staff to have all members learn to do developmental screening. This can be a valuable in-service activity especially for teachers. State requirements for qualifications should be checked and nonprofessional screeners should be trained.

Some programs have involved trained students from schools of nursing, child development or special education graduate students, or medical students who must carry out screening work as part of their required experience.

Guidance for Paragraph (d)

Parents should be provided assistance if necessary, so that they can participate in the developmental assessment.

Grantees should offer parents assistance in understanding the implications of developmental assessments as well as medical, dental or other conditions which can affect their child's development and learning.

Development assessment is an ongoing process and information from observations in the Head Start center and at home should be recorded periodically and updated in each

developmental area in order to document progress and plan activities.

Disabilities coordinators, as well as education staff, need to be thoroughly familiar with developmental assessment activities such as objective observation, time sampling and obtaining parent information and the use of formal assessment instruments. Knowledge of normal child development and understanding of the culture of the child are also important.

Guidance for Paragraph (e)

While the LEA is responsible for assuring that each child who is referred is evaluated in accordance with the provisions of IDEA and usually provides the evaluation, grantees may sometimes provide for the evaluation. In that event, grantees need to assure that evaluation specialists in appropriate areas such as psychology, special education, speech pathology and physical therapy coordinate their activities so that the child's total functioning is considered and the team's findings and recommendations are integrated.

Grantees should select members of the multidisciplinary evaluation team who are familiar with the specific Head Start population, taking into account the age of the children and their cultural and ethnic background as they relate to the overall diagnostic process and the use of specific tests.

Grantees should be certain that team members understand that Head Start programs are funded to provide preschool developmental experiences for all eligible children, some of whom also need special education and related services. The intent of the evaluation procedures is to provide information to identify children who have disabling conditions so they can receive appropriate assistance. It is also the intent to avoid mislabeling children for whom basic Head Start programming is designed and who may show developmental delays which can be overcome by a regular comprehensive program meeting the Head Start Performance Standards.

When a grantee provides for the evaluation of a child, it is important that the Head Start eligibility criteria be explained to the evaluation team members and that they be informed as to how the results will be used.

Grantees should require specific findings in writing from the evaluation team, and recommendations for intervention when the team believes the child has a disability. The findings will be used in developing the child's IEP to ensure that parents, teachers and others can best work with the child. Some grantees have obtained useful functional information by asking team members to complete a brief form describing the child's strengths and weaknesses and the effects of the disability along with suggestions for special equipment, treatment or services. The evaluators should be asked in advance to provide their findings promptly in easily understood terms. They should provide separate findings and, when they agree, consensus professional opinions. When planning in advance for evaluation services from other agencies, grantees should try to obtain agreements on prompt timing for delivery of reports which are necessary to plan services.

To assist the evaluation team, Head Start should provide the child's screening results, pertinent observations, and the results of any developmental assessment information which may be available.

It is important that programs ensure that no individual child or family is labeled, mislabeled, or stigmatized with reference to a disabling condition. Head Start must exercise care to ensure that no child is misidentified because of economic circumstances, ethnic or cultural factors or developmental lags not caused by a disability, bilingual or dialectical differences, or because of being non-English speaking.

If Head Start is arranging for the evaluation, it is important to understand that a child whose problem has been corrected (e.g., a child wearing glasses whose vision is corrected and who does not need special education and related services) does not qualify as a child with a disability. A short-term medical problem such as post-operative recovery or a problem requiring only medical care and health monitoring when the evaluation specialists have not stated that special education and related services are needed does not qualify as a disability.

The evaluation team should include consideration of the way the disability affects the child's ability to function as well as the cause of the condition.

Some children may have a recent evaluation from a clinic, hospital or other agency (other than the LEAs) prior to enrolling in Head Start. If that evaluation did not include needed functional information or a professional opinion as to whether the child meets one of the Head Start eligibility criteria, the grantee should contact the agency to try to obtain that information.

Some children, prior to enrolling in Head Start, already have been diagnosed as having severe disabilities and a serious need for services. Some of these children already may be receiving some special assistance from other agencies for their disabilities but lack developmental services in a setting with other children. Head Start programs may best meet their needs by serving them jointly, i.e., providing developmental services while disability services are provided from another source. It is important in such situations that regular communication take place between the two sites.

Beginning in 1990, State EPSDT/Medicaid programs must, by law, evaluate and provide services for young children whose families

meet eligibility criteria at 133 percent of the poverty levels. This is a resource for Head Start and it is important to become aware of EPSDT provisions.

Section 1308.7 Eligibility Criteria: Health Impairment Guidance

Guidance for Paragraph (c)

Many health impairments manifest themselves in other disabling conditions. Because of this, particular care should be taken when classifying a health impaired child.

Guidance for Paragraph (b)

Because AIDS is a health impairment, grantees will continue to enroll children with AIDS on an individual basis. Staff need to be familiar with the Head Start Information Memorandum on Enrollment in Head Start Programs of Infants and Young Children with Human Immunodeficiency Virus (HIV), AIDS Related Complex (ARC), or Acquired Immunodeficiency Syndrome (AIDS) dated June 22, 1988. This guidance includes material from the Centers for Disease Control which stresses the need for a team, including a physician, to make informed decisions on enrollment on an individual basis. It provides guidance in the event that a child with disabilities presents a problem involving biting or bodily fluids. The guidance also discusses methods for control of all infectious diseases through stringent cleanliness standards and includes lists of Federal, State and national agencies and organizations that can provide additional information as more is learned. Staff should be aware that there is a high incidence of visual impairment among children with HIV and AIDS.

Guidance for Paragraph (c)

Teachers or others in the program setting are in the best position to note the following kinds of indications that a child may need to be evaluated to determine whether an attention deficit disorder exists:

(1) Inability of a child who is trying to participate in classroom activities to be able to orient attention, for example to choose an activity for free time or to attend to simple instructions;

(2) Inability to maintain attention, as in trying to complete a selected activity, to carry out simple requests or attend to telling of an interesting story; or

(3) Inability to focus attention on recent activities, for example on telling the teacher about a selected activity, inability to tell about simple requests after carrying them out, or inability to tell about a story after hearing it.

These indicators should only be used after the children have had sufficient time to become familiar with preschool procedures and after most of the children are able easily to carry out typical preschool activities.

Culturally competent staff recognize and appreciate cultural differences, and this awareness needs to include understanding that some cultural groups may promote behavior that may be misinterpreted as inattention. Care must be taken that any deviations in attention behavior which are within the cultural norms of the child's group are not used as indicators of possible attention deficit disorder.

A period of careful observation over three months can assure that adequate documentation is available for the difficult task of evaluation. It also provides opportunity to provide extra assistance to the child, perhaps through an aide or special education student under the teacher's direction, which might improve the child's functioning and eliminate the behavior taken as evidence of possible attention deficit disorder.

Attention deficit disorders are not the result of learning disabilities, emotional/behavioral disabilities, autism or mental retardation. A comprehensive psychological evaluation may be carried out in some cases to rule out learning disability or mental retardation. It is possible, however, in some instances for this disability to coexist with another disability. Children who meet the criteria for multiple disabilities (e.g., attention deficient disorder and learning disability, or emotional/behavioral disorder, or mental retardation) would be eligible for services as children with multiple disabilities or under their primary disability.

Teacher and parent reports have been found to provide the most useful information for assessment of children suspected of having attention deficit disorder. They are also useful in planning and providing special education intervention. The most successful approach may be a positive behavior modification program in the classroom, combined with a carryover program in the home. Prompt and clear response should be provided consistently. Positive reinforcement for appropriate behavior, based on rewards such as stickers or small items desired by the child has been found effective for children with this disorder, along with occasional withholding of rewards or postponing of desired activities in the face of inappropriate behavior. Effective programs suggest that positive interactions with the child after appropriate behavior are needed at least three times as often as any negative response interactions after inappropriate behavior. Consultants familiar with behavior modification should be used to assist teachers in planning and carrying out intervention which can maintain this positive to negative ratio while shaping behaviors. These behavior interventions can be provided in mainstream placements with sufficient personnel.

Suggested Primary Members of A Head Start Evaluation Team for Health Impaired Children:

Physician.

Pediatrician.

Psychologist.

Other specialists related to specific disabilities.

Possible Related Services:

(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)

Family counseling.

Genetic counseling.

Nutrition counseling.

Recreational therapy.

Supervision of physical activities.

Transportation.

Assistive technology devices or services

Section 1308.8 Eligibility Criteria: Emotional/Behavioral Disorders

Guidance for Paragraph (a)

Staff should insure that behavior which may be typical of some cultures or ethnic groups, such as not making eye contact with teachers or other adults or not volunteering comments or initiating conversations are not misinterpreted.

The disability, social service and parent involvement coordinators should consider providing extra attention to children at-risk for emotional/behavioral disorders and their parents to help prevent a disability. Members of the Council of One Hundred, Kiwanis, Urban League, Jaycees, Rotary, Foster Grandparents, etc. may be able to provide mentoring and individual attention.

Suggested Primary Members of a Head Start Evaluation Team for Emotional/behavioral Disorders:

Psychologist, psychiatrist or other clinically trained and State qualified mental health professionals.

Pediatrician.

Possible Related Services:

(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)

Behavior management.

Environmental adjustments.

Family counseling.

Psychotherapy.

Transportation.

Assistive technology.

Section 1308.9 Eligibility Criteria: Speech or Language Impairment

Guidance for Paragraph (a)

Staff familiar with the child should consider whether shyness, lack of familiarity with vocabulary which might be used by testers, unfamiliar settings, or linguistic or cultural factors are negatively influencing screening and assessment results. Whenever possible, consultants trained in assessing the speech and language skills of young children should be selected. The child's ability to communicate at home, on the playground and in the neighborhood should be determined for an accurate assessment. Review of the developmentally appropriate age ranges for the production of difficult speech sounds can also help reduce over-referral for evaluation.

Suggested Primary Members of a Head Start Evaluation Team for Speech or Language Impairment:

Speech Pathologist.

Language Pathologist.

Audiologist.

Otolaryngologist.

Psychologist.

Possible Related Services:

(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)

Environmental adjustments.

Family counseling.

Language therapy.

Speech therapy.

Transportation.

Assistive technology devices or services.

Section 1308.10 Eligibility Criteria: Mental Retardation

Guidance for Paragraph (a)

Evaluation instruments with age-appropriate norms should be used. These should be administered and interpreted by professionals sensitive to racial, ethnic and linguistic differences. The diagnosticians must be aware of sensory or perceptual impairments that the child may have (e.g., a child who is visually impaired should not be tested with instruments that rely heavily on visual information as this could produce a depressed score from which erroneous diagnostic conclusions might be drawn).

Suggested primary members of a Head Start evaluation team for mental retardation:

Psychologist.

Pediatrician.

Possible related services:

(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)

Environmental adjustments.

Family counseling.

Genetic counseling.

Language therapy.

Recreational therapy.

Speech therapy.

Transportation.

Nutrition counseling.

Section 1308.11 Eligibility Criteria: Hearing Impairment Including Deafness

Guidance for Paragraph (a)

An audiologist should evaluate a child who has failed rescreening or who does not respond to more than one effort to test the child's hearing. If the evaluation team determines that the child has a disability, the team should make recommendations to meet the child's needs for education and medical care or habilitation, including auditory training to learn to use hearing more effectively.

Suggested Primary Members of a Head Start Evaluation Team for Hearing Impairment:

Audiologist.
Otolaryngologist.
Possible Related Services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Auditory training.
Aural habilitation.
Environmental adjustments.
Family counseling.
Genetic counseling.
Language therapy.
Medical treatment.
Speech therapy.
Total communication, speechreading or manual communication.
Transportation.
Use of amplification.
Assistive technology devices or services.

Section 1308.12 Eligibility Criteria: Orthopedic Impairment

Guidance for Paragraph (a)

Suggested Primary Members of a Head Start Evaluation Team for Orthopedic Impairment:

Pediatrician.
Orthopedist.
Neurologist.
Occupational Therapist.
Physical Therapist.
Rehabilitation professional.
Possible Related Services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Environmental adjustments.
Family counseling.
Language therapy.
Medical treatment.
Occupational therapy.
Physical therapy.
Assistive technology.
Recreational therapy.
Speech therapy.
Transportation.
Nutrition counseling.

Section 1308.13 Eligibility Criteria: Visual Impairment Including Blindness

Guidance for Paragraph (a)

Primary Members of an Evaluation Team for Visual Impairment including Blindness:

Ophthalmologist.
Optometrist.
Possible Related Services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Environmental adjustments.
Family counseling.
Occupational therapy.
Orientation and mobility training.
Pre-Braille training.
Recreational therapy.
Sensory training.
Transportation.
Functional vision assessment and therapy.

Section 1308.14 Learning Disabilities

Guidance for Paragraph (a)

When a four or five-year-old child shows signs of possible learning disabilities, thorough documentation should be gathered. For example, specific anecdotal information and samples of the child's drawings, if appropriate, should be included in the material given to the evaluation team.

A Master's degree level professional with a background in learning disabilities should be a member of the evaluation team.

Possible Related Services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Vision evaluation.
Neurology.
Psychology.
Motor development.
Hearing evaluation.
Child psychiatry.
Pediatric evaluation.

Section 1308.15 Autism

A child who manifests characteristics of the condition after age three can still be diagnosed as having autism. Autism does not include children with characteristics of serious emotional disturbance.

Suggested possible members of a Head Start evaluation team:

Psychologist.
Pediatrician.
Audiologist.
Psychiatrist.
Language pathologist.
Possible related services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)

Family support services.
Language therapy.
Transportation.

Section 1308.16 Traumatic Brain Injury

Traumatic brain injury does not include congenital brain injury.

Suggested possible members of an evaluation team included:
Psychologist.
Physical therapist.
Speech or language pathologist.
Possible related services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Rehabilitation professional.
Occupational therapy.
Speech or language therapy.
Assistive technology.

Section 1308.17 Other Impairments

This category was included to ensure that any Head Start child who meets the State eligibility criteria as developmentally delayed or State-specific criteria for services to preschool children with disabilities is eligible for needed special services either within Head Start or the State program.

Suggested primary members of an evaluation team for other impairments meeting State eligibility criteria for services to preschool children with disabilities.
Pediatrician.
Psychologist.
Other specialists with expertise in the appropriate area(s).
Possible Related Services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Occupational therapy.
Speech or language therapy.
Family Counseling.
Transportation.

Deaf-blindness

Information on assistance or joint services for deaf-blind children can be obtained through SEAs.

Multiple Disabilities

A child who is deaf and has speech and language impairments would not be considered to have multiple disabilities, as it could be expected that these impairments were caused by the hearing loss.

Suggested primary members of a Head Start evaluation team:
Audiologists.
Special educators.
Speech, language or physical therapists.
Psychologists or psychiatrists.
Rehabilitation professional.
Possible related services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Speech, language, occupational or physical therapists as needed.
Assistive technology devices or services.
Mental health services.
Transportation.

Section 1308.18 Disabilities/Health Services Coordination

Guidance for Paragraph (a)

It is important for staff to maintain close communication concerning children with health impairments. Health and disability services coordinators need to schedule frequent re-tests of children with recurrent middle ear infections and to ensure that they receive ongoing medical treatment to prevent speech and language delay. They should ensure that audiometers are calibrated annually for accurate testing of hearing. Speech and hearing centers, the manufacturer, or public school education services districts should be able to perform this service. In addition, a daily check when an audiometer is in use and a check of the acoustics in the testing site are needed for accurate testing.

Approximately 17 percent of Down Syndrome children have a condition of the spine (atlanto-axial instability) and should not engage in somersaults, trampoline exercises, or other activities which could lead to spinal injury without first having a cervical spine x-ray.

Guidance for Paragraph (b)

The disabilities services coordinator needs to assure that best use is made of mental health consultants when a child appears to have a problem which may be symptomatic of a disability in the social/emotional area. Teachers, aides and volunteers should keep anecdotal records of the child's activities, tantrums, the events which appear to precipitate the tantrums, language use, etc. These can provide valuable information to a mental health consultant, who should be used primarily to make specific recommendations and assist the staff rather than to document the problem.

The mental health coordinator can cooperate in setting up group meetings for parents of children with disabilities which provide needed support and a forum for talking over mutual concerns. Parents needing community mental health services may need direct assistance in accessing services, especially at first.

The disability services coordinator needs to work closely with staff across components to help parents of children who do not have disabilities become more understanding and knowledgeable about disabilities and ways to

lessen their effects. This can help reduce the isolation which some families with children with disabilities experience.

Guidance for Paragraphs (c) and (d)

Arrangements should be made with the family and the physician to schedule the administration of medication during times when the child is most likely to be under parental supervision.

Awareness of possible side effects is of particular importance when treatment for a disability requires administration of potentially harmful drugs (e.g., anti-convulsants, amphetamines).

Section 1308.19 Developing Individual Education Programs (IEPs)

Guidance for Paragraph (a)

The IEP determines the type of placement and the specific programming which are appropriate for a child. The least restrictive environment must be provided and staff need to understand that this means the most appropriate placement in a regular program to the maximum extent possible based on the IEP. Because it is individually determined, the least restrictive environment varies for different children. Likewise, the least restrictive environment for a given child can vary over time as the disability is remediated or worsens. A mainstreamed placement, in a regular program with services delivered by regular or special staff, is one type of integrated placement on the continuum of possible options. It represents the least restrictive environment for many children.

Following screening, evaluation and the determination that a child meets the eligibility criteria and has a disability, a plan to meet the child's individual needs for special education and related services is developed. In order to facilitate communication with other agencies which may cooperate in providing services and especially with LEAs or private schools which the children will eventually enter, it is recommended that programs become familiar with the format of the IEP used by the LEAs and use that format to foster coordination. However, the format of the IEP to be developed for children in Head Start can vary according to local option. It should be developed to serve as a working document for teachers and others providing services for a child.

It is recommended that the staff review the IEP of each child with a disability more frequently than the minimum once a year to keep the objectives and activities current.

It is ideal if a child can be mainstreamed in the full program with modifications of some of the small group, large group or individual program activities to meet his or her special needs and this should be the first option considered. However, this is not possible or realistic in some cases on a full-time basis. The IEP team needs to consider the findings and recommendations of the multidisciplinary evaluation team, observation and developmental assessment information from the Head Start staff and parents, parental information and desires, and the IEP to plan for the best situation for each child. Periodic reviews can change the degree to which a child can be mainstreamed during the program year. For example, a child with autism whose IEP called for part-time services in Head Start in the fall might improve so that by spring the hours could be extended.

If Head Start is not an appropriate placement to meet the child's needs according to the IEP, referral should be made to another agency.

Helpful specific information based on experience in Head Start is provided in manuals and resource materials on serving children with disabilities developed by ACYF and by technical assistance providers. They cover such aspects of developing and implementing the IEP as:

- Gathering data needed to develop the IEP;
- Preparing parents for the IEP conference;
- Writing IEPs useful to teachers; and
- Developing appropriate curriculum activities and home follow-up activities.

Guidance for Paragraph (j)

Programs are encouraged to offer parents assistance in noting how their child functions at home and in the neighborhood. Parents should be encouraged to contribute this valuable information to the staff for use in ongoing planning. Care should be taken to put parents at ease and to eliminate or explain specialized terminology. Comfortable settings, familiar meeting rooms and ample preparation can help lessen anxiety. The main purpose is to involve parents actively, not just to obtain their signature on the IEP.

It is important to involve the parents of children with disabilities in activities related to their child's unique needs, including the procurement and coordination of specialized services and follow-through on the child's treatment plan, to the extent possible. It is especially helpful for Head Start to assist parents in developing confidence, strategies and techniques to become effective advocates for their children and to negotiate complicated systems. Under IDEA, a federally-funded Parent Training and Information Program exists whereby parent training centers in each State provide information, support and assistance to parents enabling them to advocate for their child. Information regarding these centers should be given to parents of a child determined to have a disability. Because some parents will need to advocate for their children over a

number of years, they need to gain the confidence and skills to access resources and negotiate systems with increasing independence.

Some parents of children with disabilities are also disabled. Staff may need to adjust procedures for assisting parents who have disabilities to participate in their children's programs. Materials to assist in this effort are available from technical assistance providers.

Section 1308.20 Nutrition Services

Guidance for Paragraph (a)

Vocabulary and concept building, counting, learning place settings, social skills such as conversation and acceptable manners can be naturally developed at meal or snack time, thus enhancing children's skills. Children with disabilities often need planned attention to these areas.

The staff person who is responsible for nutrition and the disabilities services coordinator should work with the social services coordinator to help families access nutrition resources and services for children who are not able to learn or develop normally because of malnutrition.

The staff person who is responsible for nutrition and the disabilities services coordinator should alert staff to watch for practices leading to baby bottle caries. This is severe tooth decay caused by putting a baby or toddler to bed with a nursing bottle containing milk, juice or sugar water or letting the child carry around a bottle for long periods of time. The serious dental and speech problems this can cause are completely preventable.

In cases of severe allergies, staff should work closely with the child's physician or a medical consultant.

Section 1308.21 Parent Participation and Transition of Children From Head Start to Public School

Guidance for Paragraph (a)

Grantees should help parents understand the value of special early assistance for a child with a disability and reassure those parents who may fear that if their child receives special education services the child may always need them. This is not the experience in Head Start and most other preschool programs where the majority of children no longer receive special education after the preschool years. The disabilities coordinator needs to help parents understand that their active participation is of great importance in helping their children overcome or lessen the effects of disabilities and develop to their full potential.

The disabilities coordinator should help program staff deal realistically with parents of children who have unfamiliar disabilities by providing the needed information, training and contact with consultants or specialized agencies. The coordinator should ensure that staff carrying out family needs assessment or home visits do not overlook possible disabilities among younger siblings who should be referred for early evaluation and preventive actions.

Guidance for Paragraphs (b) and (c)

As most Head Start children will move into the public school system, disabilities coordinators need to work with the Head Start staff for early and ongoing activities designed to minimize discontinuity and stress for children and families as they move into a different system. As the ongoing advocates, parents will need to be informed and confident in communicating with school personnel and staff of social service and medical agencies. Disabilities coordinators need to ensure that the Head Start program:

- Provides information on services available for LEAs and other sources of services parents will have to access on their own, such as dental treatment;
- Informs parents of the differences between the two systems in role, staffing patterns, schedules, and focus;
- Provides opportunities for mutual visits by staff to one another's facilities to help plan appropriate placement;
- Familiarizes parents and staff of the receiving program's characteristics and expections;
- Provides early and mutually planned transfer of records with parent consent at times convenient for both systems;
- Provides information on services available under the Individuals With Disabilities Education Act, the federally-funded parent training centers and provisions for parent involvement and due process; and
- Provides opportunities for parents to confer with staff to express their ideas and needs so they have experience in participating in IEP and other conferences in an active, confident manner. Role playing has been found helpful.

It is strongly recommended that programs develop activities for smooth transition into Head Start from Part H infant/toddler programs funded under IDEA and from Head Start to kindergarten or other placement. In order to be effective, such plans must be developed jointly. They are advantageous for the children, parents, Part H programs, Head Start and LEAs. ACYF has developed materials useful for transition. American Indian programs whose children move into several systems, such as Bureau of Indian Affairs schools and public schools, need to prepare children and families in advance for the new situation. Plans should be used as working documents and reviewed for annual update, so that the foundation laid in Head Start is maintained and strengthened.

PART 1309—HEAD START FACILITIES PURCHASE, MAJOR RENOVATION AND CONSTRUCTION

Subpart A—General

Sec.
1309.1 Purpose and application.
1309.2 Approval of the use of Head Start funds to continue purchase of facilities.
1309.3 Definitions.
1309.4 Eligibility—Construction.
1309.5 Eligibility—Major Renovations.

Subpart B—Application Procedures

1309.10 Applications for the purchase, construction and major renovation of facilities.
1309.11 Cost comparison for purchase, construction and major renovation of facilities.
1309.12 Timely decisions.

Subpart C—Protection of Federal Interest

1309.20 Title.
1309.21 Recording of Federal interest and other protection of Federal interest.
1309.22 Rights and responsibilities in the event of grantee's default on mortgage, or withdrawal or termination.
1309.23 Insurance, bonding, and maintenance.

Subpart D—Modular Units

1309.30 General.
1309.31 Site description.
1309.32 Statement of procurement procedure for modular units.
1309.33 Inspection.
1309.34 Costs of installation of modular unit.

Subpart E—Other Administrative Provisions

1309.40 Copies of documents.
1309.41 Record retention.
1309.42 Audit of mortgage.
1309.43 Use of grant funds to pay fees.
1309.44 Independent analysis.

Subpart F—Construction and Major Renovation

1309.51 Submission of drawings and specifications.
1309.52 Procurement procedures.
1309.53 Inspection of work.
1309.54 Davis-Bacon Act.

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

SOURCE: 64 FR 5945, Feb. 8, 1999, unless otherwise noted.

Subpart A—General

§ 1309.1 Purpose and application.

This part prescribes regulations implementing sections 644(c), (f) and (g) and 645A(b)(9) of the Head Start Act, 42 U.S.C. 9801 *et seq.*, as they apply to grantees operating Head Start programs (including Early Head Start grantees) under the Act. It prescribes the procedures for applying for Head Start grant funds to purchase, construct, or make major renovations to facilities in which to operate Head Start programs. It also details the measures which must be taken to protect the Federal interest in such facilities purchased, constructed or renovated with Head Start grant funds.

[68 FR 23219, May 1, 2003]

§ 1309.2 Approval of the use of Head Start funds to continue purchase of facilities.

Head Start grantees (including Early Head Start grantees) which purchased facilities after December 31, 1986, and which are continuing to pay costs of purchasing those facilities, may apply to receive Head Start funds to meet those costs by submitting applications which conform to the requirements of this part and the Act. A grantee may only use grant funds to pay facility purchase costs incurred after the responsible HHS official approves its application.

[68 FR 23219, May 1, 2003]

§ 1309.3 Definitions.

As used in this part,

ACF means the Administration for Children and Families in the Department of Health and Human Services, and includes the Regional Offices.

Acquire means to purchase or construct in whole or in part with Head Start grant funds through payments made in satisfaction of a mortgage agreement (both principal and interest), as a down payment, and for professional fees, closing costs and any other costs associated with the purchase or construction of the property that are usual and customary for the locality.

Act means the Head Start Act, 42 U.S.C. section 9801, *et seq.*

ACYF means the Administration on Children, Youth and Families, a component of the Administration for Children and Families in the Department of Health and Human Services.

Construction means new buildings, and excludes renovations, alterations, additions, or work of any kind to existing buildings.

Facility means a structure such as a building or modular unit appropriate for use by a Head Start grantee to carry out a Head Start program.

Grant funds means Federal financial assistance received by a grantee from ACF to administer a Head Start or Early Head Start program pursuant to the Head Start Act.

Grantee means any agency designated to operate a Head Start program (including an agency designated to operate an Early Head Start program) pursuant to section 641 or 645A of the Head Start Act.

Head Start center or a direct support facility for a Head Start program means a facility used primarily to provide Head Start services to children and their families, or for administrative or other activities necessary to the conduct of the Head Start program.

Incidental alterations and renovations means improvements to facility which do not meet the definition of major renovation.

Major renovation means a structural change to the foundation, roof, floor, or exterior or load-bearing walls of a facility, or extension of an existing facility to increase its floor area. Major renovation also means extensive alteration of an existing facility, such as to significantly change its function and purpose, even if such renovation does not include any structural change to the facility. Major renovation also includes a renovation of any kind which has a cost exceeding the lesser of $200,000, adjusted annually to reflect the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) beginning one year after June 2, 2003, or 25 percent of the total annual direct costs approved for the grantee by ACF for the budget period in which the application is made.

Modular unit means a portable prefabricated structure made at another location and moved to a site for use by a Head Start grantee to carry out a Head Start program.

Purchase means to buy an existing facility, either outright or through a mortgage. Purchase also refers to an approved use of Head Start funds to continue paying the cost of purchasing facilities begun after December 31, 1986 as permitted by the Head Start Act and by § 1309.2.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Responsible HHS official means the official who is authorized to make the grant of financial assistance to operate a Head Start program, or such official's designee.

Suitable facility means a facility which is large enough to meet the foreseeable needs of the Head Start program and which complies with local licensing and code requirements and the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23219, May 1, 2003]

§ 1309.4 Eligibility—Construction.

Before submitting an application under § 1309.10 for construction of a facility, the grantee must establish that:

(a) The Head Start program serves an Indian Tribe; or is located in a rural or other low-income community; and

(b) There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit the operation of the program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease in the service area is suitable for use by the Head Start program. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported whenever possible by a written statement from a licensed real estate professional in the grantee's service area.

[68 FR 23219, May 1, 2003]

§ 1309.5 Eligibility—Major Renovations.

Before submitting an application under § 1309.10, the grantee must establish that:

(a) The Head Start program serves an Indian Tribe, or is located in a rural or other low-income community; and

(b) There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit or prevent the operation of the program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease or purchase in the service area is suitable or could be made suitable without major renovation. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported, whenever possible, by written statement from a licensed real estate professional in the grantee's service area.

[68 FR 23220, May 1, 2003]

Subpart B—Application Procedures

§ 1309.10 Applications for the purchase, construction and major renovation of facilities.

A grantee which proposes to use grant funds to purchase a facility, or a grantee found eligible under § 1309.4 to apply for funds to construct a facility, or § 1309.5 to undertake major renovation of a facility, including facilities purchased for that purpose, must submit a written application to the responsible HHS official. The application must include the following information:

(a) A legal description of the site of the facility, and an explanation of the appropriateness of the location to the grantee's service area, including a statement of the effect that acquisition or major renovation of the facility has had or will have on the transportation of children to the program, on the grantee's ability to collaborate with other child care, early education programs, social services and health providers, and on all other program activities and services.

(b) Plans and specifications of the facility to be acquired, including information on the size and type of structure, the number and a description of the rooms, and the lot on which the building is located or will be located (including the space available for a playground and for parking). If incidental alterations and renovations or major renovations are being proposed to make a facility suitable to carry out the Head Start program, a description of the renovations, and the plans and specifications submitted, must also describe the facility as it will be after renovations are complete. In the case of a proposed major renovation or construction project, the applicant must submit a written estimate of all costs associated with the project. An architect or engineer must prepare the written estimate.

(c) The cost comparison described in § 1309.11.

(d) The intended use of the facility proposed for acquisition or major renovation, including information showing the percentage of floor space that will be used as a Head Start center or a direct support facility for a Head Start program. As provided under section 644(f)(2)(D) of the Act, in the case of a request regarding funding for the continuing purchase of a facility, the application must include information demonstrating that the facility will be used principally as a Head Start center, or a direct support facility for a Head Start program.

(e) An assurance that the facility complies (or will comply when constructed or after completion of the renovations described in paragraph (b) of this section) with local licensing and code requirements, the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973. The grantee will also assure that it has met the requirements of the Flood Disaster Protection Act of 1973, if applicable.

(f) If the grantee proposing to purchase a facility without undertaking major renovations is claiming that the lack of alternative facilities will prevent or would have prevented operation of the program, a statement of how it was determined that there is or was a

lack of alternative facilities. This statement must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area. If a grantee requesting approval of the use of Head Start funds to continue purchase of a facility is unable to provide such statements based on circumstances which existed at the time the purchase began, the grantee and the licensed real estate professional may use present conditions as a basis for making the determination.

(g) The terms of any proposed or existing loan(s) related to acquisition or major renovation of facility and the repayment plans (detailing balloon payments or other unconventional terms, if any), and information on all other sources of funding of the acquisition or major renovations, including any restrictions or conditions imposed by other funding sources.

(h) A statement of the effect that the acquisition or major renovation of the facility would have on the grantee's meeting the non-Federal share requirement of section 640(b) of the Head Start Act, including whether the grantee is seeking a waiver of its non-Federal share obligation under that section of the Act.

(i) Certification by a licensed engineer or architect that the building proposed to be purchased or for which Head Start funds will be used to continue to purchase is structurally sound and safe for use as a Head Start facility. The applicant must certify that, upon completion of major renovation to a facility or construction of a facility, that an inspection by a licensed engineer or architect will be conducted to determine that the facility is structurally sound and safe for use as a Head Start facility.

(j) A statement of the effect that the acquisition or major renovation of a facility would have on the grantee's ability to meet the limitation on development and administrative costs in section 644(b) of the Head Start Act. One-time fees and expenses necessary to the acquisition or major renovation, such as the down payment, the cost of necessary renovation, loan fees and related expenses, and fees paid to attorneys, engineers, and appraisers, are not considered to be administrative costs.

(k) A proposed schedule for acquisition, renovation and occupancy of the facility.

(l) Reasonable assurance that the applicant will obtain, or has obtained, a fee simple or such other estate or interest in the site of the facility to assure undisturbed use and possession for the purpose of operating a Head Start program. A grantee seeking funding for acquisition or *major renovation* of a facility that is sited on land not owned by the grantee must establish in its application that there is no other feasible alternative to acquisition or *leasing* of the facility for providing a suitable facility appropriate to the needs of the Head Start program. If the grantee proposes to acquire a facility without also purchasing the land on which the facility is or will be situated, the application must include a copy of the existing or proposed land lease or other document which protects the Federal interest in the facility and ensures undisturbed use and possession of the facility by the grantee, or other organization designated by ACF, for the purpose of operating a Head Start program or other program designated by ACF. A grantee applying for funding to make major renovations to a facility it does not own must include with its application written permission from the owner of the building projected to undergo major renovation and a copy of the lease or proposed lease for the facility. A grantee receiving funds for acquisition or the major renovation of a facility, on land belonging to another party, must have a land lease or other similar interest in the underlying land which is long enough to allow the Head Start program to receive the full value of those permanent grant-supported improvements.

(m) An assessment of the impact of the proposed project on the human environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and its implementing regulations (40 CFR

parts 1500 through 1508), as well as a report showing the results of tests for environmental hazards present in the facility, ground water, and soil (or justification why such testing is not necessary). In addition, such information as may be necessary to comply with the National Historic Preservation Act of 1966 (16 U.S.C. 470f) must be included.

(n) Assurance that the grantee will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq*. and 49 CFR part 24), and information about the costs that may be incurred due to compliance with this Act.

(o) A statement of the share of the cost of acquisition or major renovation that will be paid with grant funds.

(p) For a grantee seeking approval of the use of Head Start funds to continue purchase of a facility, a statement of the extent to which it has attempted to comply and will be able to comply with the provision of § 1309.22.

(q) Such additional information as the responsible HHS official may require.

[68 FR 23220, May 1, 2003]

§ 1309.11 Cost comparison for purchase, construction and major renovation of facilities.

(a) A grantee proposing to acquire or undertake a major renovation of a facility must submit a detailed estimate of the costs of the proposed activity and compare the costs of the proposed activity as provided under paragraph (c) of this section and provide any additional information requested by the responsible HHS official.

(b) All costs of acquisition, renovation and ownership must be identified, including, but not limited to, professional fees, purchase of the facility to be renovated, renovation costs, moving expenses, additional transportation costs, maintenance, taxes, insurance, and easements, rights of way or land rentals. An independent appraisal of the current value of the facility proposed to be purchased, or which the grantee will continue to purchase with Head Start funds or to receive major renovation, made by a professional appraiser, must be included.

(c)(1) Grantees proposing to purchase a facility, without requesting funds for major renovations to the facility, must compare costs of the proposed facility to the cost of the facility currently used by the grantee, unless the grantee has no current facility, will lose the use of its current facility, intends to continue to use its current facility after it purchases the new facility, or has shown to the satisfaction of the responsible HHS official that its existing facility is inadequate. Where the grantee's current facility is not used as the alternate facility, the grantee must use for comparison a facility (or facilities) available for lease in the grantee's service area and suitable for use as a Head Start facility or which can be made suitable through incidental alteration or renovations, the cost of which shall be included in the cost comparison. In the case of an application for approval of the use of Head Start funds to continue purchase of a facility, the cost of the present facility must be compared to the cost of the facility used by the grantee before purchase of its current facility. If the facility used by the grantee before the purchase of its present facility was deemed inadequate by the responsible HHS official, or the grantee had no previous facility, the alternative facility shall be an available, appropriate facility (or facilities) of comparable size that was available for rent in the grantee's service are at the time of its purchase of the current facility. Grantees which have established under § 1309.10(f) that there is a lack of alternative facilities that will prevent or would have prevented operation of the program are not required to provide a cost comparison under this paragraph.

(2) Grantees proposing to construct a facility must compare the costs of constructing the proposed facility to the costs of purchasing a suitable alternate facility or owning, purchasing or leasing an alternative facility which can be made suitable for use through incidental alterations and renovations or major renovations. The alternative facility is one now owned by the grantee or available for lease or purchase in the grantee's service area. If no such facility is available, this statement must explain how this fact was determined

and the claim must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area.

(3) A grantee proposing to undertake a major renovation of a facility must compare the cost of the proposed renovation (including the cost of purchasing the facility to be renovated, if the grantee is proposing to purchase the facility) to the costs of constructing a facility of comparable size. In place of the cost comparison required in the preceding sentence, a grantee proposing to make major renovations to a leased facility must show that the monthly or annual occupancy costs for the term of the lease, including the cost of the major renovations, is less than, or comparable to, the costs of purchasing or leasing any other facility in the grantee's service area which can be made suitable through major renovations, if such a facility is available.

(d) The grantee must separately delineate the following expenses in the application:

(1) One-time costs, including but not limited to, costs of purchasing the facility to be renovated, the down payment, professional fees, moving expenses, the cost of site preparation; and

(2) Ongoing costs, including, but not limited to, mortgage payments, insurance premiums, maintenance costs, and property taxes. If the grantee is exempt from the payment of property taxes, this fact must be stated.

(e) The period of comparison for purchase, construction or major renovation of a facility is twenty years, except that for the purchase of a modular unit the period of comparison is ten years and the period of comparison for major renovation of a leased facility is the period of the lease remaining after the renovations are completed. For approvals of the use of Head Start funds to continue purchase of the facility the period of comparison begins on the date the purchase began.

(f) If the facility is to be used for other purposes in addition to the operation of the Head Start program, the cost of use of that part of the facility used for such other purposes must be allocated in accordance with applicable Office of Management and Budget cost principles.

[68 FR 23221, May 1, 2003]

§ 1309.12 Timely decisions.

The responsible HHS official shall promptly review and make final decisions regarding completed applications under this part.

Subpart C—Protection of Federal Interest

§ 1309.20 Title.

Title to facilities acquired with grant funds vests with the grantee upon acquisition, subject to the provisions of this part.

§ 1309.21 Recording of Federal interest and other protection of Federal interest.

(a) The Federal government has an interest in all real property and equipment acquired or upon which major renovations have been undertaken with grant funds for use as a Head Start facility. The responsible HHS official may subordinate the Federal interest in such property to that of a lender, which financed the acquisition or major renovation costs subject to the conditions set forth in paragraph (f) of this section.

(b) Facilities acquired with grant funds may not be mortgaged or used as collateral, or sold or otherwise transferred to another party, without the written permission of the responsible HHS official.

(c) Use of the facility for other than the purpose for which the facility was funded, without the express written approval of the responsible HHS official, is prohibited.

(d)(1) A grantee receiving funds to acquire or make major renovations to a facility that is or will be sited on land not owned by the grantee must have a lease or other arrangement which protects the Federal interest in the facility and ensures the grantee's undisturbed use and possession of the facility. The lease or document evidencing another arrangement shall include provisions to protect the right of the grantee, or some other organization designated by ACF in the place of the

grantee, to occupy the facility for the term of the lease or other arrangement and such other terms required by the responsible HHS official. The designation of an alternate tenant or occupant of the facility by ACF shall be subject to approval by the Lessor, which will not be withheld except for good reason, not including the willingness of another party to pay a higher rent. A grantee receiving funds for the major renovation or acquisition of a facility, on land belonging to another party, must have a land lease or other similar interest in the underlying land which is long enough to allow the Head Start program to receive the full value of those permanent grant-supported improvements.

(2) Except as required under § 1309.31 for certain modular units, the grantee must record the Notice of Federal Interest in the appropriate official records for the jurisdiction where a facility is or will be located immediately upon: purchasing a facility or land on which a facility is to be constructed; receiving permission to use funds to continue purchase of a facility; commencing major renovation of a facility or construction of a facility. In the case of a leased facility undergoing major renovations, the Notice of Federal Interest shall be a copy of the executed lease and all amendments. In the case of a facility now sited or to be constructed on land not owned by the grantee, the Notice of Federal Interest shall be the land lease or other document protecting the Federal interest. The lease or other document must ensure the right of the grantee to have undisturbed use and possession of the facility. In the event that filing of a lease is prohibited by State law, the grantee shall file an affidavit signed by the representatives of the grantee and the Lessor stating that the lease includes terms which protect the right of the grantee, or some other organization designated by ACF in the place of the grantee, to occupy the facility for the term of the lease.

(3) The Notice of Federal Interest for property sited on land not owned by the grantee shall include the following information:

(i) The date of the award of grant funds for the acquisition or major renovation of the property to be used as a Head Start facility, and the address and legal description of the property to be acquired or renovated;

(ii) That the grant incorporated conditions which included restrictions on the use of the property and provide for a Federal interest in the property;

(iii) That the property may not be used for any purpose inconsistent with that authorized by the Head Start Act and applicable regulations;

(iv) That the property may not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the written permission of the responsible HHS official;

(v) That these grant conditions and requirements cannot be altered or nullified through a transfer of ownership; and

(vi) The name (including signature) and title of the person who completed the Notice for the grantee agency, and the date of the Notice.

(4) A lease, serving as a Notice of Federal Interest, an affidavit filed in the land records as a substitute for the lease, or other document protecting the Federal interest in a facility acquired with grant funds and sited on land not owned by the grantee, shall include the following information:

(i) The address and legal description of the property;

(ii) That the grant incorporated conditions which include restrictions on the use of the property and provide for a Federal interest in the property for the term of the lease or other arrangement; and

(iii) That the property may not be used for any purpose during the lease or other arrangement that is inconsistent with that authorized by the Head Start Act and applicable regulations.

(e) Grantees must meet all of the requirements in 45 CFR parts 74 or 92 pertaining to the purchase and disposition of real property, or the use and disposal of equipment, as appropriate.

(f) In subordinating its interest in a facility acquired or upon which major renovations have been undertaken with grant funds, the responsible HHS officials does not waive application of paragraph (d) of this section and § 1309.22. A written agreement by the

responsible HHS official to subordinate the Federal interest must provide:

(1)(i) The lender shall notify the Office of the Regional Administrator, Administration for Children and Families, the Office of the Commissioner, Administration on Children, Youth and Families, Washington, D.C., and the Office of the General Counsel, Department of Health and Human Services, Washington, DC, or their successor agencies, immediately, both telephonically and in writing of any default by the Head Start grantee;

(ii) Written notice of default must be sent by registered mail return receipt requested; and,

(iii) The lender will not foreclose on the property until at least 60 days after the required notice by the lender has been sent.

(2) Such notice will include:

(i) The full names, addresses, and telephone numbers of the lender and the Head Start grantee;

(ii) The following statement prominently displayed at the top of the first page of the notice: ''The Federal Interest in certain real property or equipment used for the Head Start Program may be at risk. Immediately give this notice to the appropriate government official'';

(iii) The date and nature of the default and the manner in which the default may be cured; and

(iv) In the event that the lender will be exercising its remedy of foreclosure or other remedies, the date or expected date of the foreclosure or other remedies.

(3) Head Start grantees which purchase facilities with respect to which the responsible HHS official has subordinated the Federal Interest to that of the lender must keep the lender informed of the current addresses and telephone numbers of the agencies to which the lender is obligated under paragraph (b) of this section to give notice in the event of a default.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23221, May 1, 2003]

§ 1309.22 Rights and responsibilities in the event of grantee's default on mortgage, or withdrawal or termination.

(a) The mortgage agreement, or security agreement in the case of a modular unit which is proposed to be purchased under a chattel mortgage, shall provide in the case of default by the grantee or the withdrawal or termination of the grantee from the Head Start program that ACF may intervene. In the case of a default, the mortgage agreement or security agreement must provide that ACF may intervene to ensure that the default is cured by the grantee or another agency designated by ACF and that the lender shall accept the payment of money or performance of any other obligation by ACF's designee, for the grantee, as if such payment of money of performance had been made by the grantee. The agreement shall also provide that ACF will have a period of 60 days after notification by the grantee of default in which to intervene to attempt to cure the default. The agreement shall further provide that in the event of a default, or the withdrawal or termination of the grantee the mortgage may be assumed by an organization designated by ACF. The mortgage or creditor will have the right to approve the organization designated to assume the mortgage, but such approval will not be withheld except for good reason. The required provisions must be included in the mortgages of facilities funded as continuing purchases pursuant to § 1309.2 unless a convincing justification for not doing so is shown by the Head Start grantee.

(b) The grantee must immediately provide the responsible HHS official with both telephonic and written notification of a default of any description on the part of the grantee under a real property or chattel mortgage.

(c) In the event that a default is not cured and foreclosure takes place, the mortgagee or creditor shall pay ACF that percentage of the proceeds from the foreclosure sale of the property attributable to the Federal share as defined in 45 CFR 74.2, or, if part 92 is applicable, to ACF's share as defined in 45 CFR 92.3. If ACF and the mortgagee or

creditor have agreed that ACF's Federal interest will be subordinated to the mortgagee's or creditor's interest in the property, that agreement must be set forth in a written subordination agreement that is signed by the responsible HHS official and that complies with § 1309.21 and any other applicable Federal law.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23222, May 1, 2003]

§ 1309.23 Insurance, bonding and maintenance.

(a) At the time of acquiring or undertaking a major renovation of a facility or receiving approval for the use of Head Start funds to continue purchase the grantee shall obtain insurance coverage for the facility which is not lower in value than coverage it has obtained for other real property it owns, and which at least meets the requirements of the coverage specified in paragraphs (a)(1) and (2) of this section. For facilities, which have been constructed or renovated, insurance coverage must begin at the commencement of the expenditure of costs in fulfillment of construction or renovation work.

(1) A title insurance policy which insures the fee interest in the facility for an amount not less than the full appraised value as approved by ACF, or the amount of the purchase price, whichever is greater, and which contains an endorsement identifying ACF as a loss payee to be reimbursed if the title fails. If no endorsement naming ACF as loss payee is made, the grantee is required to pay ACF the title insurance proceeds it receives in the event of title failure; and

(2) A physical destruction insurance policy, including flood insurance where appropriate, which insures the full replacement value of the facility from risk of partial and total physical destruction. The insurance policy is to be maintained for the period of time the facility is owned by the grantee.

(b) The grantee shall submit copies of such insurance policies to ACF within five days of acquiring the facility or receiving approval for the previous purchase of a facility. If the grantee has not received the policies in time to submit copies within this period, it shall submit evidence that it has obtained the appropriate insurance policies within five days of acquiring the facility or receiving approval for the previous purchase of a facility, and it shall submit copies of the policies within five days of its receipt of them.

(c) The grantee must maintain facilities acquired with grant funds in a manner consistent with the purposes for which the funds were provided and in compliance with State and local government property standards and building codes.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23222, May 1, 2003]

Subpart D—Modular Units

§ 1309.30 General.

In addition to the special requirements of §§ 1309.31 through 1309.34, the proposed purchase or request for approval of continuing purchase of a modular unit is subject to all of the requirements of this part with the following exceptions:

(a) The requirements of § 1309.33 apply rather than the requirement of § 1309.10(i); and

(b) Section 1309.21(d) of this part does not apply to the proposed purchase of modular units if the land on which the unit is installed is not owned by the grantee.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23223, May 1, 2003]

§ 1309.31 Site description.

(a) An application for the purchase or approval of a continuing purchase of a modular unit pursuant to § 1309.2 must state specifically where the modular unit is or will be installed, and whether the land on which the modular unit will be installed will be purchased by the grantee. If the grantee does not propose to purchase the land on which to install the modular unit or if the modular unit the grantee is continuing to purchase with Head Start funds is located on land not owned by the grantee, the application must state who owns the land on which the modular unit is or will be situated and describe the easement, right-of-way or

land rental it will obtain or has obtained to allow it sufficient access to the modular unit.

(b) Modular units which are purchased with grant funds and which are not permanently affixed to land, or which are affixed to land which is not owned by the grantee, must have posted in a conspicuous place the following notice: ''On (date), the Department of Health and Human Services (DHHS) awarded (grant number) to (Name of grantee). The grant provided Federal funds for conduct of a Head Start program, including purchase of this modular unit. The grant incorporated conditions which included restrictions on the use and disposition of this property, and provided for a continuing Federal interest in the property. Specifically, the property may not be used for any purpose other than the purpose for which the facility was funded, without the express written approval of the responsible DHHS official, or sold or transferred to another party without the written permission of the responsible DHHS official. These conditions are in accordance with the statutory provisions set forth in 42 U.S.C. 9839; the regulatory provisions set forth in 45 CFR part 1309, 45 CFR part 74 and 45 CFR part 92; and Administration for Children and Families' grants policy.''

(c) A modular unit which has been approved for purchase and installation in one location may not be moved to another location without the written permission of the responsible HHS official.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23223, May 1, 2003]

§ 1309.32 Statement of procurement procedure for modular units.

(a) An application for the purchase of a modular unit must include a statement describing the procedures which will be used by the grantee to purchase the modular unit.

(b) This statement must include a copy of the specifications for the unit which is proposed to be purchased and assurance that the grantee will comply with procurement procedures in 45 CFR parts 74 and 92, including assurance that all transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. A grantee requesting approval for the use of Head Start funds for continued purchase of a modular unit must also include a copy of the specifications for the unit.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23223, May 1, 2003]

§ 1309.33 Inspection.

A grantee which purchases a modular unit with grant funds or receives approval of a continuing purchase must have the modular unit inspected by a licensed engineer or architect within 15 calendar days of its installation or approval of a continuing purchase, and must submit to the responsible HHS official the engineer's or architect's inspection report within 30 calendar days of the inspection.

[68 FR 23223, May 1, 2003]

§ 1309.34 Costs of installation of modular unit.

Consistent with the cost principles referred to in 45 CFR part 74 and 45 CFR part 92, all reasonable costs necessary to the installation of a modular unit the purchase of which has been approved by the responsible HHS official are payable with grant funds. Such costs include, but are not limited to, payments for public utility hook-ups, site surveys and soil investigations.

Subpart E—Other Administrative Provisions

§ 1309.40 Copies of documents.

Certified copies of the deed, lease, loan instrument, mortgage, and any other legal documents related to the acquisition or major renovation of the facility or the discharge of any debt secured by the facility must be submitted to the responsible HHS official within ten days of their execution.

[68 FR 23223, May 1, 2003]

§ 1309.41 Record retention.

All records pertinent to the acquisition or major renovation of a facility must be retained by the grantee for a period equal to the period of the grantee's ownership (or occupancy, in the

case of leased facilities) of the facility plus three years.

[68 FR 23223, May 1, 2003]

§ 1309.42 Audit of mortgage.

Any audit of a grantee, which has acquired or made major renovations to a facility with grant funds, shall include an audit of any mortgage or encumbrance on the facility. Reasonable and necessary fees for this audit and appraisal are payable with grant funds.

[68 FR 23223, May 1, 2003]

§ 1309.43 Use of grant funds to pay fees.

Consistent with the cost principles referred to in 45 CFR part 74 and 45 CFR part 92, reasonable fees and costs associated with and necessary to the acquisition or major renovation of a facility (including reasonable and necessary fees and costs incurred to establish preliminary eligibility under §§ 1309.4 and 1309.5, or otherwise prior to the submission of an application under § 1309.10 or acquisition of the facility) are payable with grant funds, and require prior, written approval of the responsible HHS official.

[68 FR 23223, May 1, 2003]

§ 1309.44 Independent analysis.

(a) The responsible HHS official may direct the grantee applying for funds to acquire or make major renovations to a facility to obtain an independent analysis of the cost comparison submitted by the grantee pursuant to § 1309.11, or the statement under 1309.10(f) of this part, or both, if, in the judgment of the official, such an analysis is necessary to adequately review a proposal submitted under this part.

(b) The analysis shall be in writing and shall be made by a qualified, disinterested real estate professional in the community in which the property to be purchased or renovated is situated.

(c) Section 1309.43 of this part applies to payment of the cost of the analysis.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23223, May 1, 2003]

Subpart F—Construction and Major Renovation

SOURCE: 68 FR 23223, May 1, 2003, unless otherwise noted.

§ 1309.51 Submission of drawings and specifications.

(a) The grantee may not advertise for bids or award a contract for any part of construction or major renovation funded by grant funds until the grantee has submitted to the responsible HHS official final working drawings and written specifications for the project, a written certification by a licensed engineer or architect as to technical appropriateness of the proposed construction or renovation and the conformity of the project as shown in the final working drawings and specifications with Head Start programmatic requirements, and a written estimate of the costs of the project by a licensed architect or engineer.

(b) The responsible HHS official may authorize the grantee to advertise bids or award a contract after receiving the information provided under paragraph (a) of this section and determining that sufficient funding is, or will be, available to cover the costs of the project as estimated by the architect or engineer, and that the scope of the project as described in the drawings and specifications is appropriate to the needs of the grantee.

§ 1309.52 Procurement procedures.

(a) All facility construction and major renovation transactions must comply with the procurement procedure in 45 CFR parts 74 or 92, and must be conducted in a manner to provide, to the maximum extent practical, open and free competition.

(b) All contracts for construction or major renovation of a facility to be paid for in whole or in part with Head Start funds require the prior, written approval of the responsible HHS official and shall be on a lump sum fixed-price basis.

(c) Prior written approval of the responsible HHS official is required for unsolicited modifications that would change the scope or objective of the project or would materially alter the costs of the project by increasing the

amount of grant funds needed to complete the project.

(d) All construction and major renovation contracts for facilities acquired with grant funds shall contain a clause stating that the responsible HHS official or his or her designee shall have access at all reasonable times to the work being performed pursuant to the contract, at any stage of preparation or progress, and require that the contractor shall facilitate such access and inspection.

§ 1309.53 Inspection of work.

(a) The grantee must provide and maintain competent and adequate architectural or engineering inspection at the work site to insure that the completed work conforms to the approved plans and specifications.

(b) The grantee must submit a final architectural or engineering inspection report of the facility to the responsible HHS official within 30 calendar days of substantial completion of the construction or renovation.

§ 1309.54 Davis-Bacon Act.

Construction and renovation projects and subcontracts financed with funds awarded under the Head Start program are subject to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) and the Regulations of the Department of Labor, 29 CFR part 5. The grantee must provide an assurance that all laborers and mechanics employed by contractors or subcontractors in the construction or renovation of affected Head Start facilities shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

PART 1310—HEAD START TRANSPORTATION

Subpart A—General

Sec.
1310.1 Purpose.
1310.2 Applicability.
1310.3 Definitions.

Subpart B—Transportation Requirements

1310.10 General.
1310.11 Child Restraint Systems.
1310.12 Required use of School Buses or Allowable Alternate Vehicles.
1310.13 Maintenance of vehicles.
1310.14 Inspection of new vehicles at time of delivery.
1310.15 Operation of vehicles.
1310.16 Driver qualifications.
1310.17 Driver and bus monitor training.

Subpart C—Special Requirements

1310.20 Trip routing.
1310.21 Safety education.
1310.22 Children with disabilities.
1310.23 Coordinated transportation.

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

SOURCE: 66 FR 5311, Jan. 18, 2001, unless otherwise noted.

Subpart A—General

§ 1310.1 Purpose.

Under the authority of sections 640(i) and 645A(b)(9) of the Head Start Act (42 U.S.C. 9801 *et seq.*), this part prescribes regulations on safety features and the safe operation of vehicles used to transport children participating in Head Start and Early Head Start programs. Under the authority of sections 644(a) and (c) and 645A(b)(9) of the Head Start Act, this part also requires Head Start, Early Head Start, and delegate agencies to provide training in pedestrian safety and to make reasonable efforts to coordinate transportation resources to control costs and to improve the quality and the availability of transportation services.

§ 1310.2 Applicability.

(a) This rule applies to all Head Start and Early Head Start agencies, and their delegate agencies (hereafter, agency or agencies), including those that provide transportation services, with the exceptions provided in this section, regardless of whether such transportation is provided directly on agency owned or leased vehicles or through arrangement with a private or public transportation provider. Transportation services to children served under the home-based Option for Head Start and Early Head Start services are excluded from the requirements of 45 CFR 1310.12, 1310.15(c), and 1310.16. Except when there is an applicable State or local requirement that sets a higher standard on a matter covered by

this part, agencies must comply with requirements of this part.

(b)(1) Sections 1310.12(a) and 1310.22(a) of this part are effective December 20, 2006.

(2) This paragraph and paragraph (c) of this section, the definition of child restraint systems in Sec. 1310.3 of this part, and Sec. 1310.15(a) are effective November 1, 2006. Sections 1310.11 and 1310.15(c) of this part are effective June 21, 2004. Section 1310.12(b) of this part is effective February 20, 2001. All other provisions of this part are effective January 18, 2002.

(c) Effective November 1, 2006, an agency may request a waiver of specific requirements of this part, except for the requirements of this paragraph. Requests for waivers must be made in writing to the responsible Health and Human Services (HHS) official, as part of an agency's annual application for financial assistance or amendment thereto, based on good cause. ''Good cause'' for a waiver will exist when adherence to a requirement of this part would itself create a safety hazard in the circumstances faced by the agency, or when compliance with requirements related to child restraint systems (Secs. 1310.11, 1310.15(a)) or bus monitors (Sec. 1310.15(c)) will result in a significant disruption to the program and the agency demonstrates that waiving such requirements is in the best interest of the children involved. In addition, the responsible HHS official shall have the authority to grant waivers of the requirements related to child restraint systems (Sec. 1310.11, 1310.15(a)) or bus monitors (Sec. 1310.15(c)) that are retroactive to October 1, 2006 during the period from November 1, 2006 to October 30, 2007. The responsible HHS official is not authorized to waive any requirements of the Federal Motor Vehicle Safety Standards (FMVSS) made applicable to any class of vehicle under 49 CFR part 571. The responsible HHS official shall have the right to require such documentation as the official deems necessary in support of a request for a waiver. Approvals of waiver requests must be in writing, be signed by the responsible HHS official, and be based on good cause.

[66 FR 5311, Jan. 18, 2001, as amended at 69 FR 2517, Jan. 16, 2004; 71 FR 58535, Oct. 4, 2006]

§ 1310.3 Definitions.

Agency as used in this regulation means a Head Start or Early Head Start or delegate agency unless otherwise designated.

Agency Providing Transportation Services means an agency providing transportation services, either directly or through another arrangement with a private or public transportation provider, to children enrolled in its Head Start or Early Head Start program.

Allowable Alternate Vehicle means a vehicle designed for carrying eleven or more people, including the driver, that meets all the Federal Motor Vehicle Safety Standards applicable to school buses, except 49 CFR 571.108 and 571.131.

Bus monitor means a person with specific responsibilities for assisting the driver in ensuring the safety of the children while they ride, board, or exit the vehicle and for assisting the driver during emergencies.

Child Restraint System means any device designed to restrain, seat, or position children that meets the current requirements of Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, 49 CFR 571.213, for children in the weight category established under the regulation, or any device designed to restrain, seat, or position children, other than a Type I seat belt as defined at 49 CFR 571.209, for children not in the weight category currently established by 49 CFR 571.213.

Commercial Driver's License (CDL) means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR part 383, to an individual which authorizes the individual to operate a class of commercial motor vehicles.

Delegate Agency means a local public or private not-profit or for-profit agency to which a Head Start or Early Head Start agency has delegated all or part of its responsibility for operation of a Head Start program.

Early Head Start Agency means a public or private non-profit or for-profit agency or delegate agency designated

to operate an Early Head Start program pursuant to Section 645A of the Head Start Act.

Early Head Start Program means a program of services provided by an Early Head Start Agency funded under the Head Start Act.

Federal Motor Vehicle Safety Standards (FMVSS) means the National Highway and Traffic Safety Administration's standards for motor vehicles and motor vehicle equipment (49 CFR part 571) established under section 30111 of Title 49, United States Code.

Fixed route means the established routes to be traveled on a regular basis by vehicles that transport children to and from Head Start or Early Head Start program activities, and which include specifically designated stops where children board or exit the vehicle.

Head Start Agency, means a local public or private non-profit or for-profit agency designated to operate a Head Start program pursuant to Section 641 of the Head Start Act.

Head Start Program means a program of services provided by a Head Start agency or delegate agency and funded under the Head Start Act.

National Driver Register means the National Highway Traffic Safety Administration's automated system for assisting State driver license officials in obtaining information regarding the driving records of individuals who have been denied licenses for cause; had their licenses denied for cause, had their licenses canceled, revoked, or suspended for cause, or have been convicted of certain serious driving offenses.

National Standards for School Buses and School Bus Operations means the recommendations resulting from the Eleventh National Conference on School Transportation, May 1990, published by the National Safety Council, Chicago, Illinois.

Reverse beeper means a device which automatically sounds an intermittent alarm whenever the vehicle is engaged in reverse.

School Bus means a motor vehicle designed for carrying 11 or more persons (including the driver) and which complies with the Federal Motor Vehicle Safety Standards applicable to school buses.

Seat Belt Cutter means a special device that may be used in an emergency to rapidly cut through the seat belts used on vehicles in conjunction with child restraint systems.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

Transportation Services means the planned transporting of children to and from sites where an agency provides services funded under the Head Start Act. Transportation services can involve the pick-up and discharge of children at regularly scheduled times and pre-arranged sites, including trips between children's homes and program settings. The term includes services provided directly by the Head Start and Early Head Start grantee or delegate agency and services which such agencies arrange to be provided by another organization or an individual. Incidental trips, such as transporting a sick child home before the end of the day, or such as might be required to transport small groups of children to and from necessary services, are not included under the term.

Trip routing means the determination of the fixed routes to be traveled on a regular basis for the purpose of transporting children to and from the Head Start or Early Head Start program or activities.

[66 FR 5311, Jan. 18, 2001, as amended at 71 FR 58535, Oct. 4, 2006]

Subpart B—Transportation Requirements

§ 1310.10 General.

(a) Each agency must assist as many families as possible who need transportation in order for their children to attend the program in obtaining that transportation.

(b) When an agency has decided not to provide transportation services, either for all or a portion of the children, it must provide reasonable assistance

to the families of such children to arrange transportation to and from its activities. The specific types of assistance being offered must be made clear to all prospective families in the program's recruitment announcements.

(c) Each agency providing transportation services is responsible for compliance with the applicable requirements of this Part. When an agency provides transportation through another organization or an individual, the agency must ensure the compliance of the transportation provider with the requirements of this part.

(d) Each agency providing transportation services, must ensure that each vehicle used in providing such services is equipped with:

(1) a communication system to call for assistance in case of an emergency:

(2) safety equipment for use in an emergency, including a charged fire extinguisher that is properly mounted near the driver's seat and a sign indicating its location;

(3) a first aid kit and a sign indicating the location of such equipment; and

(4) a seat belt cutter for use in an emergency evacuation and a sign indicating its location.

(e) Each agency providing transportation services must ensure that any auxiliary seating, such as temporary or folding jump seats, used in vehicles of any type providing such services are built into the vehicle by the manufacturer as part of its standard design, are maintained in proper working order, and are inspected as part of the annual inspection required under § 1310.13(a) of this subpart.

(f) Each agency providing transportation services must ensure that all accidents involving vehicles that transport children receiving such services are reported in accordance with applicable State requirements.

(g) Each agency must ensure that children are only released to a parent or legal guardian, or other individual identified in writing by the parent or legal guardian. This regulation applies when children are not transported and are picked up from the classroom, as well as when they are dropped off by a vehicle Agencies must maintain lists of the persons, including alternates in case of emergency, and up-to-date child rosters must be maintained at all times to ensure that no child is left behind, either at the classroom or on the vehicle at the end of the route.

§ 1310.11 Child Restraint Systems.

(a) Effective June 21, 2004, each agency providing transportation services must ensure that each vehicle used to transport children receiving such services is equipped for use of height- and weight-appropriate child safety restraint systems.

(b) [Reserved]

[69 FR 2517, Jan. 16, 2004, as amended at 71 FR 58535, Oct. 4, 2006]

§ 1310.12 Required use of School Buses or Allowable Alternate Vehicles.

(a) Effective December 30, 2006, each agency providing transportation services must ensure that children enrolled in its program are transported in school buses or allowable alternate vehicles that are equipped for use of height- and weight-appropriate child restraint systems, and that have reverse beepers. As provided in 45 CFR 1310.2(a), this paragraph does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

(b) Effective February 20, 2001, each Head Start and Early Head Start agency receiving permission from the responsible HHS official to purchase a vehicle with grant funds for use in providing transportation services to children in its program or a delegate agency's program must ensure that the funds are used to purchase a vehicle that is either a school bus or an allowable alternate vehicle and is equipped

(1) for use of height- and weight-appropriate child restraint systems; and

(2) with a reverse beeper.

(c) As provided in 45 CFR 1310.2(a), paragraph (b) of this section does not apply to vehicles purchased for use in transporting children served under the home-based option for Head Start and Early Head Start.

[66 FR 5311, Jan. 18, 2001, as amended at 71 FR 58535, Oct. 4, 2006]

§ 1310.13 Maintenance of vehicles.

Each agency providing transportation services must ensure that vehicles used to provide such services are maintained in safe operating condition at all times. The organization operating the vehicle must establish and implement procedures for:

(a) a thorough safety inspection of each vehicle on at least an annual basis through an inspection program licensed or operated by the State;

(b) systematic preventive maintenance on such vehicles; and

(c) daily pre-trip inspection of the vehicles by the driver.

§ 1310.14 Inspection of new vehicles at the time of delivery.

Each agency providing transportation services must ensure that bid announcements for school buses and allowable alternate vehicles for use in transporting children in its program include the correct specifications and a clear statement of the vehicle's intended use. Such agencies must ensure that there is a prescribed procedure for examining such vehicles at the time of delivery to ensure that they are equipped in accordance with the bid specifications and that the manufacturer's certification of compliance with the applicable FMVSS is included with the vehicle.

§ 1310.15 Operation of vehicles.

Each agency providing transportation services, either directly or through an arrangement with another organization or an individual, to children enrolled in its program must ensure that:

(a) Effective October 1, 2006, on a vehicle equipped for use of such devices, any child enrolled in a Head Start or Early Head Start program is seated in a child restraint system appropriate to the child's height and weight while the vehicle is in motion.

(b) Baggage and other items transported in the passenger compartment are properly stored and secured and the aisles remain clear and the doors and emergency exits remain unobstructed at all times.

(c) Effective June 21, 2004, there is at least one bus monitor on board at all times, with additional bus monitors provided as necessary, such as when needed to accommodate the needs of children with disabilities. As provided in 45 CFR 1310.2(a), this paragraph does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

(d) Except for bus monitors who are assisting children, all vehicle occupants must be seated and wearing height- and weight- appropriate safety restraints while the vehicle is in motion.

[66 FR 5311, Jan. 18, 2001, as amended at 69 FR 2517, Jan. 16, 2004; 71 FR 58535, Oct. 4, 2006]

§ 1310.16 Driver qualifications.

(a) Each agency providing transportation services must ensure that persons who drive vehicles used to provide such services, at a minimum:

(1) in States where such licenses are granted, have a valid Commercial Driver's License (CDL) for vehicles in the same class as the vehicle the driver will operating; and

(2) meet any physical, mental, and other requirements established under applicable law or regulations as necessary to perform job-related functions with any necessary reasonable accommodations.

(b) Each agency providing transportation services must ensure that there is an applicant review process for use in hiring drivers, that applicants for driver positions must be advised of the specific background checks required at the time application is made, and that there are criteria for the rejection of unacceptable applicants. The applicant review procedure must include, at minimum:

(1) all elements specified in 45 CFR 1304.52(b), with additional disclosure by the applicant of all moving traffic violations, regardless of penalty;

(2) a check of the applicant's driving record through the appropriate State agency, including a check of the applicant's record through the National Driver Register, if available in the State; and

(3) after a conditional offer of employment to the applicant and before the applicant begins work as a driver, a medical examination, performed by a

licensed doctor of medicine or osteopathy, establishing that the individual possesses the physical ability to perform any job-related functions with any necessary accommodations.

(c) As provided in 45 CFR 1310.2(a), this section does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

§ 1310.17 Driver and bus monitor training.

(a) Each agency providing transportation services must ensure that persons employed to drive vehicles used in providing such services will have received the training required under paragraphs (b) and (c) of this section no later than 90 days after the effective date of this section as established by § 1310.2 of this part. The agency must ensure that drivers who are hired to drive vehicles used in providing transportation services after the close of the 90 day period must receive the training required under paragraphs (b) and (c) prior to transporting any child enrolled in the agency's program. The agency must further ensure that at least annually after receiving the training required under paragraphs (b) and (c), all drivers who drive vehicles used to provide such services receive the training required under paragraph (d) of this section.

(b) Drivers must receive a combination of classroom instruction and behind-the-wheel instruction sufficient to enable each driver to:

(1) operate the vehicle in a safe and efficient manner;

(2) safely run a fixed route, including loading and unloading children, stopping at railroad crossings and performing other specialized driving maneuvers;

(3) administer basic first aid in case of injury;

(4) handle emergency situations, including vehicle evacuation procedures;

(5) operate any special equipment, such as wheelchair lifts, assistance devices or special occupant restraints;

(6) conduct routine maintenance and safety checks of the vehicle; and

(7) maintain accurate records as necessary.

(c) Drivers must also receive instruction on the topics listed in 45 CFR 1304.52(k)(1), (2) and (3)(i) and the provisions of the Head Start Program Performance Standards for Children with Disabilities (45 CFR 1308) relating to transportation services for children with disabilities.

(d) Drivers must receive refresher training courses including the topics listed in paragraphs (b) and (c) of this section and any additional necessary training to meet the requirements applicable in the State where the agency operates.

(e) Each agency providing transportation services must ensure that drivers who transport children receiving the services qualify under the applicable driver training requirements in its State.

(f) Each agency providing transportation services must ensure that:

(1) the annual evaluation of each driver of a vehicle used to provide such services includes an on-board observation of road performance; and

(2) before bus monitors assigned to vehicles used to provide such services begin their duties, they are trained on child boarding and exiting procedure, use of child restraint systems, any required paperwork, responses to emergencies, emergency evacuation procedures, use of special equipment, child pick-up and release procedures and pre- and post-trip vehicle check.

Subpart C—Special Requirements

§ 1310.20 Trip routing.

(a) Each agency providing transportation services must ensure that in planning fixed routes the safety of the children being transported is the primary consideration.

(b) The agency must also ensure that the following basic principles of trip routing are adhered to:

(1) The time a child is in transit to and from the Head Start or Early Head Start program must not exceed one hour unless there is no shorter route available or any alternative shorter route is either unsafe or impractical.

(2) Vehicles must not be loaded beyond the maximum passenger capacity at any time.

(3) Vehicles must not be required to back up or make ''U'' turns, except when necessary for reasons of safety or because of physical barriers.

(4) Stops must be located to minimize traffic disruptions and to afford the driver a good field of view in front of and behind the vehicle.

(5) When possible, stops must be located to eliminate the need for children to cross the street or highway to board or leave the vehicle.

(6) If children must cross the street before boarding or after leaving the vehicle because curbside drop off or pick up is impossible, they must be escorted across the street by the bus monitor or another adult.

(7) Specific procedures must be established for use of alternate routes in the case of hazardous conditions that could affect the safety of the children who are being transported, such as ice or water build up, natural gas line breaks, or emergency road closing. In selecting among alternatives, transportation providers must choose routes that comply as much as possible with the requirements of this section.

§ 1310.21 Safety education.

(a) Each agency must provide training for parents and children in pedestrian safety. The training provided to children must be developmentally appropriate and an integral part of program experiences. The need for an adult to accompany a preschool child while crossing the street must be emphasized in the training provided to parents and children. The required transportation and pedestrian safety education of children and parents, except for the bus evacuation drills required by paragraph (d) of this section, must be provided within the first thirty days of the program year.

(b) Each agency providing transportation services, directly or through another organization or an individual, must ensure that children who receive such services are taught:

(1) safe riding practices;

(2) safety procedures for boarding and leaving the vehicle;

(3) safety procedures in crossing the street to and from the vehicle at stops;

(4) recognition of the danger zones around the vehicle; and

(5) emergency evacuation procedures, including participating in an emergency evacuation drill conducted on the vehicle the child will be riding.

(c) Each agency providing transportation services must provide training for parents that:

(1) emphasizes the importance of escorting their children to the vehicle stop and the importance of reinforcing the training provided to children regarding vehicle safety; and

(2) complements the training provided to their children so that safety practices can be reinforced both in Head Start and at home by the parent.

(d) Each agency providing transportation services must ensure that at least two bus evacuation drills in addition to the one required under paragraph (b)(5) of this section are conducted during the program year.

(e) Each agency providing transportation services must develop activities to remind children of the safety procedures. These activities must be developmentally appropriate, individualized and be an integral part of the Head Start or Early Head Start program activities.

§ 1310.22 Children with disabilities.

(a) Effective December 30, 2006 each agency must ensure that there are school buses or allowable alternate vehicles adapted or designed for transportation of children with disabilities available as necessary to transport such children enrolled in the program. This requirement does not apply to the transportation of children receiving home-based services unless school buses or allowable alternate vehicles are used to transport the other children served under the home-based option by the grantee. Whenever possible, children with disabilities must be transported in the same vehicles used to transport other children enrolled in the Head Start or Early Head Start program.

(b) Each Head Start, Early Head Start and delegate agency must ensure compliance with the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), the HHS regulations at 45 CFR part 84, implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794),

and the Head Start Program Performance Standards on Services for Children with Disabilities (45 CFR part 1308) as they apply to transportation services.

(c) Each agency must specify any special transportation requirements for a child with a disability when preparing the child's Individual Education Plan (IEP) or Individual Family Service Plan (IFSP), and ensure that in all cases special transportation requirements in a child's IEP or IFSP are followed, including:

(1) special pick-up and drop-off requirements;

(2) special seating requirements;

(3) special equipment needs;

(4) any special assistance that may be required; and

(5) any special training for bus drivers and monitors.

[66 FR 5311, Jan. 18, 2001, as amended at 71 FR 58536, Oct. 4, 2006]

§ 1310.23 Coordinated transportation.

(a) Each agency providing transportation services must make reasonable efforts to coordinate transportation resources with other human services agencies in its community in order to control costs and to improve the quality and the availability of transportation services.

(b) At a minimum, the agency must:

(1) identify the true costs of providing transportation in order to knowledgeably compare the costs of providing transportation directly versus contracting for the service;

(2) explore the option of participating in any coordinated public or private transportation systems existing in the community; and

(3) where no coordinated public or private non-profit transportation system exists in the community, make every effort to identify other human services agencies also providing transportation services and, where reasonable, to participate in the establishment of a local transportation coordinating council.

PART 1311—HEAD START FELLOWS PROGRAM

Sec.

1311.1 Head Start Fellows Program purpose.
1311.2 Definitions.
1311.3 Application process.
1311.4 Qualifications, selection, and placement.
1311.5 Duration of Fellowships and status of Head Start Fellows.

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

SOURCE: 62 FR 1400, Jan. 10, 1997, unless otherwise noted.

§ 1311.1 Head Start Fellows Program Purpose.

(a) This part establishes regulations implementing section 648A(d) of the Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*, applicable to the administration of the Head Start Fellows Program, including selection, placement, duration and status of the Head Start Fellows.

(b) As provided in section 648A(d) of the Act, the Head Start Fellows Program is designed to enhance the ability of Head Start Fellows to make significant contributions to Head Start and to other child development and family services programs.

§ 1311.2 Definitions.

As used in this part:

Act means the Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*

Associate Commissioner means the Associate Commissioner of the Head Start Bureau in the Administration on Children, Youth and Families.

Head Start Fellows means individuals who participate in the Head Start Fellows Program, who may be staff in local Head Start programs or other individuals working in the field of child development and family services.

§ 1311.3 Application process.

An individual who wishes to obtain a Fellowship must submit an application to the Associate Commissioner. The Administration for Children and Families will publish an annual announcement of the availability and number of Fellowships in the FEDERAL REGISTER. Federal employees are not eligible to apply. (The information collection requirement contained in this section is approved under OMB Control Number 0970–0140.)

§ 1311.4 Qualifications, selection, and placement.

(a) The Act specifies that an applicant must be working on the date of application in a local Head Start program or otherwise working in the field of child development and family services. The qualifications of the applicants for Head Start Fellowship positions will be competitively reviewed. The Associate Commissioner will make the final selection of the Head Start Fellows.

(b) Head Start Fellows may be placed in:

(1) The Head Start national and regional offices;

(2) Local Head Start agencies and programs;

(3) Institutions of higher education;

(4) Public or private entities and organizations concerned with services to children and families; and

(5) Other appropriate settings.

(c) A Head Start Fellow who is not an employee of a local Head Start agency or program may only be placed in the national or regional offices within the Department of Health and Human Services that administer Head Start or local Head Start agencies.

(d) Head Start Fellows shall not be placed in any agency whose primary purpose, or one of whose major purposes is to influence Federal, State or local legislation.

§ 1311.5 Duration of Fellowships and status of Head Start Fellows.

(a) Head Start Fellowships will be for terms of one year, and may be renewed for a term of one additional year.

(b) For the purposes of compensation for injuries under chapter 81 of title 5, United States Code, Head Start Fellows shall be considered to be employees, or otherwise in the service or employment, of the Federal Government.

(c) Head Start Fellows assigned to the national or regional offices within the Department of Health and Human Services shall be considered employees in the Executive Branch of the Federal Government for the purposes of chapter 11 of title 18, United States Code, and for the purposes of any administrative standards of conduct applicable to the employees of the agency to which they are assigned.

SUBCHAPTER C—THE ADMINISTRATION ON AGING, OLDER AMERICANS PROGRAMS

PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

Subpart A—Introduction

Sec.
1321.1 Basis and purpose of this part.
1321.3 Definitions.
1321.5 Applicability of other regulations.

Subpart B—State Agency Responsibilities

1321.7 Mission of the State agency.
1321.9 Organization and staffing of the State agency.
1321.11 State agency policies.
1321.13 Advocacy responsibilities.
1321.15 Duration, format and effective date of the State plan.
1321.17 Content of State plan.
1321.19 Amendments to the State plan.
1321.21 Submission of the State plan or plan amendment to the Commissioner for approval.
1321.23 Notification of State plan or State plan amendment approval.
1321.25 Restriction of delegation of authority to other agencies.
1321.27 Public participation.
1321.29 Designation of planning and service areas.
1321.31 Appeal to Commissioner.
1321.33 Designation of area agencies.
1321.35 Withdrawal of area agency designation.
1321.37 Intrastate funding formula.
1321.41 Single State planning and service area.
1321.43 Interstate planning and service area.
1321.45 Transfer between congregate and home-delivered nutrition service allotments.
1321.47 Statewide non-Federal share requirements.
1321.49 State agency maintenance of effort.
1321.51 Confidentiality and disclosure of information.
1321.52 Evaluation of unmet need.

Subpart C—Area Agency Responsibilities

1321.53 Mission of the area agency.
1321.55 Organization and staffing of the area agency.
1321.57 Area agency advisory council.
1321.59 Submission of an area plan and plan amendments to the State for approval.
1321.61 Advocacy responsibilities of the area agency.

Subpart D—Service Requirements

1321.63 Purpose of services allotments under Title III.
1321.65 Responsibilities of service providers under area plans.
1321.67 Service contributions.
1321.69 Service priority for frail, homebound or isolated elderly.
1321.71 Legal assistance.
1321.73 Grant related income under Title III-C.
1321.75 Licenses and safety.

Subpart E—Hearing Procedures for State Agencies

1321.77 Scope.
1321.79 When a decision is effective.
1321.81 How the State may appeal.
1321.83 How the Commissioner may reallot the State's withheld payments.

AUTHORITY: 42 U.S.C. 3001 et seq.; title III of the Older Americans Act, as amended.

SOURCE: 53 FR 33766, Aug. 31, 1988, unless otherwise noted.

Subpart A—Introduction

§ 1321.1 Basis and purpose of this part.

(a) This part prescribes requirements State agencies shall meet to receive grants to develop comprehensive and coordinated systems for the delivery of supportive and nutrition services under title III of the Older Americans Act, as amended (Act). These requirements include:

(1) Designation and responsibilities of State agencies;

(2) State plans and amendments;

(3) Services delivery; and

(4) Hearing procedures for applicants for planning and services area designation.

(b) The requirements of this part are based on title III of the Act. Title III provides for formula grants to State agencies on aging, under approved State plans, to stimulate the development or enhancement of comprehensive and coordinated community-based systems resulting in a continuum of services to older persons with special emphasis on older individuals with the greatest economic or social need, with

particular attention to low-income minority individuals. A responsive community-based system of services shall include collaboration in planning, resource allocation and delivery of a comprehensive array of services and opportunities for all older Americans in the community. The intent is to use title III funds as a catalyst in bringing together public and private resources in the community to assure the provision of a full range of efficient, well coordinated and accessible services for older persons.

(c) Each State agency designates planning and service areas in the State, and makes a subgrant or contract under an approved area plan to one area agency in each planning and service area for the purpose of building comprehensive systems for older people throughout the State. Area agencies in turn make subgrants or contracts to service providers to perform certain specified functions.

§ 1321.3 Definitions.

Act means the Older Americans Act of 1965 as amended.

Altering or *renovating*, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

Constructing, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

Department means the Department of Health and Human Services.

Direct services, as used in this part, means any activity performed to provide services directly to an individual older person by the staff of a service provider, an area agency, or a State agency in a single planning and service area State.

Fiscal year, as used in this part, means the Federal Fiscal Year.

Frail, as used in this part, means having a physical or mental disability, including having Alzheimer's disease or a related disorder with neurological or organic brain dysfunction, that restricts the ability of an individual to perform normal daily tasks or which threatens the capacity of an individual to live independently.

Human services, as used in § 1321.41(a)(1) of this part, with respect to criteria for designation of a statewide planning and service area, means social, health, or welfare services.

In-home service, as used in this part, includes: (a) Homemaker and home health aides; (b) visiting and telephone reassurance; (c) chore maintenance; (d) in-home respite care for families, including adult day care as a respite service for families; and (e) minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home, and that is not available under other programs, except that not more than $150 per client may be expended under this part for such modification.

Means test, as used in the provison of services, means the use of an older person's income or resource to deny or limit that person's receipt of services under this part.

Official duties, as used in section 307(a)(12)(J) of the Act with respect to representatives of the Long-Term Care Ombudsman Program, means work pursuant to the Long-Term Care Ombudsman Program authorized by the Act or State law and carried out under the auspices and general direction of the State Long-Term Care Ombudsman.

Periodic, as used in sections 306(a)(6) and 307(a)(8) of the Act with respect to evaluations of, and public hearings on, activities carried out under State and area plans, means, at a minimum, once each fiscal year.

Reservation, as used in section 305(b)(4) of the Act with respect to the designation of planning and service areas, means any federally or State recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaskan Native

regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

Service provider, as used in section 306(a)(1) of the Act with respect to the provison of supportive and nutrition services, means an entity that is awarded a subgrant or contract from an area agency to provide services under the area plan.

Severe disability, as used to carry out the provisions of the Act, means a severe chronic disability attributable to mental and/or physical impairment of an individual that:

(a) Is likely to continue indefinitely; and

(b) Results in substantial functional limitation in 3 or more of the following major life activities:

(1) Self-care,

(2) Receptive and expressive language,

(3) Learning,

(4) Mobility,

(5) Self-direction,

(6) Capacity for independent living, and

(7) Economic self-sufficiency.

§ 1321.5 Applicability of other regulations.

Several other regulations apply to all activities under this part. These include but are not limited to:

(a) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board;

(b) 45 CFR part 74—Administration of Grants, except subpart N;

(c) 45 CFR part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of title VI of the Civil Rights Act of 1964;

(d) 45 CFR part 81—Practice and Procedures for Hearings Under Part 80 of this title;

(e) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Participation;

(f) 45 CFR part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance;

(g) 45 CFR part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(h) 45 CFR part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities; and

(i) 5 CFR part 900, subpart F, Standards for a Merit System of Personnel Administration.

Subpart B—State Agency Responsibilities

§ 1321.7 Mission of the State agency.

(a) The Older Americans Act intends that the State agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the State. This means that the State agency shall proactively carry out a wide range of functions related to advocacy, planning, coordination, interagency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, communities throughout the State. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

(b) The State agency shall designate area agencies on aging for the purpose of carrying out the mission described above for the State agency at the sub-State level. The State agency shall designate as its area agencies on aging only those sub-state agencies having the capacity and making the commitment to fully carry out the mission described for area agencies in § 1321.53 below.

(c) The State agency shall assure that the resources made available to area agencies on aging under the Older Americans Act are used to carry out the mission described for area agencies in § 1321.53 below.

§ 1321.9 Organization and staffing of the State agency.

(a) The State shall designate a sole State agency to develop and administer the State plan required under this part and serve as the effective visible advocate for the elderly within the State.

(b) The State agency shall have an adequate number of qualified staff to carry out the functions prescribed in this part.

(c) The State agency shall have within the State agency, or shall contract or otherwise arrange with another agency or organization, as permitted by section 307(a)(12)(A), an Office of the State Long-Term Care Ombudsman, with a full-time State ombudsman and such other staff as are appropriate.

(d) If a State statute establishes a State ombudsman program which will perform the functions of section 307(a)(12) of the Act, the State agency continues to be responsible to assure that all of the requirements of the Act for this program are met regardless of the State legislation or source of funds. In such cases, the Governor shall confirm this through an assurance in the State plan.

§ 1321.11 State agency policies.

(a) The State agency on aging shall develop policies governing all aspects of programs operated under this part, including the ombudsman program whether operated directly by the State agency or under contract. These policies shall be developed in consultation with other appropriate parties in the State. The State agency is responsible for enforcement of these policies.

(b) The policies developed by the State agency shall address the manner in which the State agency will monitor the performance of all programs and activities initiated under this part for quality and effectiveness. In monitoring the ombudsman program, access to files, minus the identity of any complainant or resident of a long-term care facility, shall be available only to the director of the State agency on aging and one other senior manager of the State agency designated by the State director for this purpose. In the conduct of the monitoring of the ombudsman program, the confidentiality protections concerning any complainant or resident of a long term care facility as prescribed in section 307(a)(12) of the Act shall be strictly adhered to.

§ 1321.13 Advocacy responsibilities.

(a) The State agency shall:

(1) Review, monitor, evaluate and comment on Federal, State and local plans, budgets, regulations, programs, laws, levies, hearings, policies, and actions which affect or may affect older individuals and recommend any changes in these which the State agency considers to be appropriate;

(2) Provide technical assistance to agencies, organizations, associations, or individuals representing older persons; and

(3) Review and comment, upon request, on applications to State and Federal agencies for assistance relating to meeting the needs of older persons.

(b) No requirement in this section shall be deemed to supersede a prohibition contained in a Federal appropriation on the use of Federal funds to lobby the Congress.

§ 1321.15 Duration, format and effective date of the State plan.

(a) A State may use its own judgment as to the format to use for the plan, how to collect information for the plan, and whether the plan will remain in effect for two, three or four years.

(b) An approved State plan or amendment, as indentified in § 1321.17, becomes effective on the date designated by the Commissioner.

(c) A State agency may not make expenditures under a new plan or amendment requiring approval, as identified in § 1321.17 and § 1321.19, until it is approved.

§ 1321.17 Content of State plan.

To receive a grant under this part, a State shall have an approved State plan as prescribed in section 307 of the Act. In addition to meeting the requirements of section 307, a State plan shall include:

(a) Identification by the State of the sole State agency that has been designated to develop and administer the plan.

(b) Statewide program objectives to implement the requirements under Title III of the Act and any objectives established by the Commissioner through the rulemaking process.

(c) A resource allocation plan indicating the proposed use of all title III

funds administered by a State agency, and the distribution of title III funds to each planning and service area.

(d) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area, if appropriate.

(e) Provision of prior Federal fiscal year information related to low income minority and rural older individuals as required by sections 307(a) (23) and (29) of the Act.

(f) Each of the assurances and provisions required in sections 305 and 307 of the Act, and provisions that the State meets each of the requirements under §§ 1321.5 through 1321.75 of this part, and the following assurances as prescribed by the Commissioner:

(1) Each area agency engages only in activities which are consistent with its statutory mission as prescribed in the Act and as specified in State policies under § 1321.11;

(2) Preference is given to older persons in greatest social or economic need in the provision of services under the plan;

(3) Procedures exist to ensure that all services under this part are provided without use of any means tests;

(4) All services provided under title III meet any existing State and local licensing, health and safety requirements for the provision of those services;

(5) Older persons are provided opportunities to voluntarily contribute to the cost of services;

(6) Area plans shall specify as submitted, or be amended annually to include, details of the amount of funds expended for each priority service during the past fiscal year;

(7) The State agency on aging shall develop policies governing all aspects of programs operated under this part, including the manner in which the ombudsman program operates at the State level and the relation of the ombudsman program to area agencies where area agencies have been designated;

(8) The State agency will require area agencies on aging to arrange for outreach at the community level that identifies individuals eligible for assistance under this Act and other programs, both public and private, and informs them of the availability of assistance. The outreach efforts shall place special emphasis on reaching older individuals with the greatest economic or social needs with particular attention to low income minority individuals, including outreach to identify older Indians in the planning and service area and inform such older Indians of the availability of assistance under the Act.

(9) The State agency shall have and employ appropriate procedures for data collection from area agencies on aging to permit the State to compile and transmit to the Commissioner accurate and timely statewide data requested by the Commissioner in such form as the Commissioner directs; and

(10) If the State agency proposes to use funds received under section 303(f) of the Act for services other than those for preventive health specified in section 361, the State plan shall demonstrate the unmet need for the services and explain how the services are appropriate to improve the quality of life of older individuals, particularly those with the greatest economic or social need, with special attention to low-income minorities.

(11) Area agencies shall compile available information, with necessary supplementation, on courses of post-secondary education offered to older individuals with little or no tuition. The assurance shall include a commitment by the area agencies to make a summary of the information available to older individuals at multipurpose senior centers, congregate nutrition sites, and in other appropriate places.

(12) Individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under this part shall be provided a meal on the same basis that meals are provided to volunteers pursuant to section 307(a)(13)(I) of the Act.

(13) The services provided under this part will be coordinated, where appropriate, with the services provided under title VI of the Act.

(14)(i) The State agency will not fund program development and coordinated activities as a cost of supportive services for the administration of area

plans until it has first spent 10 percent of the total of its combined allotments under Title III on the administration of area plans;

(ii) State and area agencies on aging will, consistent with budgeting cycles (annually, biannually, or otherwise), submit the details of proposals to pay for program development and coordination as a cost of supportive services, to the general public for review and comment; and

(iii) The State agency certifies that any such expenditure by an area agency will have a direct and positive impact on the enhancement of services for older persons in the planning and service area.

(15) The State agency will assure that where there is a significant population of older Indians in any planning and service area that the area agency will provide for outreach as required by section 306(a)(6)(N) of the Act.

§ 1321.19 Amendments to the State plan.

(a) A State shall amend the State plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations,

(2) A material change in any law, organization, policy or State agency operation, or

(3) Information required annually by sections 307(a) (23) and (29) of the Act.

(b) Information required by paragraph (a)(3) of this section shall be submitted according to guidelines prescribed by the Commissioner.

(c) If a State intends to amend provisions of its plan required under §§ 1321.17 (a) or (f), it shall submit its proposed amendment to the Commissioner for approval. If the State changes any of the provisions of its plan required under § 1321.17 (b) through (d), it shall amend the plan and notify the Commissioner. A State need only submit the amended portions of the plan.

§ 1321.21 Submission of the State plan or plan amendment to the Commissioner for approval.

Each State plan, or plan amendment which requires approval of the Commissioner, shall be signed by the Governor or the Governor's designee and submitted to the Commissioner to be considered for approval at least 45 calendar days before the proposed effective date of the plan or plan amendment.

§ 1321.23 Notification of State plan or State plan amendment approval.

(a) The Commissioner approves a State plan or State plan amendment by notifying the Governor or the Governor's designee in writing.

(b) When the Commissioner proposes to disapprove a State plan or amendment, the Commissioner notifies the Governor in writing, giving the reasons for the proposed disapproval, and informs the State agency that it has 60 days to request a hearing on the proposed disapproval following the procedures specified in subpart E of this part.

§ 1321.25 Restriction of delegation of authority to other agencies.

A State or area agency may not delegate to another agency the authority to award or administer funds under this part.

§ 1321.27 Public participation.

The State agency shall have a mechanism to obtain and shall consider the views of older persons and the public in developing and administering the State plan.

§ 1321.29 Designation of planning and service areas.

(a) Any unit of general purpose local government, region within a State recognized for area wide planning, metropolitan area, or Indian reservation may make application to the State agency to be designated as a planning and service area, in accordance with State agency procedures.

(b) A State agency shall approve or disapprove any application submitted under paragraph (a) of this section.

(c) Any applicant under paragraph (a) of this section whose application for designation as a planning and service area is denied by a State agency may appeal the denial to the State agency, under procedures specified by the State agency.

(d) If the State denies an applicant for designation as a planning and service area under paragraph (a) of this section, the State shall provide a hearing on the denial of the application, if requested by the applicant, as well as issue a written decision.

§ 1321.31 Appeal to Commissioner.

This section sets forth the procedures the Commissioner follows for providing hearings to applicants for designation as a planning and service area, under § 1321.29(a), whose application is denied by the State agency.

(a) Any applicant for designation as a planning and service area under § 1321.29(a) whose application is denied, and who has been provided a hearing and a written decision by the State agency, may appeal the denial to the Commissioner in writing within 30 days following receipt of a State's hearing decision.

(b) The Commissioner, or the Commissioner's designee, holds a hearing, and issues a written decision, within 60 days following receipt of an applicant's written request to appeal the State agency hearing decision to deny the applicant's request under § 1321.29(a).

(c) When the Commissioner receives an appeal, the Commissioner requests the State Agency to submit:

(1) A copy of the applicant's application for designation as a planning and service area;

(2) A copy of the written decision of the State; and

(3) Any other relevant information the Commissioner may require.

(d) The procedures for the appeal consist of:

(1) Prior written notice to the applicant and the State agency of the date, time and location of the hearing;

(2) The required attendance of the head of the State agency or designated representatives;

(3) An opportunity for the applicant to be represented by counsel or other representative; and

(4) An opportunity for the applicant to be heard in person and to present documentary evidence.

(e) The Commissioner may:

(1) Deny the appeal and uphold the decision of a State agency;

(2) Uphold the appeal and require a State agency to designate the applicant as a planning and service area; or

(3) Take other appropriate action, including negotiating between the parties or remanding the appeal to the State agency after initial findings.

(f) The Commissioner will uphold the decision of the State agency if it followed the procedures specified in § 1321.29, and the hearing decision is not manifestly inconsistent with the purpose of this part.

(g) The Commissioner's decision to uphold the decision of a State agency does not extend beyond the period of the approved State plan.

§ 1321.33 Designation of area agencies.

An area agency may be any of the types of agencies under section 305(c) of the Act. A State may not designate any regional or local office of the State as an area agency. However, when a new area agency on aging is designated, the State shall give right of first refusal to a unit of general purpose local government as required in section 305(b)(5)(B) of the Act. If the unit of general purpose local government chooses not to exercise this right, the State shall then give preference to an established office on aging as required in section 305(c)(5) of the Act.

§ 1321.35 Withdrawal of area agency designation.

(a) In carrying out section 305 of the Act, the State agency shall withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that:

(1) An area agency does not meet the requirements of this part;

(2) An area plan or plan amendment is not approved;

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Act or of this part or policies and procedures established and published by the State agency on aging; or

(4) Activities of the area agency are inconsistent with the statutory mission prescribed in the Act or in conflict with the requirement of the Act that it function only as an area agency on aging.

(b) If a State agency withdraws an area agency's designation under paragraph (a) of this section it shall:

(1) Provide a plan for the continuity of area agency functions and services in the affected planning and service area; and

(2) Designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period of up to 180 days after its final decision to withdraw designation of an area agency:

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

(d) The Commissioner may extend the 180-day period if a State agency:

(1) Notifies the Commissioner in writing of its action under paragraph (c) of this section;

(2) Requests an extension; and

(3) Demonstrates to the satisfaction of the Commissioner a need for the extension.

§ 1321.37 Intrastate funding formula.

(a) The State agency, after consultation with all area agencies in the State, shall develop and use an intrastate funding formula for the allocation of funds to area agencies under this part. The State agency shall publish the formula for review and comment by older persons, other appropriate agencies and organizations and the general public. The formula shall reflect the proportion among the planning and service areas of persons age 60 and over in greatest economic or social need with particular attention to low-income minority individuals. The State agency shall review and update its formula as often as a new State plan is submitted for approval.

(b) The intrastate funding formula shall provide for a separate allocation of funds received under section 303(f) for preventive health services. In the award of such funds to selected planning and service areas, the State agency shall give priority to areas of the State:

(1) Which are medically underserved; and

(2) In which there are large numbers of individuals who have the greatest economic and social need for such services.

(c) The State agency shall submit its intrastate formula to the Commissioner for review and comment. The intrastate formula shall be submitted separately from the State plan.

§ 1321.41 Single State planning and service area.

(a) The Commissioner will approve the application of a State which was, on or before October 1, 1980, a single planning and service area, to continue as a single planning and service area if the State agency demonstrates that:

(1) The State is not already divided for purposes of planning and administering human services; or

(2) The State is so small or rural that the purposes of this part would be impeded if the State were divided into planning and services areas; and

(3) The State agency has the capacity to carry out the responsibilities of an area agency, as specified in the Act.

(b) Prior to the Commissioner's approval for a State to continue as a single planning and service area, all the requirements and procedures in § 1321.29 shall be met.

(c) If the Commissioner approves a State's application under paragraph (a) this section:

(1) The Commissioner notifies the State agency to develop a single State planning and service area plan which meets the requirements of section 306 and 307 of the Act.

(2) A State agency shall meet all the State and area agency function requirements specified in the Act.

(d) If the Commissioner denies the application because a State fails to meet the criteria or requirements set forth in paragraphs (a) or (b) of this section, the Commissioner notifies the State that it shall follow procedures in section 305(A)(1)(E) of the Act to divide the State into planning and service areas.

§ 1321.43 Interstate planning and service area.

(a) Before requesting permission of the Commissioner to designate an interstate planning and service area, the Governor of each State shall execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions, agreed upon by each State, governing the administration of the interstate planning and service area.

(b) The lead State shall request permission of the Commissioner to designate an interstate planning and service area.

(c) The lead State shall submit the request together with a copy of the agreement as part of its State plan or as an amendment to its State plan.

(d) Prior to the Commissioner's approval for States to designate an interstate planning and service area, the Commissioner shall determine that all applicable requirements and procedures in § 1321.29 and § 1321.33 of this part, shall be met.

(e) If the request is approved, the Commissioner, based on the agreement between the States, increases the allotment of the State with lead responsibility for administering the programs within the interstate area and reduces the allotment(s) of the State(s) without lead responsibility by one of these methods:

(1) Reallotment of funds in proportion to the number of individuals age 60 and over for that portion of the interstate planning and service area located in the State without lead responsibility; or

(2) Reallotment of funds based on the intrastate funding formula of the State(s) without lead responsibility.

§ 1321.45 Transfer between congregate and home-delivered nutrition service allotments.

(a) A State agency, without the approval of the Commissioner, may transfer between allotments up to 30 percent of a State's separate allotments for congregate and home-delivered nutrition services.

(b) A State agency may apply to the Commissioner to transfer from one allotment to the other a portion exceeding 30 percent of a State's separate allotments for congregate and home-delivered nutrition services. A State agency desiring such a transfer of allotment shall:

(1) Specify the percent which it proposes to transfer from one allotment to the other;

(2) Specify whether the proposed transfer is for the entire period of a State plan or a protion of a plan period; and

(3) Specify the purpose of the proposed transfer.

§ 1321.47 Statewide non-Federal share requirements.

The statewide non-Federal share for State or area plan administration shall not be less than 25 percent of the funds usesd under this part. All services statewide, including ombudsman services and services funded under Title III-B, C, D, E and F, shall be funded on a statewide basis with a non-Federal share of not less than 15 percent. Matching requirements for individual area agencies are determined by the State agency.

§ 1321.49 State agency maintenance of effort.

In order to avoid a penalty, each fiscal year the State agency, to meet the required non-federal share applicable to its allotments under this part, shall spend under the State plan for both services and administration at least the average amount of State funds it spent under the plan for the three previous fiscal years. If the State agency spends less than this amount, the Commissioner reduces the State's allotments for supportive and nutrition services under this part by a percentage equal to the percentage by which the State reduced its expenditures.

§ 1321.51 Confidentiality and disclosure of information.

(a) A State agency shall have procedures to protect the confidentiality of information about older persons collected in the conduct of its responsibilities. The procedures shall ensure that no information about an order person, or obtained from an older person by a service provider or the State or area

agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State, or local monitoring agencies.

(b) A State agency is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

(c) A State or area agency on aging may not require a provider of legal assistance under this part to reveal any information that is protected by attorney client privilege.

§ 1321.52 Evaluation of unmet need.

Each State shall submit objectively collected and statistically valid data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, and multipurpose senior centers gathered pursuant to section 307(a)(3)(A) of the Act to the Commissioner. The evaluations for each State shall consider all services in these categories regardless of the source of funding for the services. This information shall be submitted not later than June 30, 1989 and shall conform to guidance issued by the Commissioner.

Subpart C—Area Agency Responsibilities

§ 1321.53 Mission of the area agency.

(a) The Older Americans Act intends that the area agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the planning and service area. This means that the area agency shall proactively carry out, under the leadership and direction of the State agency, a wide range of functions related to advocacy, planning, coordination, inter-agency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, each community in the planning and service area. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

(b) A comprehensive and coordinated community based system described in paragraph (a) of this section shall:

(1) Have a visible focal point of contact where anyone can go or call for help, information or referral on any aging issue;

(2) Provide a range of options:

(3) Assure that these options are readily accessible to all older persons: The independent, semi-dependent and totally dependent, no matter what their income;

(4) Include a commitment of public, private, voluntary and personal resources committed to supporting the system;

(5) Involve collaborative decision-making among public, private, voluntary, religious and fraternal organizations and older people in the community;

(6) Offer special help or targetted resources for the most vulnerable older persons, those in danger of losing their independence;

(7) Provide effective referral from agency to agency to assure that information or assistance is received, no matter how or where contact is made in the community;

(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older person;

(9) Have a unique character which is tailored to the specific nature of the community;

(10) Be directed by leaders in the community who have the respect, capacity and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change and plan community responses for the present and for the future.

(c) The resources made available to the area agency on aging under the Older Americans Act are to be used to finance those activities necessary to achieve elements of a community based system set forth in paragraph (b) of this section. For the purpose of assuring access to information and services for older persons, the area agency

shall work with elected community officials in the planning and service area to designate one or more focal points on aging in each community, as appropriate. The area agency shall list designated focal points in the area plan. It shall be the responsibility of the area agency, with the approval of the State agency, to define ''community'' for the purposes of this section. Since the Older Americans Act defines focal point as a ''facility'' established to encourage the maximum collocation and coordination of services for older individuals, special consideration shall be given to developing and/or designating multi-purpose senior centers as community focal points on aging. The area agency on aging shall assure that services financed under the Older Americans Act in, or on behalf of, the community will be either based at, linked to or coordinated with the focal points designated. The area agency on aging shall assure access from the designated focal points to services financed under the Older Americans Act. The area agency on aging shall work with, or work to assure that community leadership works with, other applicable agencies and institutions in the community to achieve maximum collocation at, coordination with or access to other services and opportunities for the elderly from the designated community focal points. The area agency may not engage in any activity which is inconsistent with its statutory mission prescribed in the Act or policies prescribed by the State under § 1321.11.

§ 1321.55 Organization and staffing of the area agency.

(a) An area agency may be either:

(1) An agency whose single purpose is to administer programs for older persons; or

(2) A separate organizational unit within a multi-purpose agency which functions only for purposes of serving as the area agency on aging. Where the State agency on aging designates, as an area agency on aging, a separate organizational unit of a multipurpose agency which has been serving as an area agency, the State agency action shall not be subject to section 305(b)(5)(B) of the Act.

(b) The area agency, once designated, is responsible for providing for adequate and qualified staff to perform all of the functions prescribed in this part.

(c) The designated area agency continues to function in that capacity until either:

(1) The area agency informs the State agency that it no longer wishes to carry out the responsibilities of an area agency; or

(2) The State agency withdraws the designation of the area agency as provided in § 1321.35.

§ 1321.57 Area agency advisory council.

(a) *Functions of council.* The area agency shall establish an advisory council. The council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for all older persons in the planning and service area. The council shall advise the agency relative to:

(1) Developing and administering the area plan;

(2) Conducting public hearings;

(3) Representing the interest of older persons; and

(4) Reviewing and commenting on all community policies, programs and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.

(b) *Composition of council.* The council shall include individuals and representatives of community organizations who will help to enhance the leadership role of the area agency in developing community-based systems of services. The advisory council shall be made up of:

(1) More than 50 percent older persons, including minority individuals who are participants or who are eligible to participate in programs under this part;

(2) Representatives of older persons;

(3) Representatives of health care provider organizations, including providers of veterans' health care (if appropriate);

(4) Representatives of supportive services providers organizations;

(5) Persons with leadership experience in the private and voluntary sectors;

(6) Local elected officials; and

(7) The general public.

(c) *Review by advisory council.* The area agency shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval.

§ 1321.59 Submission of an area plan and plan amendments to the State for approval.

The area agency shall submit the area plan and amendments to the State agency for approval following procedures specified by the State agency in the State policies prescribed by § 1321.11.

§ 1321.61 Advocacy responsibilities of the area agency.

(a) The area agency shall serve as the public advocate for the development or enhancement of comprehensive and coordinated community-based systems of services in each community throughout the planning and service area.

(b) In carrying out this responsibility, the area agency shall:

(1) Monitor, evaluate, and, where appropriate, comment on all policies, programs, hearings, levies, and community actions which affect older persons;

(2) Solicit comments from the public on the needs of older persons;

(3) Represent the interests of older persons to local level and executive branch officials, public and private agencies or organizations;

(4) Consult with and support the State's long-term care ombudsman program; and

(5) Undertake on a regular basis activities designed to facilitate the coordination of plans and activities with all other public and private organizations, including units of general purpose local government, with responsibilities affecting older persons in the planning and service area to promote new or expanded benefits and opportunities for older persons; and

(c) Each area agency on aging shall undertake a leadership role in assisting communities throughout the planning and service area to target resources from all appropriate sources to meet the needs of older persons with greatest economic or social need, with particular attention to low income minority individuals. Such activities may include location of services and specialization in the types of services must needed by these groups to meet this requirement. However, the area agency may not permit a grantee or contractor under this part to employ a means test for services funded under this part.

(d) No requirement in this section shall be deemed to supersede a prohibition contained in the Federal appropriation on the use of Federal funds to lobby the Congress; or the lobbying provision applicable to private nonprofit agencies and organizations contained in OMB Circular A–122.

Subpart D—Service Requirements

§ 1321.63 Purpose of services allotments under Title III.

(a) Title III of the Older Americans Act authorizes the distribution of Federal funds to the State agency on aging by formula for the following categories of services:

(1) Supportive services;

(2) Congregate meals services;

(3) Home delivered meals services;

(4) In-home services;

(5) Ombudsman services;

(6) Special needs services;

(7) Elder abuse services;

(8) Preventive health services; and

(9) Outreach services.

Funds authorized under these categories are for the purpose of assisting the State and its area agencies to develop or enhance for older persons comprehensive and coordinated community based systems as described in § 1321.53(b) throughout the State.

(b) Except for ombudsman services, State agencies on aging will award the funds made available under paragraph (a) of this section to designated area agencies on aging according to the formula determined by the State agency. Except where a waiver is granted by the State agency, area agencies shall award these funds by grant or contract to community services provider agencies and organizations. All funds awarded to area agencies under this part are for the purpose of assisting area agencies to develop or enhance

comprehensive and coordinated community based systems for older persons in, or serving, communities throughout the planning and service area.

§ 1321.65 Responsibilities of service providers under area plans.

As a condition for receipt of funds under this part, each area agency on aging shall assure that providers of services shall:

(a) Provide the area agency, in a timely manner, with statistical and other information which the area agency requires in order to meet its planning, coordination, evaluation and reporting requirements established by the State under § 1321.13;

(b) Specify how the provider intends to satisfy the service needs of low-income minority individuals in the area served, including attempting to provide services to low-income minority individuals at least in proportion to the number of low-income minority older persons in the population serviced by the provider;

(c) Provide recipients with an opportunity to contribute to the cost of the service as provided in § 1321.67;

(d) With the consent of the older person, or his or her representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older person, or the household of the older person, in imminent danger;

(e) Where feasible and appropriate, make arrangements for the availability of services to older persons in weather related emergencies;

(f) Assist participants in taking advantage of benefits under other programs; and

(g) Assure that all services funded under this part are coordinated with other appropriate services in the community, and that these services do not constitute an unnecessary duplication of services provided by other sources.

§ 1321.67 Service contributions.

(a) For services rendered with funding under the Older Americans Act, the area agency on aging shall assure that each service provider shall:

(1) Provide each older person with an opportunity to voluntarily contribute to the cost of the service;

(2) Protect the privacy of each older person with respect to his or her contributions; and

(3) Establish appropriate procedures to safeguard and account for all contributions.

(b) Each service provider shall use supportive services and nutrition services contributions to expand supportive services and nutrition services respectively. To that end, the State agency shall:

(1) Permit service providers to follow either the addition alternative or the cost sharing alternatives as stated in 45 CFR 92.25(g) (2) and (3); or

(2) A combination of the two alternatives.

(c) Each service provider under the Older Americans Act may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the provider shall consider the income ranges of older persons in the community and the provider's other sources of income. However, means tests may not be used for any service supported with funds under this part. State agencies, in developing State eligibility criteria for in-home services under section 343 of the Act, may not include a means test as an eligibility criterion.

(d) A service provider that receives funds under this part may not deny any older person a service because the older person will not or cannot contribute to the cost of the service.

§ 1321.69 Service priority for frail, homebound or isolated elderly.

(a) Persons age 60 or over who are frail, homebound by reason of illness or incapacitating disability, or otherwise isolated, shall be given priority in the delivery of services under this part.

(b) The spouse of the older person, regardless of age or condition, may receive a home-delivered meal if, according to criteria determined by the area agency, receipt of the meal is in the best interest of the homebound older person.

§ 1321.71 Legal assistance.

(a) The provisions and restrictions in this section apply only to legal assistance providers and only if they are providing legal assistance under section 307(a)(15) of the Act.

(b) Nothing in this section is intended to prohibit any attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(c) The area agency shall award funds to the legal assistance provider(s) that most fully meet the standards in this subsection. The legal assistance provider(s) shall:

(1) Have staff with expertise in specific areas of law affecting older persons in economic or social need, for example, public benefits, institutionalization and alternatives to institutionalization;

(2) Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with economic or social need;

(3) Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;

(4) Demonstrate the capacity to provide legal services to institutionalized, isolated, and homebound older individuals effectively; and

(5) Demonstrate the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language.

(d) A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.

(e) A legal assistance provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

(f) A legal assistance provider and its attorneys may engage in other legal activities to the extent that there is no conflict of interest nor other interference with their professional responsibilities under this Act.

(g) No provider shall use funds received under the Act to provide legal assistance in a fee generating case unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. All providers shall establish procedures for the referral of fee generating cases.

(1) ''Fee generating case'' means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

(2) Other adequate representation is deemed to be unavailable when:

(i) Recovery of damages is not the principal object of the client; or

(ii) A court appoints a provider or an employee of a provider pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(iii) An eligible client is seeking benefits under title II of the Social Security Act, 42 U.S.C. 401, *et seq.*, Federal Old Age, Survivors, and Disability Insurance Benefits; or title XVI of the Social Security Act, 42 U.S.C. 1381, *et seq.*, Supplemental Security Income for Aged, Blind, and Disabled.

(3) A provider may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement.

(4) When a case or matter accepted in accordance with this section results in a recovery of damages, other than statutory benefits, a provider may accept reimbursement for out-of-pocket costs and expenses incurred in connection with the case or matter.

(h) A provider, employee of the provider, or staff attorney shall not engage in the following prohibited political activities:

(1) No provider or its employees shall contribute or make available Older Americans Act funds, personnel or equipment to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;

(2) No provider or its employees shall intentionally identify the title III program or provider with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office;

(3) While engaged in legal assistance activities supported under the Act, no attorney shall engage in any political activity;

(i) No funds made available under the Act shall be used for lobbying activities, including but not limited to any activities intended to influence any decision or activity by any nonjudicial Federal, State or local individual or body. Nothing in this section is intended to prohibit an employee from:

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation;

(3) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Older Americans Act, title III regulations or other applicable law. This provision does not authorize publication of lobbying materials or training of clients on lobbying techniques or the composition of a communication for the client's use; or

(4) Making direct contact with the area agency for any purpose;

(5) Providing a client with administrative representation in adjudicatory or rulemaking proceedings or negotiations, directly affecting that client's legal rights in a particular case, claim or application;

(6) Communicating with an elected official for the sole purpose of bringing a client's legal problem to the attention of that official; or

(7) Responding to the request of a public official or body for testimony, legal advice or other statements on legislation or other issues related to aging; provided that no such action will be taken without first obtaining the written approval of the responsible area agency.

(j) While carrying out legal assistance activities and while using resources provided under the Act, no provider or its employees shall:

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation;

(2) Encourage, direct, or coerce others to engage in such activities; or

(3) At any time engage in or encourage others to engage in:

(i) Any illegal activity; or

(ii) Any intentional identification of programs funded under the Act or recipient with any political activity.

(k) None of the funds made available under the Act may be used to pay dues exceeding $100 per recipient per annum to any organization (other than a bar association), a purpose or function of which is to engage in activities prohibited under these regulations unless such dues are not used to engage in activities for which Older Americans Act funds cannot be used directly.

§ 1321.73 Grant related income under Title III-C.

States and sub-grantees must require that their subgrantees' grant related income be used in either the matching or cost sharing alternative in 45 CFR 92.25(g)(2) or the additive alternative in § 92.25(g)(3) or a combination of the two. The deductive alternative described in § 92.25(g)(1) is not permitted.

§ 1321.75 Licenses and safety.

The State shall ensure:

(a) That, in making awards for multipurpose senior center activities, the area agency will ensure that the facility complies with all applicable State and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes; and

(b) The technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part, by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

Subpart E—Hearing Procedures for State Agencies

§ 1321.77 Scope.

(a) Hearing procedures for State plan disapproval, as provided for in section 307(c) and section 307(d) of the Act are subject to the previsions of 45 CFR part 213 with the following exceptions:

(1) Section 213.1(a); § 213.32(d); and § 213.33 do not apply.

(2) Reference to SRS Hearing Clerk shall be read to mean HHS Hearing Clerk.

(3) References to Administrator shall be read to mean Commissioner on Aging.

(b) Instead of the scope described in § 213.1(a), this subpart governs the procedures and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment:

(2) Determination that a State agency does not meet the requirements of this part:

(3) Determination that there is a failure in the provisions or the administration of an approved plan to comply substantially with Federal requirements, including failure to comply with any assurance required under the Act or under this part.

§ 1321.79 When a decision is effective.

(a) The Commissioner's decision specifies the effective date for AoA's reduction and withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the agency or the plan is changed to meet all Federal requirements, except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

§ 1321.81 How the State may appeal.

A State may appeal the final decision of the Commissioner disapproving the State plan or plan amendment, finding of noncompliance, or finding that a State agency does not meet the requirements of this part to the U.S. Court of Appeals for the circuit in which the State is located. The State shall file the appeal within 30 days of the Commissioner's final decision.

§ 1321.83 How the Commissioner may reallot the State's withheld payments.

The Commissioner disburses funds withheld from the State directly to any public or nonprofit private organization or agency, or political subdivision of the State that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part and which contains an agreement to meet the non-federal share requirements.

PART 1326—GRANTS TO INDIAN TRIBES FOR SUPPORT AND NUTRITION SERVICES

Sec.

1326.1 Basis and purpose of this part.
1326.3 Definitions.
1326.5 Applicability of other regulations.
1326.7 Confidentiality and disclosure of information.
1326.9 Contributions.
1326.11 Prohibition against supplantation.
1326.13 Supportive services.
1326.15 Nutrition services.
1326.17 Access to information.
1326.19 Application requirements.
1326.21 Application approval.
1326.23 Hearing procedures.

AUTHORITY: 42 U.S.C. 3001; Title VI, Part A of the Older Americans Act.

SOURCE: 53 FR 33774, Aug. 31, 1988, unless otherwise noted.

§ 1326.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of American Indian elders on Indian reservations. This part implements title VI (part A) of the Older Americans Act, as amended, by establishing the requirements that an Indian tribal organization shall meet in order to receive a grant to promote the delivery of services for older Indians that are comparable to services provided under Title III. This part also prescribes application and hearing requirements and procedures for these grants.

§ 1326.3 Definitions.

Acquiring, as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a multipurpose senior center.

Altering or *renovating*, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

Budgeting period, as used in § 1326.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

Constructing, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

Department, means the Department of Health and Human Services.

Indian reservation, means the reservation of any Federally recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, any community on non-trust land under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with allotted lands, or lands subject to a restriction against alienation imposed by the United States, and Alaskan Native regions established, pursuant to the Alaska Native Claims Settlement Act (84 Stat. 688).

Indian tribe, means any Indian tribe, band, nation, or organized group or community, including any Alaska Native Village, regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b).

Means test, as used in the provision of services, means the use of an older Indian's income or resources to deny or limit that person's receipt of services under this part.

Older Indians, means those individuals who have attained the minimum age determined by the tribe for services.

Project period, as used in § 1326.19 of this part, means the total time for which a project is approved for support, including any extensions.

Service area, as used in § 1326.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the tribal organization provides supportive and nutritional services to older Indians residing there. A service area may include all or part of the reservation or any portion of a county or counties which has a common boundary with the reservation. A service area may also include a noncontiguous area if the designation of such an area will further the purpose of the Act and will provide for more effective administration of the program by the tribal organization.

Service provider, means any entity that is awarded a subgrant or contract from a tribal organization to provide services under this part.

Tribal organization, as used in § 1326.7 and elsewhere in this part, means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. Provided that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite to the letting or making of the contract or grant (25 U.S.C. 450b).

§ 1326.5 Applicability of other regulations.

The following regulations in title 45 of the Code of Federal Regulations apply to all activities under this part:

(a) Part 16—Procedures of the Departmental Grant Appeals Board;

(b) Part 74—Administration of Grants;

(c) Part 75—Informal Grant Appeals Procedures;

(d) Part 80—Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of title VI of the Civil Rights Act of 1964;

(e) Part 81—Practice and Procedure for Hearings under part 80 of this Title;

(f) Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financial Participation; and

(g) Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

§ 1326.7 Confidentiality and disclosure of information.

A tribal organization shall have confidentiality and disclosure procedures as follows:

(a) A tribal organization shall have procedures to ensure that no information about an older Indian or obtained from an older Indian by any provider of services is disclosed by the provider of such services in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal or tribal monitoring agencies.

(b) A tribal organization is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

§ 1326.9 Contributions.

(a) Each tribal organization shall:

(1) Provide each older Indian with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Indian with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all services contributions to expand comprehensive and coordinated services systems supported under this part, while using nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.

(b) Each tribal organization may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the tribal organization shall consider the income ranges of older Indians in the service area and the tribal organization's other sources of income. However, means tests may not be used.

(c) A tribal organization that receives funds under this part may not deny any older Indian a service because the older Indian will not or cannot contribute to the cost of the service.

§ 1326.11 Prohibition against supplantation.

A tribal organization shall ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

§ 1326.13 Supportive services.

(a) A tribal organization may provide any of the supportive services mentioned under title III of the Older Americans Act, and any other supportive services that are necessary for the general welfare of older Indians.

(b) If an applicant elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The tribal organization shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The tribal organization shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior centers assisted

under this part. The tribal organization assures technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If an applicant elects to provide legal services, it shall substantially comply with the requirements in § 1321.71 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

§ 1326.15 Nutrition services.

(a) In addition to providing nutrition services to older Indians, a tribal organization may:

(1) Provide nutrition services to the spouses of older Indians;

(2) Provide nutrition services to non-elderly handicapped or disabled Indians who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided;

(3) Offer a meal, on the same basis as meals are provided to older Indians, to individuals providing volunteer services during meal hours; and

(4) Provide a meal to individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under that part.

(b) Each tribal organization may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the tribal organization shall have an agreement with the U.S. Department of Agriculture's Food and Nutrition Service (FNS) to be a distributing agency.

(c) Where applicable, the tribal organization shall work with agencies responsible for administering other programs to facilitate participation of older Indians.

§ 1326.17 Access to information.

A tribal organization shall:

(a) Establish or have a list of all services that are available to older Indians in the service area,

(b) Maintain a list of services needed or requested by the older Indians; and

(c) Provide assistance to older Indians to help them take advantage of available services.

§ 1326.19 Application requirements.

A tribal organization shall have an approved application. The application shall be submitted as prescribed in section 604 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 604(a)(5) of the Act, and any objectives established by the Commissioner.

(b) A description of the geographic boundaries of the service area proposed by the tribal organization:

(c) Documentation of the ability of the tribal organization to deliver supportive and nutrition services to older Indians, or documentation that the tribal organization has effectively administered supportive and nutrition services within the last 3 years;

(d) Assurances as prescribed by the Commissioner that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoken by a predominant number of older Indians;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) A tribal organization shall comply with all requirements set forth in § 1326.7 through 1326.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under title III of the Act.

(e) A tribal resolution(s) authorizing the tribal organization to apply for a grant under this part; and

(f) Signature by the principal official of the tribe.

§ 1326.21 Application approval.

(a) Approval of any application under section 604(e) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuaton, or other awards with respect to any approved application or portion thereof.

(b) The Commissioner may give first priority in awarding grants to grantees which have effectively administered such grants in the prior year.

§ 1326.23 Hearing procedures.

In meeting the requirements of section 604(d)(3) of the Act, if the Commissioner disapproves an application from an eligible tribal organization, the tribal organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the tribal organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond with 30 days to the merits of the tribal organization's request.

(c) The Commissioner notifies the tribal organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the tribal organization to:

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or designated official decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or designated official decides.

(e) The Commissioner or designated official conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers, documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissoner or designated official issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the tribal organization.

(i) Either the tribal organization or the staff of the Administration on Aging may request for good cause an extension of any of the time limits specified in this section.

PART 1328—GRANTS FOR SUPPORTIVE AND NUTRITIONAL SERVICES TO OLDER HAWAIIAN NATIVES

Sec.

1328.1 Basis and purpose of this part.
1328.3 Definitions.
1328.5 Applicability of other regulations.
1328.7 Confidentiality and disclosure of information.
1328.9 Contributions.
1328.11 Prohibition against supplantation.
1328.13 Supportive services.
1328.15 Nutrition services.
1328.17 Access to information.
1328.19 Application requirements.
1328.21 Application approval.
1328.23 Hearing procedures.

AUTHORITY: 42 U.S.C. 3001; Title VI Part B of the Older Americans Act.

SOURCE: 53 FR 33777, Aug. 31, 1988, unless otherwise noted.

§ 1328.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of Older Hawaiian Natives. This part implements title VI (part B) of the Older Americans Act, as amended, by establishing the requirements that a public or nonprofit private organization shall meet in order to receive a grant to promote the delivery of services for older Hawaiian Natives that are comparable to services provided under title III. This part also prescribes application and hearing requirements and procedures for these agrants.

§ 1328.3 Definitions.

Acquiring, as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease of 10 years or more for use as a multipurpose senior center.

Act, means the Older Americans Act of 1965, as amended.

Altering or *renovating*, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

Budgeting period, as used in § 1328.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

Constructing, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modificaitons to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

Department, means the Department of Health and Human Services.

Eligible organization, means a public or nonprofit private organization having the capacity to provide services under this part for older Hawaiian Natives.

Grantee, as used in this part, means an eligible organization that has received funds to provide services to older Hawaiians.

Hawaiian Native, as used in this part, means any individual any of whose ancestors were native of the area which consists of the Hawaiian Islands prior to 1778.

Means test, as used in the provision of services, means the use of an older Hawaiian Native's income or resources to deny or limit that person receipt of services under this part.

Older Hawaiian, means any individual, age 60 or over, who is an Hawaiian Native.

Project period, as used in § 1328.19 of this part, means the total time for which a project is approved for support, including any extensions.

Service area, as used in § 1328.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the grantee provides supportive and nutritional services to older Hawaiian Natives residing there.

§ 1328.5 Applicability of other regulations.

The following regulations in title 45 of the Code of Federal Regulations apply to all activities under this part:

(a) Part 16-Procedures of the Departmental Grant Appeals Board;

(b) Part 74-Administration of Grants;

(c) Part 75-Informal Grant Appeals Procedures;

(d) Part 80-Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of title VI of the Civil Rights Act of 1964;

(e) Part 81-Practice and procedures for hearings under part 80;

(f) Part 84-Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financing Participation; and

(g) Part 91-Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

§ 1328.7 Confidentiality and disclosure of information.

A grantee shall have confidentiality and disclosure procedures as follows:

(a) The grantee shall have procedures to ensure that no information about an older Hawaiian Native or obtained from an older Hawaiian Native is disclosed in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal monitoring agencies.

(b) A grantee is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

§ 1328.9 Contributions.

(a) Each grantee shall:

(1) Provide each older Hawaiian Native with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Hawaiian Native with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all supportive services contributions to expand the services provided under this part; and

(5) Use all nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.

(b) Each grantee may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the grantee shall consider the income ranges of older Hawaiian Natives in the service area and the grantee's other sources of income. However, means tests may not be used.

(c) A grantee may not deny any older Hawaiian a service because the older Hawaiian will not or cannot contribute to the cost of the service.

§ 1328.11 Prohibition against supplantation.

A grantee shall ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

§ 1328.13 Supportive services.

(a) A grantee may provide any of the supportive services specified under title III of the Older Americans Act and any other supportive services, approved in the grantee's application, that are necessary for the general welfare of older Hawaiian Natives.

(b) If a grantee elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The grantee shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The grantee shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part. The grantee shall assure technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If a grantee elects to provide legal services, it shall substantially comply with the requirements in § 1321.71 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

§ 1328.15 Nutrition services.

(a) In addition to providing nutrition services to older Hawaiian Natives, a grantee may:

(1) Provide nutrition services to the spouses of older Hawaiian Natives;

(2) Provide nutrition services to nonelderly handicapped or disabled Hawaiian Natives who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided;

(3) Offer a meal, on the same basis as meals are provided to older Hawaiian Natives, to individuals providing volunteer services during meal hours; and

(4) Provide a meal to individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under that part.

(b) Each grantee may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the grantee shall have an agreement with the U.S. Department of Agriculture's Food and Nutrition Service (FNS) to be a distributing agency.

(c) Where applicable, the grantee shall work with agencies responsible for administering other programs to facilitate participation of older Hawaiian Natives.

§ 1328.17 Access to information.

A grantee shall:

(a) Establish or have a list of all services that are available to older Hawaiian Natives in the service area;

(b) Maintain a list of services needed or requested by the older Hawaiians; and

(c) Provide assistance to older Hawaiian Natives to help them take advantage of available services.

§ 1328.19 Application requirements.

To receive funds under this part, an eligible organization shall submit an application as prescribed in section 623 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 623(a)(6) of the Act, and any objectives established by the Commissioner;

(b) A description of the geographic boundaries of the service area proposed by the eligible organization;

(c) Documentation of the organization's ability to serve older Hawaiian Natives;

(d) Assurances as prescribed by the Commissioner that:

(1) The eligible organization represents at least 50 older Hawaiian Natives who have attained 60 years of age or older;

(2) The eligible organization shall conduct all activities on behalf of older Hawaiian natives in close coordination with the State agency and Area Agency on Aging:

(3) The eligible organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(4) The eligible organization shall ensure that all services under this part are provided without use of any means tests;

(5) The eligible organization shall comply with all requirements set forth in §§ 1328.7 through 1328.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under title III of the Act.

(e) Signature by the principal official of the eligible organization.

§ 1328.21 Application approval.

(a) Approval of any application under section 623(d) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuation, or other awards with respect to any approved application or portion thereof.

(b) The Commissioner may give first priority in awarding grants to eligible applicant organizations that have prior experience in serving Hawaiian Natives, particularly older Hawaiian Natives.

§ 1328.23 Hearing procedures.

In accordance with section 623(c)(3) of the Act, if the Commissioner disapproves an application from an eligible organization, the organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond within 30 days to the merits of the organization's request.

(c) The Commissioner notifies the organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the organization to:

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or the Commissioner's designee decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or the Commissioner's designee decides.

(e) The Commissioner or the Commissioner's designee conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissioner or the Commissioner's designee issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the organization.

(i) Either the organization or the staff of the Administration on Aging may request, for good cause, an extension of any of the time limits specified in this section.

SUBCHAPTER D—THE ADMINISTRATION FOR NATIVE AMERICANS, NATIVE AMERICAN PROGRAMS

PART 1336—NATIVE AMERICAN PROGRAMS

Subpart A—Definitions

Sec.
1336.10 Definitions.

Subpart B—Purpose of the Native American Programs

1336.20 Program purpose.

Subpart C—Native American Projects

1336.30 Eligibility under sections 804 and 805 of the Native American Programs Act of 1974.
1336.31 Project approval procedures.
1336.32 Grants.
1336.33 Eligible applicants and proposed activities which are ineligible.
1336.34 Notice of ineligibility.
1336.35 Appeal of ineligibility.

Subpart D—Evaluation

1336.40 General.

Subpart E—Financial Assistance Provisions

1336.50 Financial and administrative requirements.
1336.51 Project period.
1336.52 Appeals.

Subpart F—Native Hawaiian Revolving Loan Fund Demonstration Project

1336.60 Purpose of this subpart.
1336.61 Purpose of the Revolving Loan Fund.
1336.62 Definitions.
1336.63 General responsibilities of the Loan Administrator.
1336.64 Development of goals and strategies: Responsibilities of the Loan Administrator.
1336.65 Staffing and organization of the Revolving Loan Fund: Responsibilities of the Loan Administrator.
1336.66 Procedures and criteria for administration of the Revolving Loan Fund: Responsibilities of the Loan Administrator.
1336.67 Security and collateral: Responsibilities of the Loan Administrator.
1336.68 Defaults, uncollectible loans, liquidations: Responsibilities of the Loan Administrator.
1336.69 Reporting requirements: Responsibilities of the Loan Administrator.
1336.70 Technical assistance: Responsibilities of the Loan Administrator.
1336.71 Administrative costs.
1336.72 Fiscal requirements.
1336.73 Eligible borrowers.
1336.74 Time limits and interest on loans.
1336.75 Allowable loan activities.
1336.76 Unallowable loan activities.
1336.77 Recovery of funds.

AUTHORITY: 42 U.S.C. 2991 *et seq.*

SOURCE: 48 FR 55821, Dec. 15, 1983, unless otherwise noted.

Subpart A—Definitions

§ 1336.10 Definitions.

For the purposes of this part, unless the context otherwise requires:

Act means the Native American Programs Act of 1974, as amended (42 U.S.C. 2991 et seq.).

Alaskan Native means a person who is an Alaskan Indian, Eskimo, or Aleut, or any combination thereof. The term also includes any person who is regarded as an Alaskan Native by the Alaskan Native Village or group of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaskan Native by an Alaskan Native Village or group. The term includes any Alaskan Native as so defined, either or both of whose adoptive parents are not Alaskan Natives.

American Indian or Indian means any individual who is a member or a descendant of a member of a North American tribe, band, Pueblo or other organized group of native people who are indigenous to the Continental United States, or who otherwise have a special relationship with the United States or a State through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian tribe, group, band, or community of which he or she claims to be a member.

ANA means the Administration for Native Americans within the Office of Human Development Services.

Applicant means an organization which has applied for financial assistance from ANA.

Budget period means the interval of time into which a project period is divided for budgetary and funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period.

Economic and social self-sufficiency means the ability of Native Americans to define and achieve their own economic and social goals.

Indian tribe means a distinct political community of Indians which exercises powers of self-government.

Native American means American Indian, Indian, Native Hawaiian, and Alaskan Native, as defined in the Act, or in this section.

Project period means, for discretionary grants and cooperative agreements, the total time for which the recipient's project or program is approved for support, including any extension, subject to the availability of funds, satisfactory progress, and a determination by HHS that continued funding is in the best interest of the Government.

Recipient means an organization which has applied for financial assistance, and to which financial assistance is awarded under this Act. The term includes grantees and recipients of cooperative agreements.

Subpart B—Purpose of the Native American Programs

§ 1336.20 Program purpose.

The purpose of the Native American Programs authorized by the Native American Programs Act of 1974 is to promote the goal of economic and social self-sufficiency for Native Americans.

Subpart C—Native American Projects

§ 1336.30 Eligibility under sections 804 and 805 of the Native American Programs Act of 1974.

Financial assistance under sections 804 and 805 may be made to public or private agencies including ''for-profit'' organizations.

[48 FR 55821, Dec. 15, 1983, as amended at 53 FR 23968, June 24, 1988; 53 FR 28223, July 27, 1988; 54 FR 3452, Jan. 24, 1989; 61 FR 42820, Aug. 19, 1996]

§ 1336.31 Project approval procedures.

(a) Each applicant for financial assistance under section 803 of the Act must submit a work plan that falls within the statutory requirements of the Act and meets the criteria of program announcements published by ANA in the FEDERAL REGISTER. If the proposed project extends beyond one year, a work plan must be submitted for the period of time specified by the Commissioner in the Program Announcement. ANA will determine whether to approve all, part, or none of the requested work plan. Proposed changes to the approved work plan must receive the written approval of ANA prior to implementation by the recipient.

(b) ANA will negotiate the approved project goals, objectives, work plan, and the funding level for each budget period with each recipient.

(c) The evaluation for the purpose of making an approval decision on each proposed work plan will take into account the proposal's conformance with ANA program purposes and the recipient's past performance and accomplishments.

(d) Financial assistance awarded under section 803 may be renewed by ANA to grantees based on acceptable work plans and past performance.

(Approved by the Office of Management and Budget under control number 0980–0016)

§ 1336.32 Grants.

Generally, financial assistance will be made available for a one-year budget period and subsequent non-competing continuation awards with the same project period will also be for one year. A recipient must submit a separate application to have financial assistance continued for each subsequent year, with the same project period, but the continuation application need only contain budget and a summary progress report.

§ 1336.33 Eligible applicants and proposed activities which are ineligible.

(a) Eligibility for the listed programs is restricted to the following specified categories of organizations. In addition, applications from tribal components which are tribally-authorized divisions of a larger tribe must be approved by the governing body of the Tribe. If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served.

(1) Social and Economic Development Strategies (SEDS) and Preservation and Enhancement of Native American Languages:

(i) Federally recognized Indian Tribes;

(ii) Consortia of Indian Tribes;

(iii) Incorporated non-Federally recognized Tribes;

(iv) Incorporated nonprofit multipurpose community-based Indian organizations;

(v) Urban Indian Centers;

(vi) National and regional incorporated nonprofit Native American organizations with Native American community-specific objectives;

(vii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or nonprofit village consortia;

(viii) Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

(ix) Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;

(x) Nonprofit Native organizations in Alaska with village specific projects;

(xi) Public and nonprofit private agencies serving Native Hawaiians;

(xii) Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States);

(xiii) Tribally Controlled Community Colleges Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders; and

(xiv) Nonprofit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional councils) as recognized by the Bureau of Indian Affairs.

(Statutory authority: Sections 803(a) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991 b(a) and 42 U.S.C. 2991b–3)

(2) Alaska-Specific Social and Economic Development Strategies (SEDS) Projects:

(i) Federally recognized Indian Tribes in Alaska;

(ii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

(iii) Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

(iv) Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and

(v) Nonprofit Native organizations in Alaska with village specific projects.

(3) Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities:

(i) Federally recognized Indian Tribes;

(ii) Incorporated non-Federally and State recognized Tribes;

(iii) Nonprofit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act (IRA) or traditional councils) as recognized by the Bureau of Indian Affairs.

(iv) Nonprofit Alaska Native Regional Associations and/or Corporations with village specific projects; and

(v) Other tribal or village organizations or consortia of Indian Tribes. (Statutory authority: § 8094A of the Department of Defense Appropriations Act, 1994 (Public Law 103–139), § 8094A of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991h(b)).

(4) Improvement of the capability of tribal governing bodies to regulate environmental quality:

(i) Federally recognized Indian Tribes;

(ii) Incorporated non-Federally and State recognized Indian tribes;

(iii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or nonprofit village consortia;

(iv) Nonprofit Alaska Native Regional Corporations/Associations with village-specific projects;

(v) Other tribal or village organizations or consortia of Indian tribes: and

(vi) Tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs. (Statutory authority: Sections 803(d) of the Native Americans Programs Act of 1974, as amended 42 U.S.C. 2991b(d).)

(b) The following is a nonexclusive list of activities that are ineligible for funding under programs authorized by the Native American Programs Act of 1974:

(1) Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations (''third party T/TA''). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable;

(2) Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS long-range development plan;

(3) The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs;

(4) Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions; however, for Competitive Area 2, Alaska-Specific SEDS Projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place;

(5) The conduct of activities which are not responsive to one or more of the three interrelated ANA goals (Governance Development, Economic Development, and Social Development);

(6) Proposals from consortia of tribes that are not specific with regard to support from, and roles of member tribes. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes which duplicates activities for which member tribes also receive funding from ANA; and

(7) The purchase of real estate. (Statutory authority: Sections 803B of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b–2)

[61 FR 42820, Aug. 19, 1996]

§ 1336.34 Notice of ineligibility.

(a) Upon a finding by the Commissioner that an organization which has applied for funding is ineligible or that the activities proposed by an organization are ineligible, the Commissioner shall inform the applicant by certified letter of the decision.

(b) The letter must include the following:

(1) The legal and factual grounds for the Commissioner's finding concerning eligibility;

(2) A copy of the regulations in this part; and

(3) The following statement: This is the final decision of the Commissioner, Administration for Native Americans. It shall be the final decision of the Department unless, within 30 days after receiving this decision as provided in § 810(b) of the Native Americans Programs Act of 1974, as amended, and 45 CFR part 1336, you deliver or mail (you should use registered or certified mail to establish the date) a written notice of appeal to the HHS Departmental Appeals Board, 200 Independence Avenue, S.W., Washington, D.C. 20201. You shall attach to the notice a copy of this decision and note that you intend an appeal. The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant's position on such issue(s) along with pertinent facts and reasons in support of the position. We are enclosing a copy of 45

CFR part 1336 which governs the conduct of appeals under § 810(b). For additional information on the appeals process see 45 CFR 1336.35. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

[61 FR 42821, Aug. 19, 1996]

§ 1336.35 Appeal of ineligibility.

The following steps apply when seeking an appeal on a finding of ineligibility for funding:

(a) An applicant, which has had its application rejected either because it has been found ineligible or because the activities it proposes are ineligible for funding by the Commissioner of ANA, may appeal the Commissioner's ruling to the HHS Departmental Appeals Board, in writing, within 30 days following receipt of ineligibility notification.

(b) The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant's position on such issue(s) along with pertinent facts and reasons in support of the position.

(c) Upon receipt of appeal for reconsideration of a rejected application or activities proposed by an applicant, the Departmental Appeals Board will notify the applicant by certified mail that the appeal has been received.

(d) The applicant's request for reconsideration will be reviewed by the Departmental Appeals Board in accordance with 45 CFR part 16, except as otherwise provided in this part.

(e) The Commissioner shall have 45 days to respond to the applicant's submission under paragraph (a) of this section.

(f) The applicant shall have 20 days to respond to the Commissioner's submission and the parties may be requested to submit additional information within a specified time period before closing the record in the appeal.

(g) The Departmental Appeals Board will review the record in the appeal and provide a final written decision within 30 days following the closing of the record, unless the Board determines for good reason that a decision cannot be issued within this time period and so notifies the parties.

(h) If the Departmental Appeals Board determines that the applicant is eligible or that the activities proposed by the applicant are eligible for funding, such eligibility shall not be effective until the next cycle of grant proposals are considered by the Administration for Native Americans. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

[61 FR 42822, Aug. 19, 1996]

Subpart D—Evaluation

§ 1336.40 General.

Progress reports and continuation applications must contain sufficient information for ANA to determine the extent to which the recipient meets ANA project evaluation standards. Sufficient information means information adequate to enable ANA to compare the recipient's accomplishments with the goals and activities of the approved work plan and with ANA project evaluation criteria.

(Approved by the Office of Management and Budget under control numbers 0980–0155 and 0980–0144)

Subpart E—Financial Assistance Provisions

§ 1336.50 Financial and administrative requirements.

(a) *General.* The following HHS regulations apply to all grants awarded under this part:

45 CFR Part 16 Department grant appeals process.

45 CFR Part 46 Protection of human subjects.

45 CFR Part 74 Administration of grants.

45 CFR Part 75 Informal grant appeals procedures (indirect cost rates and other cost allocations).

45 CFR Part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

45 CFR Part 81 Practice and procedure for hearing under part 80.

45 CFR Part 84 Nondiscrimination on the basis of handicap in federally assisted programs.

45 CFR Part 86 Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 91 Nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance from HHS.

(b) *Cost sharing or matching*—(1) *Policy*. Recipients of financial assistance under sections 803, 804, and 805 of the Act are required to provide a matching share of 20 percent of the approved cost of the assisted project.

This requirement may be waived in accordance with the criteria in §1336.50(b)(3). The matching share requirement may be met using either cash or in-kind contributions.

(2) *Application*. If an applicant wishes to request a waiver of the requirement for a 20 percent non-Federal matching share, it must include with is application for funding a written justification that clearly explains why the applicant cannot provide the matching share and how it meets the criteria.

(3) *Criteria*. Both of the following criterial must be met for an applicant to be eligible for a waiver of the non-Federal matching requirement:

(i) Applicant lacks the available resources to meet part or all of the non-Federal matching requirement. This must be documented by an institutional audit if available, or a full disclosure of applicant's total assets and liabilities.

(ii) Applicant can document that reasonable efforts to obtain cash or inkind contributions for the purposes of the project from third parties have been unsuccessful. Evidence of such efforts can include letters from possible sources of funding indicating that the requested resources are not available for that project. The requests must be appropriate to the source in terms of project purpose, applicant eligibility, and reasonableness of the request.

(4) *Approval*. For a waiver to be approved, ANA must determine that it will not prevent the award of other grants at levels it believes are desirable for the purposes of the program. Waiver of all or part of the non-Federal share shall apply only to the budget period for which application was made.

(c) *Maintenance of effort*. (1) Applications for financial assistance under this Part must include either a statement of compliance with the maintenance of effort requirement contained in section 803(c) of the Act, or a request for a waiver, in accordance with criteria established in this paragraph.

(2) To be eligible for a waiver of the maintenance of effort requirement, the applicant must demonstrate to ANA that the organization whose funds previously supported the project discontinued its support:

(i) As a result of funding limitations; and

(ii) Not as a result of an adverse evaluation of the project's purpose or the manner in which it was conducted; and

(iii) Not because it was anticipated that Federal funds would replace the original source of project funding.

(3) In addition, the applicant must demonstrate in the request for a waiver that the maintenance of effort requirement would result in insurmountable hardship for the recipient or would otherwise be inconsistent with the purposes of this part.

(d) *Delegation of project operations*. (1) Each subgrant awarded to a delegate agency must have specific prior approval by ANA. Such delegation must be formalized by written agreement.

(2) The agreement must specify the activities to be performed by the delegate agency, the time schedule, the policies and procedures to be followed, the dollar limitations, and the costs allowed. The applicant must submit a budget for each delegate agency as part of its application.

(e) *Unallowable costs*. ANA funds may not be used by recipients to purchase real property.

(f) *Office of the Chief Executive*. The costs of salaries and expenses of the Office of Chief Executive of a federally recognized Indian tribal government (as defined in §74.3 of this title) are allowable, provided that such costs exclude any portion of salaries and expenses of the Office of Chief Executive that are a cost of general government and provided they are related to a project assisted under this part.

§ 1336.51 Project period.

The Notice of Financial Assistance Awarded will specify the period for which support is intended, although the Department makes funding commitments only for one budget period at a time. Financial assistance under section 803 of the Act may be ongoing, subject to policy decisions and funding limitations.

§ 1336.52 Appeals.

(a) *Right to appeal.* Recipients whose financial assistance has been suspended or terminated, or whose non-competing continuation applications for refunding have been denied, may appeal such decisions using the procedures described in this section. Denial of an application for refunding means the refusal to fund a non-competing continuation application for a budget period within a previously approved project period.

(b) *Suspension, termination, and denial of funding.* Procedures for and definitions of suspension and termination of financial assistance are published in 45 CFR 74.110–74.116. Appeals from a denial of refunding will be treated the same procedurally as appeals to termination of financial assistance. The term ''denial of refunding'' does not include policy decisions to eliminate one or more activities of an approved project. A decision not to fund an application at the end of the recipients's project period is not a ''denial of refunding'' and is not subject to appeal.

(c) *Hearings.* (1) A recipient shall be given an initial written notice at least thirty (30) days prior to the suspension or termination of financial assistance except in emergency situations, which occur when Federal property is in imminent danger of dissipation, or when life, health, or safety is endangered. During this period of time, the recipient has the opportunity to show cause to ANA why such action should not be taken.

(2) A recipient who has received final written notice of termination or denial of refunding, or whose financial assistance will be suspended for more than 30 days, or who has other appealable disputes with ANA as provided by 45 CFR part 16 may request review by the Departmental Grant Appeals Board under the provisions of 45 CFR part 16.

(3) If a recipient appeals a suspension of more than 30 days which subsequently results in termination of financial assistance, both actions may be considered simultaneously by the Departmental Grant Appeals Board.

Subpart F—Native Hawaiian Revolving Loan Fund Demonstration Project

AUTHORITY: 88 Stat. 2324, 101 Stat. 976 (42 U.S.C. 2991, et seq.).

SOURCE: 53 FR 23969, June 24, 1988; 53 FR 28223, July 27, 1988; 54 FR 3452, Jan. 24, 1989, unless otherwise noted.

§ 1336.60 Purpose of this subpart.

(a) The Administration for Native Americans will award a five-year demonstration grant to one agency of the State of Hawaii or to one community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians to develop procedures for and to manage a revolving loan fund for Native Hawaiian individuals and organizations in the State of Hawaii. (section 830A(a)(1))

(b) This subpart sets forth the requirements that the organization or agency selected to administer the revolving loan fund must meet and the terms and conditions applicable to loans made to borrowers from the loan fund.

§ 1336.61 Purpose of the Revolving Loan Fund.

The purpose of the Native Hawaiian Revolving Loan Fund is to provide funding not available from other sources on reasonable terms and conditions to:

(a) Promote economic activities which result in expanded opportunities for Native Hawaiians to increase their ownership of, employment in, or income from local economic enterprise;

(b) Assist Native Hawaiians to overcome specific gaps in local capital markets and to encourage greater private-sector participation in local economic development activities; and

(c) Increase capital formation and private-sector jobs for Native Hawaiians. (section 803A(a)(1)(A))

§ 1336.62 Definitions.

Applicant means an applicant for a loan from the Native Hawaiian Revolving Loan Fund. An applicant must be an individual Native Hawaiian or a Native Hawaiian organization. If the applicant is a group of people organized for economic development purposes, the applicant ownership must be 100% Native Hawaiian.

Commissioner means the Commissioner of the Administration for Native Americans.

Cooperative association means an association of individuals organized pursuant to State or Federal law, for the purpose of owning and operating an economic enterprise for profit, with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized pursuant to State or Federal law, as a corporation, with or without stock, for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to make scheduled payments on a loan, failure to obtain the lender's approval for disposal of assets mortgaged as security for a loan, or failure to comply with the convenants, obligations or other provisions of a loan agreement.

Economic enterprise means any Native Hawaiian-owned, commercial, industrial, agricultural or other business activity established or organized for the purpose of profit.

Financing statement means the document filed or recorded in country or State offices pursuant to the provisions of the Uniform Commercial Code as enacted by Hawaii notifying third parties that a lender has a lien on the chattel and/or crops of a borrower.

Loan Administrator means either the agency of the State of Hawaii or the community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians selected to administer the revolving loan fund.

Mortgages mean mortgages and deeds of trust evidencing an encumbrance of trust or restricted land, mortgages and security agreements executed as evidence of liens against crops and chattels, and mortgages and deeds of trust evidencing a lien on leasehold interests.

Native Hawaiian means an individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

Partnership means two or more persons engaged in the same business, sharing its profits and risks, and organized pursuant to state or Federal law.

Profits mean the net income earned after deducting operating expenses from operating revenues.

Revolving Loan Fund (RLF) means all funds that are now or are hereafter a part of the Native Hawaiian Revolving Loan Fund authorized by the Native American Programs Act of 1974, as amended in 1987, and supplemented by sums collected in repayment of loans made, including interest or other charges on loans and any funds appropriated pursuant to section 803A of the Native American Programs Act of 1974, as amended.

§ 1336.63 General responsibilities of the Loan Administrator.

(a) The Loan Administrator will make loans to Native Hawaiian organizations and to individual Native Hawaiians for the purpose or promoting economic development among Native Hawaiians in the State of Hawaii. (Section 803(a)(1)(A).)

(b) Prior to any loan being made from the RLF, the Loan Administrator will develop and obtain the Commissioner's approval of the following organizational and administrative materials necessary to implement the RLF:

(1) Goals and strategies;

(2) Staffing and organizational responsibilities;

(3) Preapplication and loan screening processes;

(4) Loan procedures including application forms;

(5) Criteria and procedures for loan review, evaluation and decision-making;

(6) Loan closing procedures; and

(7) Procedures for loan servicing, monitoring and provision of technical assistance.

(c) The Loan Administrator will set up fiscal management procedures to satisfy the requirements of section

803A of the Native American Programs Act and this subpart.

(d) The Loan Administrator must set up a separate account for the RLF into which all payments, interest, charges, and other amounts collected from loans made from the RLF will be deposited.

§ 1336.64 Development of goals and strategies: Responsibilities of the Loan Administrator.

(a) Prior to the approval of any direct loan under the RLF, the Loan Administrator will develop and obtain the Commissioner's approval for a clear and comprehensive set of goals and strategies for the RLF. The goals will specify the results the Loan Administrator expects to accomplish from the Revolving Loan Fund, define the RLF's role and responsibilities for potential users, and serve as the basis for the development of an organizational strategy and operating plan. The RLF strategies will provide the Loan Administrator with a sound understanding of the economic and market conditions within the Native Hawaiian community.

(b) The following factors shall be considered by the Loan Administrator in developing the RLF's goals:

(1) Employment needs of the local population;

(2) Characteristics of the local economic base;

(3) Characteristics of the local capital base and the gaps in the local availability of business capital;

(4) Local resources for economic development and their availability; and

(5) Goals and strategies of other local organizations involved in economic development.

(c) The loan fund strategies developed by the Revolving Loan Fund must include the following:

(1) *Business Targeting Strategy:* to determine which types of businesses are to be targeted by the loan fund. The Loan Administrator will develop procedures to ensure that the loans made are directed to Native Hawaiians.

(2) *Financing Strategy:* to determine the types of financing the loan fund will provide;

(3) *Business Assistance Strategy:* to identify the possible or potential management problems of a borrower and develop a workable plan for providing borrowers with the needed management assistance;

(4) *Marketing Strategy:* to generate applications from potential borrowers and to generate the support and participation of local financial institutions;

(5) *Capital Base Management Strategy:* to develop and allocate the financial resources of the fund in the most effective possible way to meet the need or demand for financing; and

(6) *Accountability Strategy:* to develop policies and mechanisms to hold borrowers accountable for providing the public benefits promised (e.g. jobs) in return for financing; to ensure that, until expenditure, loan proceeds are held by the borrower in secured, liquid financial instruments; to hold borrowers accountable for upholding the commitments made prior to the loan; and to develop the methods used by the RLF to enforce these commitments.

§ 1336.65 Staffing and organization of the Revolving Loan Fund: Responsibilities of the Loan Administrator.

Prior to the approval of any direct loan under the RLF, the Loan Administrator must develop and obtain the Commissioner's approval for the RLF's organization table, including:

(a) The structure and composition of the Board of Directors of the RLF;

(b) The staffing requirements for the RLF, with position descriptions and necessary personnel qualifications;

(c) The appointments to the advisory loan review committee; and

(d) The roles and responsibilities of the Board, staff and loan review committee.

§ 1336.66 Procedures and criteria for administration of the Revolving Loan Fund: Responsibilities of the Loan Administrator.

Prior to the approval of any direct loan under the RLF, the Loan Administrator must develop and obtain the Commissioner's approval for the following procedures:

(a) *Preapplication and loan screening procedures.* Some factors to be considered in the loan screening process are:

(1) General eligibility criteria;

(2) Potential economic development criteria;

(3) Indication of business viability;

(4) The need for RLF financing; and

(5) The ability to properly utilize financing.

(b) *Application process*. The application package includes forms, instructions, and policies and procedures for the loan application. The package must also include instructions for the development of a business and marketing plan and a financing proposal from the applicant.

(c) *Loan evaluation criteria and procedures*. The loan evaluation must include the following topics:

(1) General and specific business trends;

(2) Potential market for the product or service;

(3) Marketing strategy;

(4) Management skills of the borrower;

(5) Operational plan of the borrower;

(6) Financial controls and accounting systems;

(7) Financial projections; and

(8) Structure of investment and financing package.

(d) *Loan decision-making process*. Decision-making on a loan application includes the recommendations of the staff, the review by the loan review committee and the decision by the Board.

(e) *Loan closing process*. The guidelines for the loan closing process include the finalization of loan terms; conditions and covenants; the exercise of reasonable and proper care to ensure adherence of the proposed loan and borrower's operations to legal requirements; and the assurance that any requirement for outside financing or other actions on which disbursement is contingent are met by the borrower.

(f) *Loan closing documents*. Documents used in the loan closing process include:

(1) *Term Sheet:* an outline of items to be included in the loan agreement. It should cover the following elements:

(i) Loan terms;

(ii) Security interest;

(iii) Conditions for closing the loan;

(iv) Covenants, including reporting requirements;

(v) Representations and warranties;

(vi) Defaults and remedies; and

(vii) Other provisions as necessary.

(2) *Closing Agenda:* an outline of the loan documents, the background documents, and the legal and other supporting documents required in connection with the loan.

(g) *Loan servicing and monitoring*. The servicing of a loan will include collections, monitoring, and maintenance of an up-to-date information system on loan status.

(1) *Collections:* To include a repayment schedule, invoice for each loan payment, late notices, provisions for late charges.

(2) *Loan Monitoring:* To include regular reporting requirements, periodic analysis of corporate and industry information, scheduled telephone contact and site visits, regular loan review committee oversight of loan status, and systematic internal reports and files.

§ 1336.67 Security and collateral: Responsibilities of the Loan Administrator.

The Loan Administrator may require any applicant for a loan from the RLF to provide such collateral as the Loan Administrator determines to be necessary to secure the loan. (Section 803A(b)(3))

(a) *As a Credit Factor*. The availability of collateral security normally is considered an important factor in making loans. The types and amount of collateral security required should be governed by the relative strengths and weaknesses of other credit factors. The taking of collateral as security should be considered with respect to each loan. Collateral security should be sufficient to provide the lender reasonable protection from loss in the case of adversity, but such security or lack thereof should not be used as the primary basis for deciding whether to extend credit.

(b) *Security Interests*. Security interests which may be taken by the lender include, but are not limited to, liens on real or personal property, including leasehold interests; assignments of income and accounts receivable; and liens on inventory or proceeds of inventory sales as well as marketable securities and cash collateral accounts.

(1) *Motor vehicles.* Liens ordinarily should be taken on licensed motor vehicles, boats or aircraft purchased hereunder in order to be able to transfer title easily should the lender need to declare a default or repossess the property.

(2) *Insurance on property secured.* Hazard insurance up to the amount of the loan or the replacement value of the property secured (whichever is less) must be taken naming the lender as beneficiary. Such insurance includes fire and extended coverage, public liability, property damage, and other appropriate types of hazard insurance.

(3) *Appraisals.* Real property serving as collateral security must be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique (including standard reference manuals), and this valuation shall be described in the loan file.

(c) *Additional security.* The lender may require collateral security or additional security at any time during the term of the loan if after review and monitoring an assessment indicates the need for such security.

§ 1336.68 Defaults, uncollectible loans, liquidations: Responsibilities of the Loan Administrator.

(a) Prior to making loans from the RLF, the Loan Administrator will develop and obtain the Commissioner's approval for written procedures and definitions pertaining to defaults and collections of payments. (section 803A(b)(4))

(b) The Loan Administrator will provide a copy of such procedures and definitions to each applicant for a loan at the time the application is made. (section 803A(b)(4))

(c) The Loan Administrator will report to the Commissioner whenever a loan recipient is 90 days in arrears in the repayment of principal or interest or has failed to comply with the terms of the loan agreement. After making reasonable efforts to collect amounts payable, as specified in the written procedures, the Loan Administrator shall notify the Commissioner whenever a loan is uncollectible at reasonable cost. The notice shall include recommendations for future action to be taken by the Loan Administrator. (section 803A(c) (1) and (2))

(d) Upon receiving such notices, the Commissioner will, as appropriate, instruct the Loan Administrator:

(1) To demand the immediate and full repayment of the loan;

(2) To continue with its collection activities;

(3) To cancel, adjust, compromise, or reduce the amount of such loan;

(4) To modify any term or condition of such loan, including any term or condition relating to the rate of interest or the time of payment of any installment of principal or interest, or portion thereof, that is payable under such loan;

(5) To discontinue any further advance of funds contemplated by the loan agreement;

(6) To take possession of any or all collateral given as security and in the case of individuals, corporations, partnerships or cooperative associations, the property purchased with the borrowed funds;

(7) To prosecute legal action against the borrower or against the officers of the borrowing organization;

(8) To prevent further disbursement of credit funds under the control of the borrower;

(9) To assign or sell at a public or private sale, or otherwise dispose of for cash or credit any evidence of debt, contract, claim, personal or real property or security assigned to or held by the Loan Administrator; or

(10) To liquidate or arrange for the operation of economic enterprises financed with the revolving loan until the indebtedness is paid or until the Loan Administrator has received acceptable assurance of its repayment and compliance with the terms of the loan agreement. (Section 803A(c)(2)(B))

§ 1336.69 Reporting requirements: Responsibilities of the Loan Administrator.

(a) The Loan Administrator will maintain the following internal information and records:

(1) For each borrower: The loan repayment schedule, log of telephone calls and site visits made with the date

and the items discussed, correspondence with the borrower, progress reports and analyses.

(2) Monthly status of all outstanding loans, noting all overdue payments.

(3) Monthly status of the investments of the revolving loan fund monies not currently used for loans.

(4) Monthly records on the revenue generated by the loan fund from interest charges and late charges.

(5) Monthly administrative costs of the management of the loan fund and the sources of the monies to support the administrative costs.

(b) The Loan Administrator must submit a quarterly report to the Commissioner. The report may be in a format of the choice of the Loan Administrator as long as it includes at a minimum the following topics:

(1) For each borrower:

(i) Name of the borrower;

(ii) Economic development purpose(s) of the loan;

(iii) Financing of the loan by source;

(iv) Loan status (current/delinquent/paid);

(v) Principal and interest outstanding; and

(vi) Amount delinquent/defaulted, if any.

(2) Financial status of the RLF:

(i) Administrative cost expenditures;

(ii) Level of base capital;

(iii) Level of current capital;

(iv) Amount of ANA funding;

(v) Matching share;

(vi) Other direct funding of the RLF;

(vii) Program income, including interest on loans, earnings from investments, fee charges;

(viii) Loans made;

(ix) Losses on loans;

(x) Principal and interest outstanding;

(xi) Loans repaid;

(xii) Delinquent loans; and

(xiii) Collateral position of the RLF (the value of collateral as a percent of the outstanding balance on direct loans).

(c) The Loan Administrator must submit a semi-annual report to the Commissioner containing an analysis of the RLF progress to date.

(d) The Loan Administrator must submit to the Department a quarterly SF–269, Financial Status Report, or any equivalent report required by the Department.

§ 1336.70 Technical assistance: Responsibilities of the Loan Administrator.

The Loan Administrator will assure that competent management and technical assistance is available to the borrower consistent with the borrower's knowledge and experience and the nature and complexity of the economic enterprise being financed by the RLF. Consultants, RLF staff, and members of the loan review committee and Board may be used to assist borrowers. (section 803A(d)(1)(B))

§ 1336.71 Administrative costs.

Reasonable administrative costs of the RLF may be paid out of the loan fund. The grant award agreement between the Loan Administrator and ANA will set forth the allowable administrative costs of the loan fund during the five-year demonstration period. (sections 803A(a)(2) and 803A(d)(1)(A))

§ 1336.72 Fiscal requirements.

(a) Any portion of the revolving loan fund that is not required for expenditure must be invested in obligations of the United States or in obligations guaranteed or insured by the United States.

(b) Loans made under the RLF will be for a term that does not exceed five years.

(c) No loan may be made by the RLF after November 29, 1992, the close of the five-year period of the demonstration project. (section 803A(b)(6))

(d) All monies that are in the revolving loan fund on November 29, 1992 and that are not otherwise needed (as determined by the Commissioner) to carry out the provisions of this subpart must be deposited in the Treasury of the United States as miscellaneous receipts. The Commissioner will make this determination based on reports, audits and other appropriate documents as determined by the Commissioner. The Commissioner will take into consideration the costs necessary to collect loans outstanding beyond November 29, 1992, which costs may be paid from interest and loan charges collected by the Fund and in the Fund as of November 29, 1992. To use monies

in the Fund for the costs of collection after November 29, 1992, the Commissioner must give prior approval for such use.

(e) All monies deposited in the revolving loan fund after November 29, 1992 must be deposited in the Treasury of the United States as miscellaneous receipts.

(f) After November 29, 1992, the Loan Administrator will assume responsibility for the collection of all outstanding loans without additional financial assistance from ANA.

§ 1336.73 Eligible borrowers.

(a) Loans may be made to eligible applicants only if the Loan Administrator determines that the applicant is unable to obtain financing on reasonable terms and conditions from other sources such as banks, Small Business Administration, Production Credit Associations, Federal Land Banks; and

(b) Only if there is a reasonable prospect that the borrower will repay the loan. (section 803A(b)(1) (A) and (B))

(c) The Loan Administrator will determine an applicant's inability to obtain financing elsewhere on reasonable terms and conditions from documentation provided by the applicant.

(d) Those eligible to receive loans from the revolving loan fund are:

(1) Native Hawaiian individuals.

(2) Native Hawaiian non-profit organizations.

(3) Native Hawaiian businesses.

(4) Native Hawaiian cooperative associations.

(5) Native Hawaiian partnerships.

(6) Native Hawaiian associations.

(7) Native Hawaiian corporations.

§ 1336.74 Time limits and interest on loans.

(a) Loans made under the RLF will be for a term that does not exceed 5 years.

(b) Loans will be made to approved borrowers at a rate of interest that is 2 percentage points below the average market yield on the most recent public offering of United States Treasury bills occurring before the date on which the loan is made. (section 803A(b)(2) (A) and (B))

§ 1336.75 Allowable loan activities.

The following are among those activities for which a loan may be made from the RLF:

(a) The establishment or expansion of businesses engaged in commercial, industrial or agricultural activities, such as farming, manufacturing, construction, sales, service;

(b) The establishment or expansion of cooperatives engaged in the production and marketing of farm products, equipment, or supplies; the manufacture and sale of industrial, commercial or consumer products; or the provision of various commercial services;

(c) Business or job retention;

(d) Small business development;

(e) Private sector job creation; and

(f) Promotion of economic diversification, e.g. targeting firms in growth industries that have not previously been part of a community's economic base.

§ 1336.76 Unallowable loan activities.

The following activities are among those activities not eligible for support under the revolving loan fund:

(a) Loans to the Loan Administrator or any representative or delegate of the Loan Administrator (section 803A(b)(5));

(b) Loans which would create a potential conflict-of-interest for any officer or employee of the Loan Administrator; loan activities which directly benefit these individuals, or persons related to them by marriage, or law.

(c) Eligible activities which are moved from the State of Hawaii;

(d) Investing in high interest account, certificates of deposit or other investments;

(e) Relending of the loan amount by the borrower;

(f) The purchase of land or buildings;

(g) The construction of buildings; and

(h) Purchasing or financing equity in private businesses.

§ 1336.77 Recovery of funds.

(a) Funds provided under this Subpart may be recovered by the Commissioner for both costs of administration of the Loan Fund and losses incurred by the Fund (hereafter jointly referred to as ''costs'') under the following circumstances:

(1) Whenever claimed costs are unallowable under the Native Americans Programs Act of 1974, as amended, or under 45 CFR part 74, or both;

(2) For costs for loans made to ineligible persons or entities as defined in § 1336.73;

(3) For costs connected with the default of a borrower when the Loan Administrator has failed to perfect any security interest or when the Loan Administrator has failed to obtain collateral when provision of collateral is a condition of a loan.

(4) For costs connected with any default when the Loan Administrator has failed to perform a proper check of an applicant's credit;

(5) For costs whenever the Loan Administrator has failed to notify the Commission of loans at risk as required by § 1336.68 of these regulations, and as may be required by the procedures approved pursuant to that regulation;

(6) For costs whenever the Loan Administrator has failed to follow properly instructions provided to it by the Commissioner pursuant to § 1336.68(d) of these regulations;

(7) For costs which are incurred due to faulty record keeping, reporting, or both; or

(8) For costs which are in connection with any activity or action which violates any Federal or State law or regulation not specifically identified in these regulations.

(b) Whenever the Commissioner determines that funds have been improperly utilized or accounted for, he will issue a disallowance pursuant to the Act and to 45 CFR part 74 and will notify the Loan Administrator of its appeal rights, which appeal must be taken pursuant to 45 CFR part 16.

(c) If a disallowance is taken and not appealed, or if it is appealed and the disallowance is upheld by the Departmental Grant Appeals Board, the Loan Administrator must repay the disallowed amount to the Loan Fund within 30 days, such repayment to be made with non-Federal funds.

SUBCHAPTER E—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT PROGRAM

PART 1340—CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT

Subpart A—General Provisions

Sec.
1340.1 Purpose and scope.
1340.2 Definitions.
1340.3 Applicability of Department-wide regulations.
1340.4 Coordination requirements.

Subpart B—Grants to States

1340.10 Purpose of this subpart.
1340.11 Allocation of funds available.
1340.12 Application process.
1340.13 Approval of applications.
1340.14 Eligibility requirements.
1340.15 Services and treatment for disabled infants.

Subpart C—Discretionary Grants and Contracts

1340.20 Confidentiality.
APPENDIX TO PART 1340—INTERPRETATIVE GUIDELINES REGARDING 45 CFR 1340.15—SERVICES AND TREATMENT FOR DISABLED INFANTS.

AUTHORITY: 42 U.S.C. 5101 *et seq.*

SOURCE: 48 FR 3702, Jan. 26, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 1340.1 Purpose and scope.

(a) This part implements the Child Abuse Prevention and Treatment Act (''Act''). As authorized by the Act, the National Center on Child Abuse and Neglect seeks to assist agencies and organizations at the national, State and community levels in their efforts to improve and expand child abuse and neglect prevention and treatment activities.

(b) The National Center on Child Abuse and Neglect seeks to meet these goals through:

(1) Conducting activities directly (by the Center);

(2) Making grants to States to improve and expand their child abuse and neglect prevention and treatment programs;

(3) Making grants to and entering into contracts for: Research, demonstration and service improvement programs and projects, and training, technical assistance and informational activities; and

(4) Coordinating Federal activities related to child abuse and neglect. This part establishes the standards and procedures for conducting the grant funded activities and contract and coordination activities.

(c) Requirements related to child abuse and neglect applicable to programs assisted under title IV-B of the Social Security Act are implemented by regulation at 45 CFR parts 1355 and 1357.

(d) Federal financial assistance is not available under the Act for the construction of facilities.

[48 FR 3702, Jan. 26, 1983, as amended at 52 FR 3994, Feb. 6, 1987; 55 FR 27639, July 5, 1990]

§ 1340.2 Definitions.

For the purposes of this part:

(a) *A properly constituted authority* is an agency with the legal power and responsibility to perform an investigation and take necessary steps to prevent and treat child abuse and neglect. A properly constituted authority may include a legally mandated, public or private child protective agency, or the police, the juvenile court or any agency thereof.

(b) *Act* means the Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101, et seq.

(c) *Center* means the National Center on Child Abuse and Neglect established by the Secretary under the Act to administer this program.

(d) *Child abuse and neglect* means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen, or the age specified by the child protection law of the State, by a person including any employee of

a residential facility or any staff person providing out of home care who is responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term encompasses both acts and omissions on the part of a responsible person.

(1) The term *sexual abuse* includes the following activities under circumstances which indicate that the child's health or welfare is harmed or threatened with harm: The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children. With respect to the definition of sexual abuse, the term ''child'' or ''children'' means any individual who has not attained the age of eighteen.

(2)(i) ''Negligent treatment or maltreatment'' includes failure to provide adequate food, clothing, shelter, or medical care.

(ii) Nothing in this part should be construed as requiring or prohibiting a finding of negligent treatment or maltreatment when a parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child; provided, however, that if such a finding is prohibited, the prohibition shall not limit the administrative or judicial authority of the State to ensure that medical services are provided to the child when his health requires it.

(3) *Threatened harm to a child's health or welfare* means a substantial risk of harm to the child's health or welfare.

(4) *A person responsible for a child's welfare* includes the child's parent, guardian, foster parent, an employee of a public or private residential home or facility or other person legally responsible under State law for the child's welfare in a residential setting, or any staff person providing out of home care. For purposes of this definition, out-of-home care means child day care, i.e., family day care, group day care, and center-based day care; and, at State option, any other settings in which children are provided care.

(e) *Commissioner* means the Commissioner of the Administration for Children, Youth and Families of the Department of Health and Human Services.

(f) *Grants* includes grants and cooperative agreements.

(g) *Secretary* means the Secretary of Health and Human Services, or other HHS official or employee to whom the Secretary has delegated the authority specified in this part.

(h) *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

[48 FR 3702, Jan. 26, 1983, as amended at 52 FR 3994, Feb. 6, 1987; 55 FR 27639, July 5, 1990]

§ 1340.3 Applicability of Department-wide regulations.

(a) The following HHS regulations are applicable to all grants made under this part:

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.

45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under part 80

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

(b) The following regulations are applicable to all contracts awarded under this part:

48 CFR Chapter 1—Federal Acquisition Regulations.

48 CFR Chapter 3—Federal Acquisition Regulations—Department of Health and Human Services.

[48 FR 3702, Jan. 26, 1983, as amended at 52 FR 3995, Feb. 6, 1987]

§ 1340.4 Coordination requirements.

All Federal agencies responsible for programs related to child abuse and neglect shall provide information as required by the Commissioner to insure effective coordination of efforts.

Subpart B—Grants to States

§ 1340.10 Purpose of this subpart.

This subpart sets forth the requirements and procedures States must meet in order to receive grants to develop, strengthen, and carry out State child abuse and neglect prevention and treatment programs under section 107 of the Act.

[55 FR 27639, July 5, 1990]

§ 1340.11 Allocation of funds available.

(a) The Commissioner shall allocate the funds available for grants to States for each fiscal year among the States on the basis of the following formula:

(1) An amount of $25,000 or such other amount as the Commissioner may determine; plus

(2) An additional amount bearing the same ratio to the total amount made available for this purpose (reduced by the minimum amounts allocated to the States under paragraph (a)(1) of this section) as the number of children under the age of eighteen in each State bears to the total number of children under eighteen in all the States. Annual estimates of the number of children under the age of eighteen, provided by the Bureau of the Census of the Department of Commerce, are used in making this determination.

(b) If a State has not qualified for assistance under the Act and this subpart prior to a date designated by the Commissioner in each fiscal year, the amount previously allocated to the State shall be allocated among the eligible States.

§ 1340.12 Application process.

(a) The Governor of the State may submit an application or designate the State office, agency, or organization which may apply for assistance under this subpart. The State office, agency, or organization need not be limited in its mandate or activities to child abuse and neglect.

(b) Grant applications must include a description of the activities presently conducted by the State and its political subdivisions in preventing and treating child abuse and neglect, the activities to be assisted under the grant, a statement of how the proposed activities are expected to improve or expand child abuse prevention and treatment programs in the State, and other information required by the Commissioner in compliance with the paperwork reduction requirements of 44 U.S.C. chapter 35 and any applicable directives issued by the Office of Management and Budget.

(c) States shall provide with the grant application a statement signed by the Governor that the State meets the requirements of the Act and of this subpart. This statement shall be in the form and include the documentation required by the Commissioner.

§ 1340.13 Approval of applications.

(a) The Commissioner shall approve an application for an award for funds under this subpart if he or she finds that:

(1) The State is qualified and has met all requirements of the Act and § 1340.14 of this part, except for the definitional requirement of § 1340.14(a) with regard to the definition of ''sexual abuse'' (see § 1340.2(d)(1)) and the definitional requirement of negligent treatment as it relates to the failure to provide adequate medical care (see § 1340.2(d)(2)). The State must include these two definitional requirements in its definition of child abuse and neglect either by statute or regulation having the force and effect of law no later than the close of the second general legislative session of the State legislature following February 25, 1983;

(2) Either by statute or regulation having the force and effect of law, the State modifies its definition of ''child abuse and neglect'' to provide that the phrase ''person responsible for a child's welfare'' includes an employee of a residential facility or a staff person providing out-of-home care no later than the close of the first general legislative session of the State legislature which convenes following February 6, 1987;

(3) The funds are to be used to improve and expand child abuse or neglect prevention or treatment programs; and

(4) The State is otherwise in compliance with these regulations.

(b) At the time of an award under this subpart, the amount of funds not obligated from an award made eighteen or more months previously shall be subtracted from the amount of funds under the award, unless the Secretary determines that extraordinary reasons justify the failure to so obligate.

[48 FR 3702, Jan. 26, 1983, as amended at 52 FR 3995, Feb. 6, 1987; 55 FR 27639, July 5, 1990]

§ 1340.14 Eligibility requirements.

In order for a State to qualify for an award under this subpart, the State must meet the requirements of § 1340.15 and satisfy each of the following requirements:

(a) State must satisfy each of the requirements in section 107(b) of the Act.

(b) *Definition of Child Abuse and Neglect.* Wherever the requirements below use the term ''Child Abuse and Neglect'' the State must define that term in accordance with § 1340.2. However, it is not necessary to adopt language identical to that used in § 1340.2, as long as the definition used in the State is the same in substance.

(c) *Reporting.* The State must provide by statute that specified persons must report and by statute or administrative procedure that all other persons are permitted to report known and suspected instances of child abuse and neglect to a child protective agency or other properly constituted authority.

(d) *Investigations.* The State must provide for the prompt initiation of an appropriate investigation by a child protective agency or other properly constituted authority to substantiate the accuracy of all reports of known or suspected child abuse or neglect. This investigation may include the use of reporting hotlines, contact with central registers, field investigations and interviews, home visits, consultation with other agencies, medical examinations, psychological and social evaluations, and reviews by multidisciplinary teams.

(e) *Institutional child abuse and neglect.* The State must have a statute or administrative procedure requiring that when a report of known or suspected child abuse or neglect involves the acts or omissions of the agency, institution, or facility to which the report would ordinarily be made, a different properly constituted authority must receive and investigate the report and take appropriate protective and corrective action.

(f) *Emergency services.* If an investigation of a report reveals that the reported child or any other child under the same care is in need of immediate protection, the State must provide emergency services to protect the child's health and welfare. These services may include emergency caretaker or homemaker services; emergency shelter care or medical services; review by a multidisciplinary team; and, if appropriate, criminal or civil court action to protect the child, to help the parents or guardians in their responsibilities and, if necessary, to remove the child from a dangerous situation.

(g) *Guardian ad litem.* In every case involving an abused or neglected child which results in a judicial proceeding, the State must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child. This requirement may be satisfied: (1) By a statute mandating the appointments; (2) by a statute permitting the appointments, accompanied by a statement from the Governor that the appointments are made in every case; (3) in the absence of a specific statute, by a formal opinion of the Attorney General that the appointments are permitted, accompanied by a Governor's statement that the appointments are made in every case; or (4) by the State's Uniform Court Rule mandating appointments in every case. However, the guardian *ad litem* shall not be the attorney responsible for presenting the evidence alleging child abuse or neglect.

(h) *Prevention and treatment services.* The State must demonstrate that it has throughout the State procedures and services deal with child abuse and neglect cases. These procedures and services include the determination of

social service and medical needs and the provision of needed social and medical services.

(i) *Confidentiality*. (1) The State must provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense.

(2) If a State chooses to, it may authorize by statute disclosure to any or all of the following persons and agencies, under limitations and procedures the State determines:

(i) The agency (agencies) or organizations (including its designated multidisciplinary case consultation team) legally mandated by any Federal or State law to receive and investigate reports of known and suspected child abuse and neglect;

(ii) A court, under terms identified in State statute;

(iii) A grand jury;

(iv) A properly constituted authority (including its designated multidisciplinary case consultation team) investigating a report of known or suspected child abuse or neglect or providing services to a child or family which is the subject of a report;

(v) A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected;

(vi) A person legally authorized to place a child in protective custody when the person has before him or her a child whom he or she reasonably suspects may be abused or neglected and the person requires the information in the report or record in order to determine whether to place the child in protective custody;

(vii) An agency authorized by a properly constituted authority to diagnose, care for, treat, or supervise a child who is the subject of a report or record of child abuse or neglect;

(viii) A person about whom a report has been made, with protection for the identity of any person reporting known or suspected child abuse or neglect and any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person;

(ix) A child named in the report or record alleged to have been abused or neglected or (as his/her representative) his/her guardian or guardian ad litem;

(x) An appropriate State or local official responsible for administration of the child protective service or for oversight of the enabling or appropriating legislation, carrying out his or her official functions; and

(xi) A person, agency, or organization engaged in a bonafide research or evaluation project, but without information identifying individuals named in a report or record, unless having that information open for review is essential to the research or evaluation, the appropriate State official gives prior written approval, and the child, through his/her representative as cited in paragraph (i) of this section, gives permission to release the information.

(3) If a State chooses, it may authorize by statute disclosure to additional persons and agencies, as determined by the State, for the purpose of carrying out background and/or employment-related screening of individuals who are or may be engaged in specified categories of child related activities or employment. Any information disclosed for this purpose is subject to the confidentiality requirements in paragraph (i)(1) and may be subject to additional safeguards as determined by the State.

(4) Nothing in this section shall be interpreted to prevent the properly constituted authority from summarizing the outcome of an investigation to the person or official who reported the known or suspected instances of child abuse or neglect or to affect a State's laws or procedures concerning the confidentiality of its criminal court or its criminal justice system.

(5) HHS and the Comptroller General of the United States or any of their representatives shall have access to records, as required under 45 CFR 74.24.

[48 FR 3702, Jan. 26, 1983, as amended at 50 FR 14887, April 15, 1985; 52 FR 3995, Feb. 6, 1987; 55 FR 27639, July 5, 1990]

§ 1340.15 Services and treatment for disabled infants.

(a) *Purpose*. The regulations in this section implement certain provisions of the Act, including section 107(b)(10)

governing the protection and care of disabled infants with life-threatening conditions.

(b) *Definitions.* (1) The term ''medical neglect'' means the failure to provide adequate medical care in the context of the definitions of ''child abuse and neglect'' in section 113 of the Act and § 1340.2(d) of this part. The term ''medical neglect'' includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

(2) The term ''withholding of medically indicated treatment'' means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's (or physicians') reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's (or physicians') reasonable medical judgment any of the following circumstances apply:

(i) The infant is chronically and irreversibly comatose:

(ii) The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

(iii) The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

(3) Following are definitions of terms used in paragraph (b)(2) of this section:

(i) The term ''infant'' means an infant less than one year of age. The reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age, or to affect or limit any existing protections available under State laws regarding medical neglect of children over one year of age. In addition to their applicability to infants less than one year of age, the standards set forth in paragraph (b)(2) of this section should be consulted thoroughly in the evaluation of any issue of medical neglect involving an infant older than one year of age who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability.

(ii) The term ''reasonable medical judgment'' means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(c) *Eligibility requirements.* (1) In addition to the other eligibility requirements set forth in this part, to qualify for a basic State grant under section 107(b) of the Act, a State must have programs, procedures, or both, in place within the State's child protective service system for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(2) These programs and/or procedures must provide for:

(i) Coordination and consultation with individuals designated by and within appropriate health care facilities;

(ii) Prompt notification by individuals designated by and within appropriate health care facilities of cases of suspected medical neglect (including instances of the withholding of medically indicated treatment from disabled infants with life-threatening conditions); and

(iii) The authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(3) The programs and/or procedures must specify that the child protective services system will prompty contact each health care facility to obtain the name, title, and telephone number of

the individual(s) designated by such facility for the purpose of the coordination, consultation, and notification activities identified in paragraph (c)(2) of this section, and will at least annually recontact each health care facility to obtain any changes in the designations.

(4) These programs and/or procedures must be in writing and must conform with the requirements of section 107(b) of the Act and § 1340.14 of this part. In connection with the requirement of conformity with the requirements of section 107(b) of the Act and § 1340.14 of this part, the programs and/or procedures must specify the procedures the child protective services system will follow to obtain, in a manner consistent with State law:

(i) Access to medical records and/or other pertinent information when such access is necessary to assure an appropriate investigation of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life threatening conditions); and

(ii) A court order for an independent medical examination of the infant, or otherwise effect such an examination in accordance with processes established under State law, when necessary to assure an appropriate resolution of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life threatening conditions).

(5) The eligibility requirements contained in this section shall be effective October 9, 1985.

(d) *Documenting eligibility*. (1) In addition to the information and documentation required by and pursuant to § 1340.12 (b) and (c), each State must submit with its application for a basic State grant sufficient information and documentation to permit the Commissioner to find that the State is in compliance with the eligibility requirements set forth in paragraph (c) of this section.

(2) This information and documentation shall include:

(i) A copy of the written programs and/or procedures established by, and followed within, the State for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions:

(ii) Documentation that the State has authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to inititate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions. This documentation shall consist of:

(A) A copy of the applicable provisions of State statute(s); or

(B) A copy of the applicable provisions of State rules or regulations, along with a copy of the State statutory provisions that provide the authority for such rules or regulations; or

(C) A copy of an official, numbered opinion of the Attorney General of the State that so provides, along with a copy of the applicable provisions of the State statute that provides a basis for the opinion, and a certification that the official opinion has been distributed to interested parties within the State, at least including all hospitals; and

(iii) Such other information and documentation as the Commissioner may require.

(e) *Regulatory construction*. (1) No provision of this section or part shall be construed to affect any right, protection, procedures, or requirement under 45 CFR Part 84, Nondiscrimination in the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

(2) No provision of this section or part may be so construed as to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws or regulations.

(Approved by the Office of Management and Budget under control number 0980–0165)

[50 FR 14887, April 15, 1985, as amended at 52 FR 3995, Feb. 6, 1987; 55 FR 27639, July 5, 1990]

Subpart C—Discretionary Grants and Contracts

§ 1340.20 Confidentiality.

All projects and programs supported under the Act must hold all information related to personal facts or circumstances about individuals involved in those projects or programs confidential and shall not disclose any of the information in other than summary, statistical, or other form which does not identify specific individuals, except in accordance with § 1340.14(i).

APPENDIX TO PART 1340—INTERPRETATIVE GUIDELINES REGARDING 45 CFR 1340.15—SERVICES AND TREATMENT FOR DISABLED INFANTS

EXPLANATORY NOTE: The interpretative guidelines which follow were based on the proposed rule (49 FR 48160, December 10, 1984) and were published with the final rule on April 15, 1985 (50 FR 14878). References to the ''proposed rule'' and ''final rule'' in these guidelines refer to these actions.

Since that time, the Child Abuse Prevention and Treatment Act was revised, reorganized, and reauthorized by Public Law 100–294 (April 25, 1988) and renumbered by Pub. L. 101–126 (October 25, 1989). Accordingly, the definitions formerly in section 3 of the Act are now found in section 113; the State eligibility requirements formerly in section 4 of the Act are now found in section 107; and references to the ''final rule'' mean references to § 1340.15 of this part.

This appendix sets forth the Department's interpretative guidelines regarding several terms that appear in the definition of the term ''withholding of medically indicated treatment'' in section 3(3) of the Child Abuse Prevention and Treatment Act, as amended by section 121(3) of the Child Abuse Amendments of 1984. This statutory definition is repeated in § 1340.15(b)(2) of the final rule.

The Department's proposed rule to implement those provisions of the Child Abuse Amendments of 1984 relating to services and treatment for disabled infants included a number of proposed clarifying definitions of several terms used in the statutory definition. The preamble to the proposed rule explained these proposed clarifying definitions, and in some cases used examples of specific diagnoses to elaborate on meaning.

During the comment period on the proposed rule, many commenters urged deletion of these clarifying definitions and avoidance of examples of specific diagnoses. Many commenters also objected to the specific wording of some of the proposed clarifying definitions, particularly in connection with the proposed use of the word ''imminent'' to describe the proximity in time at which death is anticipated regardless of treatment in relation to circumstances under which treatment (other than appropriate nutrition, hydration and medication) need not be provided. A letter from the six principal sponsors of the ''compromise amendment'' which became the pertinent provisions of the Child Abuse Amendments of 1984 urged deletion of ''imminent'' and careful consideration of the other concerns expressed.

After consideration of these recommendations, the Department decided not to adopt these several proposed clarifying definitions as part of the final rule. It was also decided that effective implementation of the program established by the Child Abuse Amendments would be advanced by the Department stating its interpretations of several key terms in the statutory definition. This is the purpose of this appendix.

The interpretative guidelines that follow have carefully considered comments submitted during the comment period on the proposed rule. These guidelines are set forth and explained without the use of specific diagnostic exmples to elaborate on meaning.

Finally, by way of introduction, the Department does not seek to establish these interpretative guidelines as binding rules of law, nor to prejudge the exercise of reasonable medical judgment in responding to specific circumstances. Rather, this guidance is intended to assist in interpreting the statutory definition so that it may be rationally and thoughtfully applied in specific contexts in a manner fully consistent with the legislative intent.

1. *In general: The statutory definition of ''withholding of medically indicated treatment.''*

Section 1340.15(b)(2) of the final rule defines the term ''withholding of medically indicated treatment'' with a definition identical to that which appears in section 3(3) of the Act (as amended by section 121(3) of the Child Abuse Amendments of 1984).

This definition has several main features. First, it establishes the basic principle that all disabled infants with life-threatening conditions must be given medically indicated treatment, defined in terms of action to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration or medication) which, in the treating physician's (or physicians') reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions.

Second, the statutory definition spells out three circumstances under which treatment is not considered ''medically indicated.'' These are when, in the treating physician's (or physicians') reasonable medical judgment:

—The infant is chronically and irreversibly comatose:

—The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of survival of the infant; or

—The provision of such treatment would be virtually futile in terms of survival of the infant and the treatment itself under such circumstances would be inhumane.

The third key feature of the statutory definition is that even when one of these three circumstances is present, and thus the failure to provide treatment is not a ''withholding of medically indicated treatment,'' the infant must nonetheless be provided with appropriate nutrition, hydration, and medication.

Fourth, the definition's focus on the potential effectiveness of treatment in ameliorating or correcting life-threatening conditions makes clear that it does not sanction decisions based on subjective opinions about the future ''quality of life'' of a retarded or disabled person.

The fifth main feature of the statutory definition is that its operation turns substantially on the ''reasonable medical judgment'' of the treating physician or physicians. The term ''reasonable medical judgment'' is defined in §1340.15(b)(3)(ii) of the final rule, as it was in the Conference Committee Report on the Act, as a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

The Department's interpretations of key terms in the statutory definition are fully consistent with these basic principles reflected in the definition. The discussion that follows is organized under headings that generally correspond to the proposed clarifying definitions that appeared in the proposed rule but were not adopted in the final rule. The discussion also attempts to analyze and respond to significant comments received by the Department.

2. *The term ''life-threatening condition''.*

Clause (b)(3)(ii) of the proposed rule proposed a definition of the term ''life-threatening condition.'' This term is used in the statutory definition in the following context:

[T]he term ''withholding of medically indicated treatment'' means the failure to respond to the infant's *life-threatening conditions* by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions [, except that] * * *. [Emphasis supplied].

It appears to the Department that the applicability of the statutory definition might be uncertain to some people in cases where a condition may not, strictly speaking, by itself be life-threatening, but where the condition significantly increases the risk of the onset of complications that may threaten the life of the infant. If medically indicated treatment is available for such a condition, the failure to provide it may result in the onset of complications that, by the time the condition becomes life-threatening in the strictest sense, will eliminate or reduce the potential effectiveness of any treatment. Such a result cannot, in the Department's view, be squared with the Congressional intent.

Thus, the Department interprets the term ''life-threatening condition'' to include a condition that, in the treating physician's or physicians' reasonable medical judgment, significantly increases the risk of the onset of complications that may threaten the life of the infant.

In response to comments that the proposed rule's definition was potentially overinclusive by covering any condition that one could argue ''may'' become life-threatening, the Department notes that the statutory standard of ''the treating physician's or physicians' reasonable medical judgment'' is incorporated in the Department's interpretation, and is fully applicable.

Other commenters suggested that this interpretation would bring under the scope of the definition many irreversible conditions for which no corrective treatment is available. This is certainly not the intent. The Department's interpretation implies nothing about whether, or what, treatment should be provided. It simply makes clear that the criteria set forth in the statutory definition for evaluating whether, or what, treatment should be provided are applicable. That is just the start, not the end, of the analysis. The analysis then takes fully into account the reasonable medical judgment regarding potential effectiveness of possible treatments, and the like.

Other comments were that it is unnecessary to state any interpretation because reasonable medical judgment commonly deems the conditions described as life-threatening and responds accordingly. HHS agrees that this is common practice followed under reasonable medical judgment, just as all the standards incorporated in the statutory definition reflect common practice followed under reasonable medical judgment. For the reasons stated above, however, the Department believes it is useful to say so in these interpretative guidelines.

3. *The term ''treatment'' in the context of adequate evaluation.*

Clause (b)(3)(ii) of the proposed rule proposed a definition of the term ''treatment.'' Two separate concepts were dealt with in

clause (A) and (B), respectively, of the proposed rule. Both of these clauses were designed to ensure that the Congressional intent regarding the issues to be considered under the analysis set forth in the statutory definition is fully effectuated. Like the guidance regarding ''life-threatening condition,'' discussed above, the Department's interpretations go to the applicability of the statutory analysis, not its result.

The Department believes that Congress intended that the standard of following reasonable medical judgment regarding the potential effectiveness of possible courses of action should apply to issues regarding adequate medical evaluation, just as it does to issues regarding adequate medical intervention. This is apparent Congressional intent because Congress adopted, in the Conference Report's definition of ''reasonable medical judgment,'' the standard of adequate knowledge about the case and the treatment possibilities with respect to the medical condition involved.

Having adequate knowledge about the case and the treatment possibilities involved is, in effect, step one of the process, because that is the basis on which ''reasonable medical judgment'' will operate to make recommendations regarding medical intervention. Thus, part of the process to determine what treatment, if any, ''will be most likely to be effective in ameliorating or correcting'' all life-threatening conditions is for the treating physician or physicians to make sure they have adequate information about the condition and adequate knowledge about treatment possibilities with respect to the condition involved. The standard for determining the adequacy of the information and knowledge is the same as the basic standard of the statutory definition: reasonable medical judgment. A reasonably prudent physician faced with a particular condition about which he or she needs additional information and knowledge of treatment possibilities would take steps to gain more information and knowledge by, quite simply, seeking further evaluation by, or consultation with, a physician or physicians whose expertise is appropriate to the condition(s) involved or further evaluation at a facility with specialized capabilities regarding the conditions(s) involved.

Thus, the Department interprets the term ''treatment'' to include (but not be limited to) any further evaluation by, or consultation with, a physician or physicians whose expertise is appropriate to the condition(s) involved or further evaluation at a facility with specialized capabilities regarding the condition(s) involved that, in the treating physician's or physicians' reasonable medical judgment, is needed to assure that decisions regarding medical intervention are based on adequate knowledge about the case and the treatment possibilities with respect to the medical conditions involved.

This reflects the Department's interpretation that failure to respond to an infant's life-threatening conditions by obtaining any further evaluations or consultations that, in the treating physician's reasonable medical judgment, are necessary to assure that decisions regarding medical intervention are based on adequate knowledge about the case and the treatment possibilities involved constitutes a ''withholding of medically indicated treatment.'' Thus, if parents refuse to consent to such a recommendation that is based on the treating physician's reasonable medical judgment that, for example, further evaluation by a specialist is necessary to permit reasonable medical judgments to be made regarding medical intervention, this would be a matter for appropriate action by the child protective services system.

In response to comments regarding the related provision in the proposed rule, this interpretative guideline makes quite clear that this interpretation does not deviate from the basic principle of reliance on reasonable medical judgment to determine the extent of the evaluations necessary in the particular case. Commenters expressed concerns that the provision in the proposed rule would intimidate physicians to seek transfer of seriously ill infants to tertiary level facilities much more often than necessary, potentially resulting in diversion of the limited capacities of these facilities away from those with real needs for the specialized care, unnecessary separation of infants from their parents when equally beneficial treatment could have been provided at the community or regional hospital, inappropriate deferral of therapy while time-consuming arrangements can be affected, and other counterproductive ramifications. The Department intended no intimidation, prescription or similar influence on reasonable medical judgment, but rather, intended only to affirm that it is the Department's interpretation that the reasonable medical judgment standard applies to issues of medical evaluation, as well as issues of medical intervention.

4. *The term ''treatment'' in the context of multiple treatments.*

Clause (b)(3)(iii)(B) of the proposed rule was designed to clarify that, in evaluating the potential effectiveness of a particular medical treatment or surgical procedure that can only be reasonably evaluated in the context of a complete potential treatment plan, the ''treatment'' to be evaluated under the standards of the statutory definition includes the multiple medical treatments and/or surgical procedures over a period of time that are designed to ameliorate or correct a life-threatening condition or conditions. Some commenters stated that it could be construed to require the carrying out of a

long process of medical treatments or surgical procedures regardless of the lack of success of those done first. No such meaning is intended.

The intent is simply to characterize that which must be evaluated under the standards of the statutory definition, not to imply anything about the results of the evaluation. If parents refuse consent for a particular medical treatment or surgical procedure that by itself may not correct or ameliorate all life-threatening conditions, but is recommended as part of a total plan that involves multiple medical treatments and/or surgical procedures over a period of time that, in the treating physician's reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, that would be a matter for appropriate action by the child protective services system.

On the other hand, if, in the treating physician's reasonable medical judgment, the total plan will, for example, be virtually futile and inhumane, within the meaning of the statutory term, then there is no ''withholding of medically indicated treatment.'' Similarly, if a treatment plan is commenced on the basis of a reasonable medical judgment that there is a good chance that it will be effective, but due to a lack of success, unfavorable complications, or other factors, it becomes the treating physician's reasonable medical judgment that further treatment in accord with the prospective treatment plan, or alternative treatment, would be futile, then the failure to provide that treatment would not constitute a ''withholding of medically indicated treatment.'' This analysis does not divert from the reasonable medical judgment standard of the statutory definition; it simply makes clear the Department's interpretation that the failure to evaluate the potential effectiveness of a treatment plan as a whole would be inconsistent with the legislative intent.

Thus, the Department interprets the term ''treatment'' to include (but not be limited to) multiple medical treatments and/or surgical procedures over a period of time that are designed to ameliorate or correct a life-threatening condition or conditions.

5. *The term ''merely prolong dying.''*

Clause (b)(3)(v) of the proposed rule proposed a definition of the term ''merely prolong dying,'' which appears in the statutory definition. The proposed rule's provision stated that this term ''refers to situations where death is imminent and treatment will do no more than postpone the act of dying.''

Many commenters argued that the incorporation of the word ''imminent,'' and its connotation of immediacy, appeared to deviate from the Congressional intent, as developed in the course of the lengthy legislative negotiations, that reasonable medical judgments can and do result in nontreatment decisions regarding some conditions for which treatment will do no more than temporarily postpone a death that will occur in the near future, but not necessarily within days. The six principal sponsors of the compromise amendment also strongly urged deletion of the word ''imminent.''

The Department's use of the term ''imminent'' in the proposed rule was not intended to convey a meaning not fully consonant with the statute. Rather, the Department intended that the word ''imminent'' would be applied in the context of the condition involved, and in such a context, it would not be understood to specify a particular number of days. As noted in the preamble to the proposed rule, this clarification was proposed to make clear that the ''merely prolong dying'' clause of the statutory definition would not be applicable to situations where treatment will not totally correct a medical condition but will give a patient many years of life. The Department continues to hold to this view.

To eliminate the type of misunderstanding evidenced in the comments, and to assure consistency with the statutory definition, the word ''imminent'' is not being adopted for purposes of these interpretative guidelines.

The Department interprets the term ''merely prolong dying'' as referring to situations where the prognosis is for death and, in the treating physician's (or physicians') reasonable medical judgment, further or alternative treatment would not alter the prognosis in an extension of time that would not render the treatment futile.

Thus, the Department continues to interpret Congressional intent as not permitting the ''merely prolong dying'' provision to apply where many years of life will result from the provision of treatment, or where the prognosis is not for death in the near future, but rather the more distant future. The Department also wants to make clear it does not intend the connotations many commenters associated with the word ''imminent.'' In addition, contrary to the impression some commenters appeared to have regarding the proposed rule, the Department's interpretation is that reasonable medical judgments will be formed on the basis of knowledge about the condition(s) involved, the degree of inevitability of death, the probable effect of any potential treatments, the projected time period within which death will probably occur, and other pertinent factors.

6. *The term ''not be effective in ameliorating or correcting all of the infant's life threatening conditions'' in the context of a future life-threatening condition.*

Clause (b)(3)(vi) of the proposed rule proposed a definition of the term ''not be effective in ameliorating or correcting all the infant's life-threatening conditions'' used in

the statutory definition of ''withholding of medically indicated treatment.''

The basic point made by the use of this term in the statutory definition was explained in the Conference Committee Report:

Under the definition, if a disabled infant suffers more than one life-threatening condition and, in the treating physician's or physicians' reasonable medical judgment, there is no effective treatment for one of those conditions, then the infant is not covered by the terms of the amendment (except with respect to appropriate nutrition, hydration, and medication) concerning the withholding of medically indicated treatment.

H. Conf. Rep. No. 1038, 98th Cong., 2d Sess. 41 (1984).

This clause of the proposed rule dealt with the application of this concept in two contexts: First, when the nontreatable condition will not become life-threatening in the near future, and second, when humaneness makes palliative treatment medically indicated.

With respect to the context of a future life-threatening condition, it is the Department's interpretation that the term ''not be effective in ameliorating or correcting all of the infant's life-threatening conditions'' does not permit the withholding of treatment on the grounds that one or more of the infant's life-threatening conditions, although not life-threatening in the near future, will become life-threatening in the more distant future.

This clarification can be restated in the terms of the Conference Committee Report excerpt, quoted just above, with the italicized words indicating the clarification, as follows: Under the definition, if a disabled infant suffers from more than one life-threatening condition and, in the treating physician's or physicians' reasonable medical judgment, there is no effective treatment for one of these conditions *that threatens the life of the infant in the near future,* then the infant is not covered by the terms of the amendment (except with respect to appropriate nutrition, hyrdation, and medication) concerning the withholding of medically indicated treatment; *but if the nontreatable condition will not become life-threatening until the more distant future, the infant is covered by the terms of the amendment.*

Thus, this interpretative guideline is simply a corollary to the Department's interpretation of ''merely prolong dying,'' stated above, and is based on the same understanding of Congressional intent, indicated above, that if a condition will not become life-threatening until the more distant future, it should not be the basis for withholding treatment.

Also for the same reasons explained above, the word ''imminent'' that appeared in the proposed definition is not adopted for purposes of this interpretative guideline. The Department makes no effort to draw an exact line to separate ''near future'' from ''more distant future.'' As noted above in connection with the term ''merely prolong dying,'' the statutory definition provides that it is for reasonable medical judgment, applied to the specific condition and circumstances involved, to determine whether the prognosis of death, because of its nearness in time, is such that treatment would not be medically indicated.

7. *The term ''not be effective in ameliorating or correcting all life-threatening conditions'' in the context of palliative treatment.*

Clause (b)(3)(iv)(B) of the proposed rule proposed to define the term ''not be effective in ameliorating or correcting all life-threatening conditions'' in the context where the issue is not life-saving treatment, but rather palliative treatment to make a condition more tolerable. An example of this situation is where an infant has more than one life-threatening condition, at least one of which is not treatable and will cause death in the near future. Palliative treatment is available, however, that will, in the treating physician's reasonable medical judgment, relieve severe pain associated with one of the conditions. If it is the treating physician's reasonable medical judgment that this palliative treatment will ameliorate the infant's *overall* condition, taking all individual conditions into account, even though it would not ameliorate or correct *each* condition, then this palliative treatment is medically indicated. Simply put, in the context of ameliorative treatment that will make a condition more tolerable, the term ''not be effective in ameliorating or correcting *all* life-threatening conditions'' should not be construed as meaning *each and every* condition, but rather as referring to the infant's *overall* condition.

HHS believes Congress did not intend to exclude humane treatment of this kind from the scope of ''medically indicated treatment.'' The Conference Committee Report specifically recognized that ''it is appropriate for a physician, in the exercise of reasonable medical judgment, to consider that factor [humaneness] in selecting among effective treatments.'' H. Conf. Rep. No. 1038, 98th Cong., 2d Sess. 41 (1984). In addition, the articulation in the statutory definition of circumstances in which treatment need not be provided specifically states that ''appropriate nutrition, hydration, and medication'' must nonetheless be provided. The inclusion in this proviso of medication, one (but not the only) potential palliative treatment to relieve severe pain, corroborates the Department's interpretation that such palliative treatment that will ameliorate the infant's overall condition, and that in the exercise of reasonable medical judgment is humane and medically indicated, was not intended by Congress to be outside the scope of the statutory definition.

Thus, it is the Department's interpretation that the term ''not be effective in ameliorating or correcting all of the infant's life-threatening conditions'' does not permit the withholding of ameliorative treatment that, in the treating physician's or physicians' reasonable medical judgment, will make a condition more tolerable, such as providing palliative treatment to relieve severe pain, even if the overall prognosis, taking all conditions into account, is that the infant will not survive.

A number of commenters expressed concerns about some of the examples contained in the preamble of the proposed rule that discussed the proposed definition relating to this point, and stated that, depending on medical complications, exact prognosis, relationships to other conditions, and other factors, the treatment suggested in the examples might not necessarily be the treatment that reasonable medical judgment would decide would be most likely to be effective. In response to these comments, specific diagnostic examples have not been included in this discussion, and this interpretative guideline makes clear that the ''reasonable medical judgment'' standard applies on this point as well.

Other commenters argued that an interpretative guideline on this point is unnecessary because reasonable medical judgment would commonly provide ameliorative or palliative treatment in the circumstances described. The Department agrees that such treatment is common in the exercise of resaonable medical judgment, but believes it useful, for the reasons stated, to provide this interpretative guidance.

8. *The term ''virtually futile''.*

Clause (b)(3)(vii) of the proposed rule proposed a definition of the term ''virtually futile'' contained in the statutory definition. The context of this term in the statutory definition is:

[T]he term ''withholding of medically indicated treatment'' * * * does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment, * * * the provision of such treatment would be *virtually futile* in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. Section 3(3)(C) of the Act [emphasis supplied].

The Department interprets the term ''virtually futile'' to mean that the treatment is highly unlikely to prevent death in the near future.

This interpretation is similar to those offered in connection with ''merely prolong dying'' and ''not be effective in ameliorating or correcting all life-threatening conditions'' in the context of a future life-threatening condition, with the addition of a characterization of likelihood that corresponds to the statutory word ''virtually.'' For the reasons explained in the discussion of ''merely prolong dying,'' the word ''imminent'' that was used in the proposed rule has not been adopted for purposes of this interpretative guideline.

Some commenters expressed concern regarding the words ''highly unlikely,'' on the grounds that such certitude is often medically impossible. Other commenters urged that a distinction should be made between generally utilized treatments and experimental treatments. The Department does not believe any special clarifications are needed to respond to these comments. The basic standard of reasonable medical judgment applies to the term ''virtually futile.'' The Department's interpretation does not suggest an impossible or unrealistic standard of certitude for any medical judgment. Rather, the standard adopted in the law is that there be a ''reasonable medical judgment.'' Similarly, reasonable medical judgment is the standard for evaluating potential treatment possibilities on the basis of the actual circumstances of the case. HHS does not believe it would be helpful to try to establish distinctions based on characterizations of the degree of general usage, extent of validated efficacy data, or other similar factors. The factors considered in the exercise of reasonable medical judgment, including any factors relating to human subjects experimentation standards, are not disturbed.

9. *The term ''the treatment itself under such circumstances would be inhumane.''*

Clause (b)(3)(viii) of the proposed rule proposed a definition of the term ''the treatment itself under such circumstances would be inhumane,'' that appears in the statutory definition. The context of this term in the statutory definition is that it is not a ''withholding of medically indicated treatment'' to withhold treatment (other than appropriate nutrition, hydration, or medication) when, in the treating physician's reasonable medical judgment, ''the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.'' §3(3)(C) of the Act.

The Department interprets the term ''the treatment itself under such circumstances would be inhumane'' to mean the treatment itself involves significant medical contraindications and/or significant pain and suffering for the infant that clearly outweigh the very slight potential benefit of the treatment for an infant highly unlikely to survive. (The Department further notes that the use of the term ''inhumane'' in this context is not intended to suggest that consideration of the humaneness of a particular treatment is not legitimate in any other context; rather, it is recognized that it is appropriate for a physician, in the exercise of reasonable

medical judgment, to consider that factor in selecting among effective treatments.)

Other clauses of the statutory definition focus on the expected *result* of the possible treatment. This provision of the statutory definition adds a consideration relating to the *process* of possible treatment. It recognizes that in the exercise of reasonable medical judgment, there are situations where, although there is some slight chance that the treatment will be beneficial to the patient (the potential treatment is considered *virtually* futile, rather than futile), the potential benefit is so outweighed by negative factors relating to the process of the treatment itself that, under the circumstances, it would be inhumane to subject the patient to the treatment.

The Department's interpretation is designed to suggest the factors that should be taken into account in this difficult balance. A number of commenters argued that the interpretation should permit, as part of the evaluation of whether treatment would be inhumane, consideration of the infant's future ''quality of life.''

The Department strongly believes such an interpretation would be inconsistent with the statute. The statute specifies that the provision applies only where the treatment would be ''virtually futile in terms of the survival of the infant,'' and the ''treatment *itself* under such circumstances would be inhumane.'' (Emphasis supplied.) The balance is clearly to be between the very slight chance that treatment will allow the infant to survive and the negative factors relating to the process of the treatment. These are the circumstances under which reasonable medical judgment could decide that the treatment itself would be inhumane.

Some commenters expressed concern about the use of terms such as ''clearly outweight'' in the description of this balance on the grounds that such precision is impractical. Other commenters argued that this interpretation could be construed to mandate useless and painful treatment. The Department believes there is no basis for these worries because ''reasonable medical judgment'' is the governing standard. The interpretative guideline suggests nothing other than application of this standard. What the guideline does is set forth the Department's interpretation that the statute directs the reasonable medical judgment to considerations relating to the slight chance of survival and the negative factors regarding the process of treatment and to the balance between them that would support a conclusion that the treatment itself would be inhumane.

Other commenters suggested adoption of a statement contained in the Conference Committee Report that makes clear that the use of the term ''inhumane'' in the statute was not intended to suggest that consideration of the humaneness of a particular treatment is not legitimate in any other context. The Department has adopted this statement as part of its interpretative guideline.

10. *Other terms.*

Some comments suggested that the Department clarify other terms used in the statutory definition of ''withholding of medically-indicated treatment,'' such as the term ''appropriate nutrition, hydration or medication'' in the context of treatment that may not be withheld, notwithstanding the existence of one of the circumstances under which the failure to provide treatment is not a ''withholding of medically indicated treatment.'' Some commenters stated, for example, that very potent pharmacologic agents, like other methods of medical intervention, can produce results accurately described as accomplishing no more than to merely prolong dying, or be futile in terms of the survival of the infant, or the like, and that, therefore, the Department should clarify that the proviso regarding ''appropriate nutrition, hydration or medication'' should not be construed entirely independently of the circumstances under which other treatment need not be provided.

The Department has not adopted an interpretative guideline on this point because it appears none is necessary. As noted above in the discussion of palliative treatment, the Department recognizes that there is no absolutely clear line between medication and treatment other than medication that would justify excluding the latter from the scope of palliative treatment that reasonable medical judgment would find medically indicated, notwithstanding a very poor prognosis.

Similarly, the Department recognizes that in some circumstances, certain pharmacologic agents, not medically indicated for palliative purposes, might, in the exercise of reasonable medical judgment, also not be indicated for the purpose of correcting or ameliorating any particular condition because they will, for example, merely prolong dying. However, the Department believes the word ''appropriate'' in this proviso of the statutory definition is adequate to permit the exercise of reasonable medical judgment in the scenario referred to by these commenters.

At the same time, it should be clearly recognized that the statute is completely unequivocal in requiring that all infants receive ''appropriate nutrition, hydration, and medication,'' regardless of their condition or prognosis.

[50 FR 14889, Apr. 15, 1985, as amended at 55 FR 27640, July 5, 1990]

SUBCHAPTER F—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, FAMILY AND YOUTH SERVICES BUREAU

PART 1351—RUNAWAY AND HOMELESS YOUTH PROGRAM

Subpart A—Definition of Terms

Sec.
1351.1 Significant terms.

Subpart B—Runaway and Homeless Youth Program Grant

1351.10 What is the purpose of the Runaway and Homeless Youth Program grant?
1351.11 Who is eligible to apply for a Runaway and Homeless Youth Program grant?
1351.12 Who gets priority for the award of a Runaway and Homeless Youth Program grant?
1351.13 What are the Federal and non-Federal match requirements under a Runaway and Homeless Youth Program grant?
1351.14 What is the period for which a grant will be awarded?
1351.15 What costs are supportable under a Runaway and Homeless Youth Program grant?
1351.16 What costs are not allowable under a Runaway and Homeless Youth Program grant?
1351.17 How is application made for a Runaway and Homeless Youth Program grant?
1351.18 What criteria has HHS established for deciding which Runaway and Homeless Youth Program grant applications to fund?
1351.19 What additional information should an applicant or grantee have about a Runaway and Homeless Youth Program grant?

Subpart C—Additional Requirements

1351.20 What are the additional requirements under a Runaway and Homeless Youth Program grant?

AUTHORITY: 42 U.S.C. 5701.

SOURCE: 43 FR 55635, Nov. 28, 1978, unless otherwise noted.

Subpart A—Definition of Terms

§ 1351.1 Significant terms.

For the purposes of this part:

(a) *Aftercare services* means the provision of services to runaway or otherwise homeless youth and their families, following the youth's return home or placement in alternative living arrangements which assist in alleviating the problems that contributed to his or her running away or being homeless.

(b) *Area* means a specific neighborhood or section of the locality in which the runaway and homeless youth project is or will be located.

(c) *Coordinated networks of agencies* means an association of two or more private agencies, whose purpose is to develop or strengthen services to runaway or otherwise homeless youth and their families.

(d) *Counseling services* means the provision of guidance, support and advice to runaway or otherwise homeless youth and their families designed to alleviate the problems which contributed to the youth's running away or being homeless, resolve intrafamily problems, to reunite such youth with their families, whenever appropriate, and to help them decide upon a future course of action.

(e) *Demonstrably frequented by or reachable* means located in an area in which runaway or otherwise homeless youth congregate or an area accessible to such youth by public transportation or by the provision of transportation by the runaway and homeless youth project itself.

(f) *Homeless youth* means a person under 18 years of age who is in need of services and without a place of shelter where he or she receives supervision and care.

(g) *Juvenile justice system* means agencies such as, but not limited to juvenile courts, law enforcement, probation, parole, correctional institutions, training schools, and detention facilities.

(h) *Law enforcement structure* means any police activity or agency with legal responsibility for enforcing a criminal code including, police departments and sheriffs offices.

(i) *A locality* is a unit of general government—for example, a city, county, township, town, parish, village, or a

combination of such units. Federally recognized Indian tribes are eligible to apply for grants as local units of government.

(j) *Runaway and homeless youth project* means a locally controlled human service program facility outside the law enforcement structure and the juvenile justice system providing temporary shelter, either directly or through other facilities, counseling and aftercare services to runaway or otherwise homeless youth.

(k) *Runaway youth* means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of his or her family.

(l) *Short-term training* means the provision of local, State, or regionally based instruction to runaway or otherwise homeless youth service providers in skill areas that will directly strengthen service delivery.

(m) *A State* includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(n) *Technical assistance* means the provision of expertise or support for the purpose of strengthening the capabilities of grantee organizations to deliver services.

(o) *Temporary shelter* means the provision of short-term (maximum of 15 days) room and board and core crisis intervention services, on a 24-hour basis, by a runaway and homeless youth project.

[43 FR 55635, Nov. 28, 1978, as amended at 54 FR 20854, May 15, 1989; 55 FR 5601, Feb. 16, 1990]

Subpart B—Runaway and Homeless Youth Program Grant

§ 1351.10 What is the purpose of the Runaway and Homeless Youth Program grant?

The purpose of the Runaway and Homeless Youth Program grant is to establish or strengthen existing or proposed community-based runaway and homeless youth projects to provide temporary shelter and care to runaway or otherwise homeless youth who are in need of temporary shelter, counseling and aftercare services. The Department is concerned about the increasing numbers of youth who leave, and stay away from, their homes without permission of their families. There is also national concern about runaway and homeless youth who have no resources, who live on the street, and who represent law enforcement problems in the communities to which they run. The problems of runaway or otherwise homeless youth should not be the responsibility of already overburdened police departments and juvenile justice authorities. Rather, Congress intends that the responsibility for locating, assisting, and returning such youth should be placed with low-cost, community-based human service programs.

§ 1351.11 Who is eligible to apply for a Runaway and Homeless Youth Program grant?

States localities, private entities, and coordinated networks of such entities are eligible to apply for a Runaway and Homeless Youth Program grant unless they are part of the law enforcement structure or the juvenile justice system.

[54 FR 20855, May 15, 1989; 55 FR 5601, Feb. 16, 1990]

§ 1351.12 Who gets priority for the award of a Runaway and Homeless Youth Program grant?

In making Runaway and Homeless Youth Program grants, HHS gives priority to those private agencies which have had past experience in dealing with runaway or otherwise homeless youth. HHS also gives priority to applicants whose total grant requests for services to runaway or otherwise homeless youth are less than $100,000 and whose project budgets, considering all funding sources, are smaller than $150,000. Past experience means that a major activity of the agency has been the provision of temporary shelter, counseling, and referral services to runaway or otherwise homeless youth and their families, either directly or through linkages established with other community agencies.

§ 1351.13 What are the Federal and non-Federal match requirements under a Runaway and Homeless Youth grant?

HHS requires a non-Federal share which is equal to at least 10 percent of the Federal funds that will be received under this grant program for any fiscal year.

[54 FR 20855, May 15, 1989; 55 FR 5601, Feb. 16, 1990]

§ 1351.14 What is the period for which a grant will be awarded?

(a) The initial notice of grant award specifies how long HHS intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed five years.

(b) Generally the grant will initially be for one year. A grantee must submit a separate application to have the support continued for each subsequent year. Continuation awards within the project period will be made provided the grantee has made satisfactory progress, funds are available, and HHS determines that continued funding is in the best interest of the Government.

[43 FR 55635, Nov. 28, 1978, as amended at 65 FR 50141, Aug. 17, 2000]

§ 1351.15 What costs are supportable under a Runaway and Homeless Youth Program grant?

Costs which can be supported include, but are not limited to, temporary shelter, referral services, counseling services, aftercare services, and staff training. Costs for acquisition and renovation of existing structures may not normally exceed 15 percent of the grant award. HHS may waive this limitation upon written request under special circumstances based on demonstrated need.

§ 1351.16 What costs are not allowable under a Runaway and Homeless Youth Program grant?

A Runaway and Homeless Youth Program grant does not cover the cost of constructing new facilities.

§ 1351.17 How is application made for a Runaway and Homeless Youth Program grant?

HHS publishes annually in the FEDERAL REGISTER a program announcement of grant funds available under the Runaway and Homeless Youth Program Act. The program announcement states the amount of funds available, program priorities for funding, and criteria for evaluating applications in awarding grants. The announcement also describes specific procedures for receipt and review of applications. An applicant should:

(a) Obtain a program announcement from the FEDERAL REGISTER or from one of HHS's 10 Regional Offices in Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, and Seattle;

(b) Obtain an application package from one of HHS's Regional Offices; and

(c) Submit a completed application to the Grants Management Office at the appropriate Regional Office.

[43 FR 55635, Nov. 28, 1978, as amended at 48 FR 29202, June 24, 1983]

§ 1351.18 What criteria has HHS established for deciding which Runaway and Homeless Youth Program grant applications to fund?

In reviewing applications for a Runaway and Homeless Youth Program grant, HHS takes into consideration a number of factors, including:

(a) Whether the application meets one or more of the program's funding priorities; (see § 1351.12)

(b) The need for Federal support based on the number of runaway or otherwise homeless youth in the area in which the runaway and homeless youth project is or will be located;

(c) The availability of services to runaway or otherwise homeless youth in the area in which the runaway and homeless youth project is located;

(d) Whether there is a minimum residential capacity of four and a maximum residential capacity not to exceed 20 youth with a ratio of staff to youth sufficient to assure adequate supervision and treatment;

(e) Plans for meeting the best interests of the youth involving, when possible, both the youth and the family.

These must include contacts with the families. This contact should be made within 24 hours, but must be made no more than 72 hours following the time of the youth's admission into the runaway and homeless youth project. The plans must also include assuring the youth's safe return home or to local government officials or law enforcement officials and indicate efforts to provide appropriate alternative living arrangements.

(f) Plans for the delivery of aftercare or counseling services to runaway or otherwise homeless youth and their families;

(g) Whether the estimated cost to the Department for the runaway and homeless youth project is reasonable considering the anticipated results;

(h) Whether the proposed personnel are well qualified and the applicant agency has adequate facilities and resources;

(i) Whether the proposed project design, if well executed, is capable of attaining program objectives;

(j) The consistency of the grant application with the provisions of the Act and these regulations.

§ 1351.19 What additional information should an applicant or grantee have about a Runaway and Homeless Youth Program grant?

(a) Several other HHS rules and regulations apply to applicants for or recipients of Runaway and Homeless Youth Program grants. These include:

(1) The provisions of 45 CFR part 74 pertaining to the Administration of Grants;

(2) The provisions of 45 CFR part 16, Departmental Grants Appeal Process, and the provisions of Informal Grant Appeal Procedures (Indirect Costs) in volume 45 CFR part 75;

(3) The provisions of 45 CFR part 80 and 45 CFR part 81 pertaining to nondiscrimination under programs receiving Federal assistance, and hearing procedures;

(4) The provisions of 45 CFR part 84 pertaining to discrimination on the basis of handicap;

(5) The provisions of 45 CFR part 46 pertaining to protection of human subjects.

(b) Several program policies regarding confidentiality of information, treatment, conflict of interest and State protection apply to recipients of Runaway and Homeless Youth Program grants. These include:

(1) *Confidential information.* All information including lists of names, addresses, photographs, and records of evaluation of individuals served by a runaway and homeless youth project shall be confidential and shall not be disclosed or transferred to any individual or to any public or private agency without written consent of the youth and family. Youth served by a runaway and homeless youth project shall have the right to review their records; to correct a record or file a statement of disagreement; and to be apprised of the individuals who have reviewed their records. Procedures shall be established for the training of project staff in the protection of these rights and for the secure storage of records.

(2) *Medical, psychiatric or psychological treatment.* No youth shall be subject to medical, psychiatric or psychological treatment without the consent of the youth and family unless otherwise permitted by State law.

(3) *Conflict of interest.* Employees or individuals participating in a program or project under the Act shall not use their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

(4) *State law protection.* HHS policies regarding confidential information and experimentation and treatment shall not apply if HHS finds that State law is more protective of the rights of runaway or otherwise homeless youth.

(c) Nothing in the Runaway and Homeless Youth Act or these regulations gives the Federal Government control over the staffing and personnel decisions regarding individuals hired by a runaway and homeless youth project receiving Federal funds.

Subpart C—Additional Requirements

§ 1351.20 What are the additional requirements under a Runaway and Homeless Youth Program grant?

(a) To improve the administration of the Runaway and Homeless Youth Program by increasing the capability of the runaway and homeless youth service providers to deliver services, HHS will require grantees to accept technical assistance and short-term training as a condition of funding for each budget period.

(1) Technical assistance may be provided in, but not limited to, such areas as:

- Program Management,
- Fiscal Management,
- Development of coordinated networks of private nonprofit agencies to provide services, and
- Low cost community alternatives for runaway or otherwise homeless youth.

(2) Short-term training may be provided in, but not limited to, such areas as:

- Shelter facility staff development,
- Aftercare services or counseling,
- Fund raising techniques,
- Youth and Family counseling, and
- Crisis intervention techniques.

(b) Grantees will be required to coordinate their activities with the 24-hour National toll-free communication system which links runaway and homeless youth projects and other service providers with runaway or otherwise homeless youth.

(c) Grantees will also be required to submit statistical reports profiling the clients served. The statistical reporting requirements are mandated by the Act which states that ''runaway and homeless youth projects shall keep adequate statistical records profiling the children and families which it serves . . .''

SUBCHAPTER G—THE ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, FOSTER CARE MAINTENANCE PAYMENTS, ADOPTION ASSISTANCE, AND CHILD AND FAMILY SERVICES

PART 1355—GENERAL

Sec.
1355.10 Scope.
1355.20 Definitions.
1355.21 State plan requirements for titles IV-E and IV-B.
1355.25 Principles of child and family services.
1355.30 Other applicable regulations.
1355.31 Elements of the child and family services review system.
1355.32 Timetable for the reviews.
1355.33 Procedures for the review.
1355.34 Criteria for determining substantial conformity.
1355.35 Program improvement plans.
1355.36 Withholding Federal funds due to failure to achieve substantial conformity or failure to successfully complete a program improvement plan.
1355.37 Opportunity for Public Inspection of Review Reports and Materials.
1355.38 Enforcement of section 471(a)(18) of the Act regarding the removal of barriers to interethnic adoption.
1355.39 Administrative and judicial review.
1355.40 Foster care and adoption data collection.
1355.50 Purpose of this part.
1355.52 Funding authority for statewide automated child welfare information systems (SACWIS).
1355.53 Conditions for approval of funding.
1355.54 Submittal of advance planning documents.
1355.55 Review and assessment of the system developed with enhanced funds.
1355.56 Failure to meet the conditions of the approved APD.
1355.57 Cost allocation.

APPENDIX A TO PART 1355—FOSTER CARE DATA ELEMENTS.
APPENDIX B TO PART 1355—ADOPTION DATA ELEMENTS.
APPENDIX C TO PART 1355—ELECTRONIC DATA TRANSMISSION FORMAT.
APPENDIX D TO PART 1355—FOSTER CARE AND ADOPTION RECORD LAYOUTS.
APPENDIX E TO PART 1355—DATA STANDARDS.
APPENDIX F TO PART 1355—ALLOTMENT OF FUNDS WITH 427 INCENTIVE FUNDS TITLE IV-B CHILD WELFARE SERVICES FISCAL YEAR 1993.

AUTHORITY: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

§ 1355.10 Scope.

Unless otherwise specified, part 1355 applies to States and Indian Tribes and contains general requirements for Federal financial participation under titles IV-B and IV-E of the Social Security Act.

[61 FR 58653, Nov. 18, 1996]

§ 1355.20 Definitions.

(a) Unless otherwise specified, the following terms as they appear in 45 CFR parts 1355, 1356 and 1357 of this title are defined as follows—

Act means the Social Security Act, as amended.

ACYF means the Administration on Children, Youth and Families, Administration for Children and Families (ACF), U. S. Department of Health and Human Services.

Adoption means the method provided by State law which establishes the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed ''adoption'' after the legal process is complete.

Child abuse and neglect means the definition contained in 42 U.S.C. 5106(g)(2).

Child care institution means a private child care institution, or a public child care institution which accommodates no more than twenty-five children, and is licensed by the State in which it is situated or has been approved by the agency of such State or tribal licensing authority (with respect to child care institutions on or near Indian Reservations) responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. This definition must not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

Commissioner means the Commissioner on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services.

Date a child is considered to have entered foster care means the earlier of: The date of the first judicial finding that the child has been subjected to child abuse or neglect; or, the date that is 60 calendar days after the date on which the child is removed from the home pursuant to § 1356.21(k). A State may use a date earlier than that required in this paragraph, such as the date the child is physically removed from the home. This definition determines the date used in calculating all time period requirements for the periodic reviews, permanency hearings, and termination of parental rights provision in section 475(5) of the Act and for providing time-limited reunification services described at section 431(a)(7) of the Act. The definition has no relationship to establishing initial title IV-E eligibility.

Department means the United States Department of Health and Human Services.

Detention facility in the context of the definition of child care institution in section 472(c)(2) of the Act means a physically restricting facility for the care of children who require secure custody pending court adjudication, court disposition, execution of a court order or after commitment.

Entity, as used in § 1355.38, means any organization or agency (*e.g.*, a private child placing agency) that is separate and independent of the State agency; performs title IV-E functions pursuant to a contract or subcontract with the State agency; and, receives title IV-E funds. A State court is not an ''entity'' for the purposes of § 1355.38 except if an administrative arm of the State court carries out title IV-E administrative functions pursuant to a contract with the State agency.

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

Foster care maintenance payments are payments made on behalf of a child eligible for title IV-E foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for a child's visitation with family, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences. ''Daily supervision'' for which foster care maintenance payments may be made includes:

(1) *Foster family care*—licensed child care, when work responsibilities preclude foster parents from being at home when the child for whom they have care and responsibility in foster care is not in school, licensed child care when the foster parent is required to participate, without the child, in activities associated with parenting a child in foster care that are beyond the scope of ordinary parental duties, such as attendance at administrative or judicial reviews, case conferences, or foster parent training. Payments to cover these costs may be: included in the basic foster care maintenance payment; a separate payment to the foster parent, or a separate payment to the child care provider; and

(2) *Child care institutions*—routine day-to-day direction and arrangements to ensure the well-being and safety of the child.

Foster family home means, for the purpose of title IV-E eligibility, the home of an individual or family licensed or

approved as meeting the standards established by the State licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority(ies)), that provides 24-hour out-of-home care for children. The term may include group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed. Anything less than full licensure or approval is insufficient for meeting title IV-E eligibility requirements. States may, however, claim title IV-E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure or approval and the date the actual license is issued, not to exceed 60 days.

Full review means the joint Federal and State review of all federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining the State's substantial conformity with the State plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part. A full review consists of two phases, the statewide assessment and a subsequent on-site review, as described in §1355.33 of this part.

Legal guardianship means a judicially-created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term *legal guardian* means the caretaker in such a relationship.

National Child Abuse and Neglect Data System (NCANDS) means the voluntary national data collection and analysis system established by the Administration for Children and Families in response to a requirement in the Child Abuse Prevention and Treatment Act (Pub. L. 93–247), as amended.

Partial review means:

(1) For the purpose of the child and family services review, the joint Federal and State review of one or more federally-assisted child and family services program(s) in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services. A partial review may consist of any of the components of the full review, as mutually agreed upon by the State and the Administration for Children and Families as being sufficient to determine substantial conformity of the reviewed components with the State plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part; and

(2) For the purpose of title IV-B and title IV-E State plan compliance issues that are outside the prescribed child and family services review format, *e.g.*, compliance with AFCARS requirements, a review of State laws, policies, regulations, or other information appropriate to the nature of the concern, to determine State plan compliance.

Permanency hearing means:

(1) The hearing required by section 475(5)(C) of the Act to determine the permanency plan for a child in foster care. Within this context, the court (including a Tribal court) or administrative body determines whether and, if applicable, when the child will be:

(i) Returned to the parent;

(ii) Placed for adoption, with the State filing a petition for termination of parental rights;

(iii) Referred for legal guardianship;

(iv) Placed permanently with a fit and willing relative; or

(v) Placed in another planned permanent living arrangement, but only in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to follow one of the four specified options above.

(2) The permanency hearing must be held no later than 12 months after the date the child is considered to have entered foster care in accordance with the definition at §1355.20 of this part or

within 30 days of a judicial determination that reasonable efforts to reunify the child and family are not required. After the initial permanency hearing, subsequent permanency hearings must be held not less frequently than every 12 months during the continuation of foster care. The permanency hearing must be conducted by a family or juvenile court or another court of competent jurisdiction or by an administrative body appointed or approved by the court which is not a part of or under the supervision or direction of the State agency. Paper reviews, *ex parte* hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and foster parents or preadoptive parents (if any) are not permanency hearings.

State means, for title IV-B, the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. For title IV-E the term ''State'' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

State agency means the State agency administering or supervising the administration of the title IV-B and title IV-E State plans and the title XX social services block grant program. An exception to this requirement is permitted by section 103(d) of the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272). Section 103(d) provides that, if on December 1, 1974, the title IV-B program (in a State or local agency) and the social services program under section 402(a)(3) of the Act (the predecessor program to title XX) were administered by separate agencies, that separate administration of the programs could continue at State option.

Statewide assessment means the initial phase of a full review of all federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services as described in §1355.33(b) of this part, for the purpose of determining the State's substantial conformity with the State plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part.

(b) Unless otherwise specified, the definitions contained in section 475 of the Act apply to all programs under titles IV-E and IV-B of the Act.

[48 FR 23114, May 23, 1983, as amended at 57 FR 30429, July 9, 1992; 58 FR 67924, Dec. 22, 1993; 61 FR 58653, Nov. 18, 1996; 65 FR 4076, Jan. 25, 2000; 66 FR 58675, Nov. 23, 2001]

§1355.21 State plan requirements for titles IV-E and IV-B.

(a) The State plans for titles IV-E and IV-B must provide for safeguards on the use and disclosure of information which meet the requirements contained in section 471(a)(8) of the Act.

(b) The State plans for titles IV-E and IV-B must provide for compliance with the Department's regulations listed in 45 CFR 1355.30.

(c) The State agency and the Indian Tribe must make available for public review and inspection the Child and Family Services Plan (CFSP) and the Annual Progress and Services Reports. (See 45 CFR 1357.15 and 1357.16.) The State agency also must make available for public review and inspection the title IV-E State Plan.

[48 FR 23114, May 23, 1983, as amended at 61 FR 58654, Nov. 18, 1996]

§1355.25 Principles of child and family services.

The following principles, most often identified by practitioners and others as helping to assure effective services for children, youth, and families, should guide the States and Indian Tribes in developing, operating, and improving the continuum of child and family services.

(a) The safety and well-being of children and of all family members is paramount. When safety can be assured, strengthening and preserving families is seen as the best way to promote the healthy development of children. One important way to keep children safe is to stop violence in the family including violence against their mothers.

(b) Services are focused on the family as a whole; service providers work with families as partners in identifying and

meeting individual and family needs; family strengths are identified, enhanced, respected, and mobilized to help families solve the problems which compromise their functioning and well-being.

(c) Services promote the healthy development of children and youth, promote permanency for all children and help prepare youth emancipating from the foster care system for self-sufficiency and independent living.

(d) Services may focus on prevention, protection, or other short or long-term interventions to meet the needs of the family and the best interests and need of the individual(s) who may be placed in out-of-home care.

(e) Services are timely, flexible, coordinated, and accessible to families and individuals, principally delivered in the home or the community, and are delivered in a manner that is respectful of and builds on the strengths of the community and cultural groups.

(f) Services are organized as a continuum, designed to achieve measurable outcomes, and are linked to a wide variety of supports and services which can be crucial to meeting families' and children's needs, for example, housing, substance abuse treatment, mental health, health, education, job training, child care, and informal support networks.

(g) Most child and family services are community-based, involve community organizations, parents and residents in their design and delivery, and are accountable to the community and the client's needs.

(h) Services are intensive enough and of sufficient duration to keep children safe and meet family needs. The actual level of intensity and length of time needed to ensure safety and assist the family may vary greatly between preventive (family support) and crisis intervention services (family preservation), based on the changing needs of children and families at various times in their lives. A family or an individual does not need to be in crisis in order to receive services.

[61 FR 58654, Nov. 18, 1996]

§ 1355.30 Other applicable regulations.

Except as specified, the following regulations are applicable to all programs funded under titles IV-B and IV-E of the Act.

(a) 45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.

(b) 45 CFR Part 30—Claims Collection.

(c) 45 CFR Part 74—Administration of Grants (Applicable only to title IV-E foster care and adoption assistance, except that: (1) Section 74.23 Cost Sharing or Matching, and (2) section 74.52 Financial Reporting Requirements, will not apply.)

(d) 45 CFR Part 76—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

(e) 45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964.

(f) 45 CFR Part 81—Practice and Procedure for Hearings Under Part 80 of This Title.

(g) 45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance.

(h) 45 CFR Part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance.

(i) 45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Applicable only to the title IV-B programs and the Independent Living Program under Section 477 of the Act).

(j) 45 CFR Part 93—New Restrictions on Lobbying.

(k) 45 CFR Part 95—General Administration—Grant Programs (Public Assistance and Medical Assistance). (Applicable to title IV-B and title IV-E except that, notwithstanding 45 CFR 95.1(a), Subpart A, Time Limits for States to File Claims, does not apply to title IV-B (subparts 1 and 2) and the Independent Living Program.)

(l) 45 CFR Part 97—Consolidation of Grants to the Insular Areas. (Applicable only to the title IV-B programs).

(m) 45 CFR Part 100—Intergovernmental Review of Department of Health and Human Services Programs

and Activities. (Only one section is applicable: 45 CFR 100.12, How may a State simplify, consolidate, or substitute federally required State plans?).

(n) 45 CFR Part 201—Grants to States for Public Assistance Programs. Only the following sections are applicable:

(1) § 201.5—Grants. (Applicable to title IV-E foster care and adoption assistance only.)

(2) § 201.6—Withholding of payment; reduction of Federal financial participation in the costs of social services and training. (Applicable only to an unapprovable change in an approved State plan, or the failure of the State to change its approved plan to conform to a new Federal requirement for approval of State plans.)

(3) § 201.15—Deferral of claims for Federal financial participation. (Applicable only to title IV-E foster care and adoption assistance.)

(4) § 201.66—Repayment of Federal funds by installments. (Applicable only to title IV-E foster care and adoption assistance.)

(o) 45 CFR Part 204.1—Submittal of State Plans for Governor's Review.

(p) 45 CFR Part 205—General Administration—Public Assistance Programs. Only the following sections are applicable:

(1) § 205.5—Plan amendments.

(2) § 205.10—Hearings.

(3) § 205.50—Safeguarding information for the financial assistance programs.

(4) § 205.100—Single State agency.

[61 FR 58654, Nov. 18, 1996, as amended at 66 FR 58675, Nov. 23, 2001]

§ 1355.31 Elements of the child and family services review system.

Scope. Sections 1355.32 through 1355.37 of this part apply to reviews of child and family services programs administered by States under subparts 1 and 2 of title IV-B of the Act, and reviews of foster care and adoption assistance programs administered by States under title IV-E of the Act.

[65 FR 4076, Jan. 25, 2000]

§ 1355.32 Timetable for the reviews.

(a) *Initial reviews*. Each State must complete an initial full review as described in § 1355.33 of this part during the four-year period after the final rule becomes effective.

(b) *Reviews following the initial review*. (1) A State found to be operating in substantial conformity during an initial or subsequent review, as defined in § 1355.34 of this part, must:

(i) Complete a full review every five years; and

(ii) Submit a completed statewide assessment to ACF three years after the on-site review. The statewide assessment will be reviewed jointly by the State and the Administration for Children and Families to determine the State's continuing substantial conformity with the State plan requirements subject to review. No formal approval of this interim statewide assessment by ACF is required.

(2) A State program found not to be operating in substantial conformity during an initial or subsequent review will:

(i) Be required to develop and implement a program improvement plan, as defined in § 1355.35 of this part; and

(ii) Begin a full review two years after approval of the program improvement plan.

(c) *Reinstatement of reviews based on information that a State is not in substantial conformity*. (1) ACF may require a full or a partial review at any time, based on any information, regardless of the source, that indicates the State may no longer be operating in substantial conformity.

(2) Prior to reinstating a full or partial review, ACF will conduct an inquiry and require the State to submit additional data whenever ACF receives information that the State may not be in substantial conformity.

(3) If the additional information and inquiry indicates to ACF's satisfaction that the State is operating in substantial conformity, ACF will not proceed with any further review of the issue addressed by the inquiry. This inquiry will not substitute for the full reviews conducted by ACF under § 1355.32(b).

(4) ACF may proceed with a full or partial review if the State does not provide the additional information as requested, or the additional information confirms that the State may not be operating in substantial conformity.

(d) *Partial reviews based on noncompliance with State plan requirements that are outside the scope of a child and family services review.* When ACF becomes aware of a title IV-B or title IV-E compliance issue that is outside the scope of the child and family services review process, we will:

(1) Conduct an inquiry and require the State to submit additional data.

(2) If the additional information and inquiry indicates to ACF's satisfaction that the State is in compliance, we will not proceed with any further review of the issue addressed by the inquiry.

(3) ACF will institute a partial review, appropriate to the nature of the concern, if the State does not provide the additional information as requested, or the additional information confirms that the State may not be in compliance.

(4) If the partial review determines that the State is not in compliance with the applicable State plan requirement, the State must enter into a program improvement plan designed to bring the State into compliance, if the provisions for such a plan are applicable. The terms, action steps and timeframes of the program improvement plan will be developed on a case-by-case basis by ACF and the State. The program improvement plan must take into consideration the extent of noncompliance and the impact of the noncompliance on the safety, permanency or well-being of children and families served through the State's title IV-B or IV-E allocation. If the State remains out of compliance, the State will be subject to a penalty related to the extent of the noncompliance.

(5) Review of AFCARS compliance will take place in accordance with 45 CFR 1355.40.

[65 FR 4076, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001]

§ 1355.33 Procedures for the review.

(a) The full child and family services reviews will:

(1) Consist of a two-phase process that includes a statewide assessment and an on-site review; and

(2) Be conducted by a team of Federal and State reviewers that includes:

(i) Staff of the State child and family services agency, including the State and local offices that represent the service areas that are the focus of any particular review;

(ii) Representatives selected by the State, in collaboration with the ACF Regional Office, from those with whom the State was required to consult in developing its CFSP, as described and required in 45 CFR part 1357.15(l);

(iii) Federal staff of HHS; and

(iv) Other individuals, as deemed appropriate and agreed upon by the State and ACF.

(b) *Statewide assessment.* The first phase of the full review will be a statewide assessment conducted by the internal and external State members of the review team. The statewide assessment must:

(1) Address each systemic factor under review, including the statewide information system; case review system; quality assurance system; staff training; service array; agency responsiveness to the community; and foster and adoptive parent licensing, recruitment and retention;

(2) Assess the outcome areas of safety, permanence, and well-being of children and families served by the State agency using data from AFCARS and NCANDS. For the initial review, ACF may approve another data source to substitute for AFCARS, and in all reviews, ACF may approve another data source to substitute for NCANDS. The State must also analyze and explain its performance in meeting the national standards for the statewide data indicators;

(3) Assess the characteristics of the State agency that have the most significant impact on the agency's capacity to deliver services to children and families that will lead to improved outcomes;

(4) Assess the strengths and areas of the State's child and family services programs that require further examination through an on-site review;

(5) Include a listing of all the persons external to the State agency who participated in the preparation of the statewide assessment pursuant to §§ 1355.33(a)(2)(ii) and (iv); and

(6) Be completed and submitted to ACF within 4 months of the date that ACF transmits the information for the statewide assessment to the State.

(c) *On-site review*. The second phase of the full review will be an on-site review.

(1) The on-site review will cover the State's programs under titles IV-B and IV-E of the Act, including in-home services and foster care. It will be jointly planned by the State and ACF, and guided by information in the completed statewide assessment that identifies areas in need of improvement or further review.

(2) The on-site review may be concentrated in several specific political subdivisions of the State, as agreed upon by the ACF and the State; however, the State's largest metropolitan subdivision must be one of the locations selected.

(3) ACF has final approval of the selection of specific areas of the State's child and family services continuum described in paragraph (c)(1) of this section and selection of the political subdivisions referenced in paragraph (c)(2) of this section.

(4) Sources of information collected during the on-site review to determine substantial conformity must include, but are not limited to:

(i) Case records on children and families served by the agency;

(ii) Interviews with children and families whose case records have been reviewed and who are, or have been, recipients of services of the agency;

(iii) Interviews with caseworkers, foster parents, and service providers for the cases selected for the on-site review; and

(iv) Interviews with key stakeholders, both internal and external to the agency, which, at a minimum, must include those individuals who participated in the development of the State's CFSP required at 45 CFR 1357.15(1), courts, administrative review bodies, children's guardians ad litem and other individuals or bodies assigned responsibility for representing the best interests of the child.

(5) The sample will range from 30–50 cases. Foster care cases must be drawn randomly from AFCARS, or, for the initial review, from another source approved by ACF and include children who entered foster care during the year under review. In-home cases must be drawn randomly from NCANDS or from another source approved by ACF. To ensure that all program areas are adequately represented, the sample size may be increased.

(6) The sample of 30–50 cases reviewed on-site will be selected from a randomly drawn oversample of no more than 150 foster care and 150 in-home services cases. The oversample must be statistically significant at a 90 percent compliance rate (95 percent in subsequent reviews), with a tolerable sampling error of 5 percent and a confidence coefficient of 95 percent. The additional cases in the oversample not selected for the on-site review will form the sample of cases to be reviewed, if needed, in order to resolve discrepancies between the statewide assessment and the on-site reviews in accordance with paragraph (d)(2) of this section.

(d) *Resolution of discrepancies between the statewide assessment and the findings of the on-site portion of the review*. Discrepancies between the statewide assessment and the findings of the on-site portion of the review will be resolved by either of the following means, at the State's option:

(1) The submission of additional information by the State; or

(2) ACF and the State will review additional cases using only those indicators in which the discrepancy occurred. ACF and the State will determine jointly the number of additional cases to be reviewed, not to exceed 150 foster care cases or 150 in-home services cases to be selected as specified in paragraph (c)(6) of this section.

(e) *Partial review*. A partial child and family services review, when required, will be planned and conducted jointly by ACF and the State agency based on the nature of the concern. A partial review does not substitute for the full reviews as required under § 1355.32(b).

(f) *Notification*. Within 30 calendar days following either a partial child and family services review, full child and family services review, or the resolution of a discrepancy between the statewide assessment and the findings of the on-site portion of the review, ACF will notify the State agency in writing of whether the State is, or is

not, operating in substantial conformity.

[65 FR 4077, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001]

§ 1355.34 Criteria for determining substantial conformity.

(a) *Criteria to be satisfied.* ACF will determine a State's substantial conformity with title IV-B and title IV-E State plan requirements based on the following:

(1) Its ability to meet national standards, set by the Secretary, for statewide data indicators associated with specific outcomes for children and families;

(2) Its ability to meet criteria related to outcomes for children and families; and

(3) Its ability to meet criteria related to the State agency's capacity to deliver services leading to improved outcomes.

(b) *Criteria related to outcomes.* (1) A State's substantial conformity will be determined by its ability to substantially achieve the following child and family service outcomes:

(i) *In the area of child safety:*

(A) Children are, first and foremost, protected from abuse and neglect; and,

(B) Children are safely maintained in their own homes whenever possible and appropriate;

(ii) *In the area of permanency for children:*

(A) Children have permanency and stability in their living situations; and

(B) The continuity of family relationships and connections is preserved for children; and

(iii) *In the area of child and family well-being:*

(A) Families have enhanced capacity to provide for their children's needs;

(B) Children receive appropriate services to meet their educational needs; and

(C) Children receive adequate services to meet their physical and mental health needs.

(2) A State's level of achievement with regard to each outcome reflects the extent to which a State has:

(i) Met the national standard(s) for the statewide data indicator(s) associated with that outcome, if applicable; and,

(ii) Implemented the following CFSP requirements or assurances:

(A) The requirements in 45 CFR 1357.15(p) regarding services designed to assure the safety and protection of children and the preservation and support of families;

(B) The requirements in 45 CFR 1357.15(q) regarding the permanency provisions for children and families in sections 422 and 471 of the Act;

(C) The requirements in section 422(b)(9) of the Act regarding recruitment of potential foster and adoptive families;

(D) The assurances by the State as required by section 422(b)(10)(C)(i) and (ii) of the Act regarding policies and procedures for abandoned children;

(E) The requirements in section 422(b)(11) of the Act regarding the State's compliance with the Indian Child Welfare Act;

(F) The requirements in section 422(b)(12) of the Act regarding a State's plan for effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements; and,

(G) The requirements in section 471(a)(15) of the Act regarding reasonable efforts to prevent removals of children from their homes, to make it possible for children in foster care to safely return to their homes, or, when the child is not able to return home, to place the child in accordance with the permanency plan and complete the steps necessary to finalize the permanent placement.

(3) A State will be determined to be in substantial conformity if its performance on:

(i) Each statewide data indicator developed pursuant to paragraph (b)(4) of this section meets the national standard described in paragraph (b)(5) of this section; and,

(ii) Each outcome listed in paragraph (b)(1) of this section is rated as ''substantially achieved'' in 95 percent of the cases examined during the on-site review (90 percent of the cases for a State's initial review). Information from various sources (case records, interviews) will be examined for each outcome and a determination made as to the degree to which each outcome

has been achieved for each case reviewed.

(4) The Secretary may, using AFCARS and NCANDS, develop statewide data indicators for each of the specific outcomes described in paragraph (b)(1) of this section for use in determining substantial conformity. The Secretary may add, amend, or suspend any such statewide data indicator(s) when appropriate. To the extent practical and feasible, the statewide data indicators will be consistent with those developed in accordance with section 203 of the Adoption and Safe Families Act of 1997 (Pub. L. 105–89).

(5) The initial national standards for the statewide data indicators described in paragraph (b)(4) of this section will be based on the 75th percentile of all State performance for that indicator, as reported in AFCARS or NCANDS. The Secretary may adjust these national standards if appropriate. The initial national standard will be set using the following data sources:

(i) The 1997 and 1998 submissions to NCANDS (or the most recent and complete 2 years available), for those statewide data indicators associated with the safety outcomes; and,

(ii) The 1998b, 1999c, and 2000a submissions to AFCARS (or the most recent and complete report periods available), for those statewide data indicators associated with the permanency outcomes.

(c) *Criteria related to State agency capacity to deliver services leading to improved outcomes for children and families.* In addition to the criteria related to outcomes contained in paragraph (b) of this section, the State agency must also satisfy criteria related to the delivery of services. Based on information from the statewide assessment and onsite review, the State must meet the following criteria for each systemic factor in paragraphs (c)(2) through (c)(7) of this section to be considered in substantial conformity: All of the State plan requirements associated with the systemic factor must be in place, and no more than one of the state plan requirements fails to function as described in paragraphs (c)(2) through (c)(7) of this section. The systemic factor in paragraph (c)(1) of this section, is rated on the basis of only one State plan requirement. To be considered in substantial conformity, the State plan requirement associated with statewide information system capacity must be both in place and functioning as described in the requirement. ACF will use a rating scale to make the determinations of substantial conformity. The systemic factors under review are:

(1) *Statewide information system:* The State is operating a statewide information system that, at a minimum, can readily identify the status, demographic characteristics, location, and goals for the placement of every child who is (or within the immediately preceding 12 months, has been) in foster care (section 422(b)(10)(B)(i) of the Act);

(2) *Case review system:* The State has procedures in place that:

(i) Provide, for each child, a written case plan to be developed jointly with the child's parent(s) that includes provisions: for placing the child in the least restrictive, most family-like placement appropriate to his/her needs, and in close proximity to the parent' home where such placement is in the child's best interests; for visits with a child placed out of State at least every 12 months by a caseworker of the agency or of the agency in the State where the child is placed; and for documentation of the steps taken to make and finalize an adoptive or other permanent placement when the child cannot return home (sections 422(b)(10)(B)(ii), 471(a)(16) and 475(5)(A) of the Act);

(ii) Provide for periodic review of the status of each child no less frequently than once every six months by either a court or by administrative review (sections 422(b)(10)(B)(ii), 471(a)(16) and 475(5)(B) of the Act);

(iii) Assure that each child in foster care under the supervision of the State has a permanency hearing in a family or juvenile court or another court of competent jurisdiction (including a Tribal court), or by an administrative body appointed or approved by the court, which is not a part of or under the supervision or direction of the State agency, no later than 12 months from the date the child entered foster care (and not less frequently than every 12 months thereafter during the

continuation of foster care) (sections 422(b)(10)(B)(ii), 471(a)(16) and 475(5)(C) of the Act);

(iv) Provide a process for termination of parental rights proceedings in accordance with sections 422(b)(10(B)(ii), 475(5)(E) and (F) of the Act; and,

(v) Provide foster parents, preadoptive parents, and relative caregivers of children in foster care with notice of and an opportunity to be heard in permanency hearings and six-month periodic reviews held with respect to the child (sections 422(b)(10)(B)(ii), 475(5)(G) of the Act, and 45 CFR 1356.21(o)).

(3) *Quality assurance system:* The State has developed and implemented standards to ensure that children in foster care placements are provided quality services that protect the safety and health of the children (section 471(a)(22)) and is operating an identifiable quality assurance system (45 CFR 1357.15(u)) as described in the CFSP that:

(i) Is in place in the jurisdictions within the State where services included in the CFSP are provided;

(ii) Is able to evaluate the adequacy and quality of services provided under the CFSP;

(iii) Is able to identify the strengths and needs of the service delivery system it evaluates;

(iv) Provides reports to agency administrators on the quality of services evaluated and needs for improvement; and

(v) Evaluates measures implemented to address identified problems.

(4) *Staff training:* The State is operating a staff development and training program (45 CFR 1357.15(t)) that:

(i) Supports the goals and objectives in the State's CFSP;

(ii) Addresses services provided under both subparts of title IV-B and the training plan under title IV-E of the Act;

(iii) Provides training for all staff who provide family preservation and support services, child protective services, foster care services, adoption services and independent living services soon after they are employed and that includes the basic skills and knowledge required for their positions;

(iv) Provides ongoing training for staff that addresses the skills and knowledge base needed to carry out their duties with regard to the services included in the State's CFSP; and,

(v) Provides training for current or prospective foster parents, adoptive parents, and the staff of State-licensed or State-approved child care institutions providing care to foster and adopted children receiving assistance under title IV-E that addresses the skills and knowledge base needed to carry out their duties with regard to caring for foster and adopted children.

(5) *Service array:* Information from the Statewide assessment and on-site review determines that the State has in place an array of services (45 CFR 1357.15(n) and section 422(b)(10)(B)(iii) and (iv) of the Act) that includes, at a minimum:

(i) Services that assess the strengths and needs of children and families assisted by the agency and are used to determine other service needs;

(ii) Services that address the needs of the family, as well as the individual child, in order to create a safe home environment;

(iii) Services designed to enable children at risk of foster care placement to remain with their families when their safety and well-being can be reasonably assured;

(iv) Services designed to help children achieve permanency by returning to families from which they have been removed, where appropriate, be placed for adoption or with a legal guardian or in some other planned, permanent living arrangement, and through post-legal adoption services;

(v) Services that are accessible to families and children in all political subdivisions covered in the State's CFSP; and,

(vi) Services that can be individualized to meet the unique needs of children and families served by the agency.

(6) *Agency responsiveness to the community:*

(i) The State, in implementing the provisions of the CFSP, engages in ongoing consultation with a broad array of individuals and organizations representing the State and county agencies responsible for implementing the CFSP and other major stakeholders in

the services delivery system including, at a minimum, tribal representatives, consumers, service providers, foster care providers, the juvenile court, and other public and private child and family serving agencies (45 CFR 1357.15(l)(4));

(ii) The agency develops, in consultation with these or similar representatives, annual reports of progress and services delivered pursuant to the CFSP (45 CFR 1357.16(a));

(iii) There is evidence that the agency's goals and objectives included in the CFSP reflect consideration of the major concerns of stakeholders consulted in developing the plan and on an ongoing basis (45 CFR 1357.15(m)); and

(iv) There is evidence that the State's services under the plan are coordinated with services or benefits under other Federal or federally-assisted programs serving the same populations to achieve the goals and objectives in the plan (45 CFR 1357.15(m)).

(7) *Foster and adoptive parent licensing, recruitment and retention:*

(i) The State has established and maintains standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes (section 471(a)(10) of the Act);

(ii) The standards so established are applied by the State to every licensed or approved foster family home or child care institution receiving funds under title IV-E or IV-B of the Act (section 471(a)(10) of the Act);

(iii) The State complies with the safety requirements for foster care and adoptive placements in accordance with sections 471(a)(16), 471(a)(20) and 475(1) of the Act and 45 CFR 1356.30;

(iv) The State has in place an identifiable process for assuring the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed (section 422(b)(9) of the Act); and,

(v) The State has developed and implemented plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children (section 422(b)(12) of the Act).

(d) *Availability of review instruments.* ACF will make available to the States copies of the review instruments, which will contain the specific standards to be used to determine substantial conformity, on an ongoing basis, whenever significant revisions to the instruments are made.

[65 FR 4078, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001]

§ 1355.35 Program improvement plans.

(a) *Mandatory program improvement plan.* (1) States found not to be operating in substantial conformity shall develop a program improvement plan. The program improvement plan must:

(i) Be developed jointly by State and Federal staff in consultation with the review team;

(ii) Identify the areas in which the State's program is not in substantial conformity;

(iii)Set forth the goals, the action steps required to correct each identified weakness or deficiency, and dates by which each action step is to be completed in order to improve the specific areas;

(iv) Set forth the amount of progress the statewide data will make toward meeting the national standards;

(v) Establish benchmarks that will be used to measure the State's progress in implementing the program improvement plan and describe the methods that will be used to evaluate progress;

(vi) Identify how the action steps in the plan build on and make progress over prior program improvement plans;

(vii) Identify the technical assistance needs and sources of technical assistance, both Federal and non-Federal, which will be used to make the necessary improvements identified in the program improvement plan.

(2) In the event that ACF and the State cannot reach consensus regarding the content of a program improvement plan or the degree of program or data improvement to be achieved, ACF retains the final authority to assign the contents of the plan and/or the degree of improvement required for successful completion of the plan. Under such circumstances, ACF will render a

written rationale for assigning such content or degree of improvement.

(b) *Voluntary program improvement plan.* States found to be operating in substantial conformity may voluntarily develop and implement a program improvement plan in collaboration with the ACF Regional Office, under the following circumstances:

(1) The State and Regional Office agree that there are areas of the State's child and family services programs in need of improvement which can be addressed through the development and implementation of a voluntary program improvement plan;

(2) ACF approval of the voluntary program improvement plan will not be required; and

(3) No penalty will be assessed for the State's failure to achieve the goals described in the voluntary program improvement plan.

(c) *Approval of program improvement plans.* (1) A State determined not to be in substantial conformity must submit a program improvement plan to ACF for approval within 90 calendar days from the date the State receives the written notification from ACF that it is not operating in substantial conformity.

(2) Any program improvement plan will be approved by ACF if it meets the provisions of paragraph (a) of this section.

(3) If the program improvement plan does not meet the provisions of paragraph (a) of this section, the State will have 30 calendar days from the date it receives notice from ACF that the plan has not been approved to revise and resubmit the plan for approval.

(4) If the State does not submit a revised program improvement plan according to the provisions of paragraph (c)(3) of this section or if the plan does not meet the provisions of paragraph (a) of this section, withholding of funds pursuant to the provisions of § 1355.36 of this part will begin.

(d) *Duration of program improvement plans.* (1) ACF retains the authority to establish time frames for the program improvement plan consistent with the seriousness and complexity of the remedies required for any areas determined not in substantial conformity, not to exceed two years.

(2) Particularly egregious areas of nonconformity impacting child safety must receive priority in both the content and time frames of the program improvement plans and must be addressed in less than two years.

(3) The Secretary may approve extensions of deadlines in a program improvement plan not to exceed one year. The circumstances under which requests for extensions will be approved are expected to be rare. The State must provide compelling documentation of the need for such an extension. Requests for extensions must be received by ACF at least 60 days prior to the affected completion date.

(4) States must provide quarterly status reports (unless ACF and the State agree upon less frequent reports) to ACF. Such reports must inform ACF of progress in implementing the measures of the plan.

(e) *Evaluating program improvement plans.* Program improvement plans will be evaluated jointly by the State agency and ACF, in collaboration with other members of the review team, as described in the State's program improvement plan and in accordance with the following criteria:

(1) The methods and information used to measure progress must be sufficient to determine when and whether the State is operating in substantial conformity or has reached the negotiated standard with respect to statewide data indicators that failed to meet the national standard for that indicator;

(2) The frequency of evaluating progress will be determined jointly by the State and Federal team members, but no less than annually. Evaluation of progress will be performed in conjunction with the annual updates of the State's CFSP, as described in paragraph (f) of this section;

(3) Action steps may be jointly determined by the State and ACF to be achieved prior to projected completion dates, and will not require any further evaluation at a later date; and

(4) The State and ACF may jointly renegotiate the terms and conditions of the program improvement plan as needed, provided that:

(i) The renegotiated plan is designed to correct the areas of the State's program determined not to be in substantial conformity and/or achieve a standard for the statewide data indicators that is acceptable to ACF;

(ii) The amount of time needed to implement the provisions of the plan does not extend beyond three years from the date the original program improvement plan was approved;

(iii) The terms of the renegotiated plan are approved by ACF; and

(iv) The Secretary approves any extensions beyond the two-year limit.

(f) *Integration of program improvement plans with CFSP planning.* The elements of the program improvement plan must be incorporated into the goals and objectives of the State's CFSP. Progress in implementing the program improvement plan must be included in the annual reviews and progress reports related to the CFSP required in 45 CFR 1357.16.

[65 FR 4080, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001]

§ 1355.36 Withholding Federal funds due to failure to achieve substantial conformity or failure to successfully complete a program improvement plan.

(a) *For the purposes of this section:*

(1) The term ''title IV-B funds'' refers to the State's combined allocation of title IV-B subpart 1 and subpart 2 funds; and

(2) The term ''title IV-E funds'' refers to the State's reimbursement for administrative costs for the foster care program under title IV-E.

(b) *Determination of the amount of Federal funds to be withheld.* ACF will determine the amount of the State title IV-B and IV-E funds to be withheld due to a finding that the State is not operating in substantial conformity, as follows:

(1) A State will have the opportunity to develop and complete a program improvement plan prior to any withholding of funds.

(2) Title IV-B and IV-E funds will not be withheld from a State if the determination of nonconformity was caused by the State's correct use of formal written statements of Federal law or policy provided the State by DHHS.

(3) A portion of the State's title IV-B and IV-E funds will be withheld by ACF for the year under review and for each succeeding year until the State either successfully completes a program improvement plan or is found to be operating in substantial conformity.

(4) The amount of title IV-B and title IV-E funds subject to withholding due to a determination that a State is not operating in substantial conformity is based on a pool of funds defined as follows:

(i) The State's allotment of title IV-B funds for each of the years to which the withholding applies; and

(ii) An amount equivalent to 10 percent of the State's Federal claims for title IV-E foster care administrative costs for each of the years to which withholding applies;

(5) The amount of funds to be withheld from the pool in paragraph (b)(4) of this section will be computed as follows:

(i) Except as provided for in paragraphs (b)(7) and (b)(8) of this section, an amount equivalent to one percent of the funds described in paragraph (b)(4) of this section for each of the years to which withholding applies will be withheld for each of the seven outcomes listed in § 1355.34(b)(1) of this part that is determined not to be in substantial conformity; and

(ii) Except as provided for in paragraphs (b)(7) and (b)(8) of this section, an amount equivalent to one percent of the funds described in paragraph (b)(4) of this section for each of the years to which withholding applies will be withheld for each of the seven systemic factors listed in § 1355.34(c) of this part that is determined not to be in substantial conformity.

(6) Except as provided for in paragraphs (b)(7), (b)(8), and (e)(4) of this section, in the event the State is determined to be in nonconformity on each of the seven outcomes and each of the seven systemic factors subject to review, the maximum amount of title IV-B and title IV-E funds to be withheld due to the State's failure to comply is 14 percent per year of the funds described in paragraph (b)(4) of this section for each year.

(7) States determined not to be in substantial conformity that fail to correct the areas of nonconformity through the successful completion of a program improvement plan, and are determined to be in nonconformity on the second full review following the first full review in which a determination of nonconformity was made will be subject to increased withholding as follows:

(i) The amount of funds described in paragraph (b)(5) of this section will increase to two percent for each of the seven outcomes and each of the seven systemic factors that continues in nonconformity since the immediately preceding child and family services review;

(ii) The increased withholding of funds for areas of continuous nonconformity is subject to the provisions of paragraphs (c), (d), and (e) of this section;

(iii) The maximum amount of title IV-B and title IV-E funds to be withheld due to the State's failure to comply on the second full review following the first full review in which the determination of nonconformity was made is 28 percent of the funds described in paragraph (b)(4) of this section for each year to which the withholding of funds applies.

(8) States determined not to be in substantial conformity that fail to correct the areas of nonconformity through the successful completion of a program improvement plan, and are determined to be in nonconformity on the third and any subsequent full reviews following the first full review in which a determination of nonconformity was made will be subject to increased withholding as follows:

(i) The amount of funds described in paragraph (b)(5) of this section will increase to three percent for each of the seven outcomes and each of the seven systemic factors that continues in nonconformity since the immediately preceding child and family services review;

(ii) The increased withholding of funds for areas of continuous nonconformity is subject to the provisions of paragraphs (c), (d), and (e) of this section;

(iii) The maximum amount of title IV-B and title IV-E funds to be withheld due to the State's failure to comply on the third and any subsequent full reviews following the first full review in which the determination of nonconformity was made is 42 percent of the funds described in paragraph (b)(4) of this section for each year to which the withholding of funds applies.

(c) *Suspension of withholding.* (1) For States determined not to be operating in substantial conformity, ACF will suspend the withholding of the State title IV-B and title IV-E funds during the time that a program improvement plan is in effect, provided that:

(i) The program improvement plan conforms to the provisions of §1355.35 of this part; and

(ii) The State is actively implementing the provisions of the program improvement plan.

(2) Suspension of the withholding of funds is limited to three years following each review, or the amount of time approved for implementation of the program improvement plan, whichever is less.

(d) *Terminating the withholding of funds.* For States determined not to be in substantial conformity, ACF will terminate the withholding of the State's title IV-B and title IV-E funds related to the nonconformity upon determination by the State and ACF that the State has achieved substantial conformity or has successfully completed a program improvement plan. ACF will rescind the withholding of the portion of title IV-B and title IV-E funds related to specific goals or action steps as of the date at the end of the quarter in which they were determined to have been achieved.

(e) *Withholding of funds.* (1) States determined not to be in substantial conformity that fail to successfully complete a program improvement plan will be notified by ACF of this final determination of nonconformity in writing within 10 business days after the relevant completion date specified in the plan, and advised of the amount of title IV-B and title IV-E funds which are to be withheld.

(2) Title IV-B and title IV-E funds will be withheld based on the following:

(i) If the State fails to submit status reports in accordance with § 1355.35(d)(4), or if such reports indicate that the State is not making satisfactory progress toward achieving goals or actions steps, funds will be withheld at that time for a period beginning October 1 of the fiscal year for which the determination of nonconformity was made and ending on the specified completion date for the affected goal or action step.

(ii) Funds related to goals and action steps that have not been achieved by the specified completion date will be withheld at that time for a period beginning October 1 of the fiscal year for which the determination of nonconformity was made and ending on the completion date of the affected goal or action step; and

(iii) The withholding of funds commensurate with the level of nonconformity at the end of the program improvement plan will begin at the latest completion date specified in the program improvement plan and will continue until a subsequent full review determines the State to be in substantial conformity or the State successfully completes a program improvement plan developed as a result of that subsequent full review.

(3) When the date the State is determined to be in substantial conformity or to have successfully completed a program improvement plan falls within a specific quarter, the amount of funds to be withheld will be computed to the end of that quarter.

(4) A State agency that refuses to participate in the development or implementation of a program improvement plan, as required by ACF, will be subject to the maximum increased withholding of 42 percent of its title IV-B and title IV-E funds, as described in paragraph (b)(8) of this section, for each year or portion thereof to which the withholding of funds applies.

(5) The State agency will be liable for interest on the amount of funds withheld by the Department, in accordance with the provisions of 45 CFR 30.13.

[65 FR 4081, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001]

§ 1355.37 Opportunity for Public Inspection of Review Reports and Materials.

The State agency must make available for public review and inspection all statewide assessments (§ 1355.33(b)), report of findings (§ 1355.33(e)), and program improvement plans (§ 1355.35(a)) developed as a result of a full or partial child and family services review.

[65 FR 4082, Jan. 25, 2000]

§ 1355.38 Enforcement of section 471(a)(18) of the Act regarding the removal of barriers to interethnic adoption.

(a) *Determination that a violation has occurred in the absence of a court finding.* (1) If ACF becomes aware of a possible section 471(a)(18) violation, whether in the course of a child and family services review, the filing of a complaint, or through some other mechanism, it will refer such a case to the Department's Office for Civil Rights (OCR) for investigation.

(2) Based on the findings of the OCR investigation, ACF will determine if a violation of section 471(a)(18) has occurred. A section 471(a)(18) violation occurs if a State or an entity in the State:

(i) Has denied to any person the opportunity to become an adoptive or foster parent on the basis of the race, color, or national origin of the person, or of the child, involved;

(ii) Has delayed or denied the placement of a child for adoption or into foster care on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved; or,

(iii) With respect to a State, maintains any statute, regulation, policy, procedure, or practice that on its face, is a violation as defined in paragraphs (a)(2)(i) and (2)(ii) of this section.

(3) ACF will provide the State or entity with written notification of its determination.

(4) If there has been no violation, there will be no further action. If ACF determines that there has been a violation of section 471(a)(18), it will take enforcement action as described in this section.

(5) Compliance with the Indian Child Welfare Act of 1978 (Pub. L. 95–608) does

not constitute a violation of section 471(a)(18).

(b) *Corrective action and penalties for violations with respect to a person or based on a court finding.* (1) A State or entity found to be in violation of section 471(a)(18) of the Act with respect to a person, as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, will be penalized in accordance with paragraph (g)(2) of this section. A State or entity determined to be in violation of section 471(a)(18) of the Act as a result of a court finding will be penalized in accordance with paragraph (g)(4) of this section. The State may develop, obtain approval of, and implement a plan of corrective action any time after it receives written notification from ACF that it is in violation of section 471(a)(18) of the Act.

(2) Corrective action plans are subject to ACF approval.

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the State must revise and resubmit the plan for approval until it has an approved plan.

(4) A State or entity found to be in violation of section 471(a)(18) of the Act by a court must notify ACF within 30 days from the date of entry of the final judgement once all appeals have been exhausted, declined, or the appeal period has expired.

(c) *Corrective action for violations resulting from a State's statute, regulation, policy, procedure, or practice.* (1) A State found to have committed a violation of the type described in paragraph (a)(2)(iii) of this section must develop and submit a corrective action plan within 30 days of receiving written notification from ACF that it is in violation of section 471(a)(18). Once the plan is approved the State will have to complete the corrective action and come into compliance. If the State fails to complete the corrective action plan within six months and come into compliance, a penalty will be imposed in accordance with paragraph (g)(3) of this section.

(2) Corrective action plans are subject to ACF approval.

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the State must revise and resubmit the plan within 30 days from the date it receives a written notice from ACF that the plan has not been approved. If the State does not submit a revised corrective action plan according to the provisions of paragraph (d) of this section, withholding of funds pursuant to the provisions of paragraph (g) of this section will apply.

(d) *Contents of a corrective action plan.* A corrective action plan must:

(1) Identify the issues to be addressed;

(2) Set forth the steps for taking corrective action;

(3) Identify any technical assistance needs and Federal and non-Federal sources of technical assistance which will be used to complete the action steps; and,

(4) Specify the completion date. This date will be no later than 6 months from the date ACF approves the corrective action plan.

(e) *Evaluation of corrective action plans.* ACF will evaluate corrective action plans and notify the State (in writing) of its success or failure to complete the plan within 30 calendar days. If the State has failed to complete the corrective action plan, ACF will calculate the amount of reduction in the State's title IV-E payment and include this information in the written notification of failure to complete the plan.

(f) *Funds to be withheld.* The term ''title IV-E funds'' refers to the amount of Federal funds advanced or paid to the State for allowable costs incurred by a State for: foster care maintenance payments, adoption assistance payments, administrative costs, and training costs under title IV-E and includes the State's allotment for the Chafee Foster Care Independence Program under section 477 of the Act.

(g) *Reduction of title IV-E funds.* (1) Title IV-E funds shall be reduced in specified amounts in accordance with paragraph (h) of this section under the following circumstances:

(i) A determination that a State or entity is in violation of section 471(a)(18) of the Act with respect to a person as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, or:

(ii) After a State's failure to implement and complete a corrective action

plan and come into compliance as described in paragraph (c) of this section.

(2) Once ACF notifies a State (in writing) that it has committed a section 471(a)(18) violation with respect to a person, the State's title IV-E funds will be reduced for the fiscal quarter in which the State received written notification and for each succeeding quarter within that fiscal year or until the State completes a corrective action plan and comes into compliance, whichever is earlier. Once ACF notifies an entity (in writing) that it has committed a section 471(a)(18) violation with respect to a person, the entity must remit to the Secretary all title IV-E funds paid to it by the State during the quarter in which the entity is notified of the violation.

(3) For States that fail to complete a corrective action plan within 6 months, title IV-E funds will be reduced by ACF for the fiscal quarter in which the State received notification of its violation. The reduction will continue for each succeeding quarter within that fiscal year or until the State completes the corrective action plan and comes into compliance, whichever is earlier.

(4) If, as a result of a court finding, a State or entity is determined to be in violation of section 471(a)(18) of the Act, ACF will assess a penalty without further investigation. Once the State is notified (in writing) of the violation, its title IV-E funds will be reduced for the fiscal quarter in which the court finding was made and for each succeeding quarter within that fiscal year or until the State completes a corrective action plan and comes into compliance, whichever is sooner. Once an entity is notified (in writing) of the violation, the entity must remit to the Secretary all title IV-E funds paid to it by the State during the quarter in which the court finding was made.

(5) The maximum number of quarters that a State will have its title IV-E funds reduced due to a finding of a State's failure to conform to section 471(a)(18) of the Act is limited to the number of quarters within the fiscal year in which a determination of nonconformity was made. However, an uncorrected violation may result in a subsequent review, another finding, and additional penalties.

(6) No penalty will be imposed for a court finding of a violation of section 471(a)(18) until the judgement is final and all appeals have been exhausted, declined, or the appeal period has expired.

(h) *Determination of the amount of reduction of Federal funds.* ACF will determine the reduction in title IV-E funds due to a section 471(a)(18) violation in accordance with section 474(d)(1) and (2) of the Act.

(1) State agencies that violate section 471(a)(18) with respect to a person or fail to implement or complete a corrective action plan as described in paragraph (c) of this section will be subject to a penalty. The penalty structure will follow section 474(d)(1) of the Act. Penalties will be levied for the quarter of the fiscal year in which the State is notified of its section 471(a)(18) violation, and for each succeeding quarter within that fiscal year until the State comes into compliance with section 471(a)(18). The reduction in title IV-E funds will be computed as follows:

(i) 2 percent of the State's title IV-E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the first finding of noncompliance in that fiscal year;

(ii) 3 percent of the State's title IV-E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the second finding of noncompliance in that fiscal year;

(iii) 5 percent of the State's title IV-E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the third or subsequent finding of noncompliance in that fiscal year.

(2) Any entity (other than the State agency) which violates section 471(a)(18) of the Act during a fiscal quarter must remit to the Secretary all title IV-E funds paid to it by the State in accordance with the procedures in paragraphs (g)(2) or (g)(4) of this section.

(3) No fiscal year payment to a State will be reduced by more than 5 percent of its title IV-E funds, as defined in paragraph (f) of this section, where the State has been determined to be out of compliance with section 471(a)(18) of the Act.

(4) The State agency or entity, as applicable, will be liable for interest on

the amount of funds reduced by the Department, in accordance with the provisions of 45 CFR 30.13.

[65 FR 4082, Jan. 25, 2000, as amended at 66 FR 58676, Nov. 23, 2001]

§ 1355.39 Administrative and judicial review.

States determined not to be in substantial conformity with titles IV-B and IV-E State plan requirements, or a State or entity in violation of section 471(a)(18) of the Act:

(a) May appeal, pursuant to 45 CFR part 16, the final determination and any subsequent withholding of, or reduction in, funds to the HHS Departmental Appeals Board within 60 days after receipt of a notice of nonconformity described in §1355.36(e)(1) of this part, or receipt of a notice of noncompliance by ACF as described in §1355.38(a)(3) of this part; and

(b) Will have the opportunity to obtain judicial review of an adverse decision of the Departmental Appeals Board within 60 days after the State or entity receives notice of the decision by the Board. Appeals of adverse Department Appeals Board decisions must be made to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(c) The procedure described in paragraphs (a) and (b) of this section will not apply to a finding that a State or entity has been determined to be in violation of section 471(a)(18) which is based on a judicial decision.

[65 FR 4083, Jan. 25, 2000]

§ 1355.40 Foster care and adoption data collection.

(a) *Scope of the data collection system.* (1) Each State which administers or supervises the administration of titles IV-B and IV-E must implement a system that begins to collect data on October 1, 1994. The first transmission must be received in ACF no later than May 15, 1995. The data reporting system must meet the requirements of §1355.40(b) and electronically report certain data regarding children in foster care and adoption. The foster care data elements are listed and defined in Appendix A to this part and the adoption data elements are listed and defined in Appendix B to this part.

(2) For the purposes of foster care reporting, each State's data transmission must include all children in foster care for whom the State title IV-B/IV-E agency has responsibility for placement, care, or supervision. This includes American Indian children covered under the assurances in section 422(b)(10) of the Act on the same basis as any other child. For children in care less than 30 days, only a core set of information will be required, as noted in appendix A to this part. For children who enter foster care prior to October 1, 1995 and who are still in the system, core data elements will be required; in addition, States will also be required to report on the most recent case plan goal affecting those children. For children in out-of-State placement, the State placing the child and making the foster care payment submits and continually updates the data.

(3) For the purposes of adoption reporting, data are required to be transmitted by the State on all adopted children who were placed by the State title IV-B/IV-E agency, and on all adopted children for whom the State agency is providing adoption assistance (either ongoing or for nonrecurring expenses), care or services directly or by contract or agreement with other private or public agencies. Full adoption data as specified in appendix B to this part are required only for children adopted after the implementation date of October 1, 1994. For children adopted prior to October 1, 1994, who are continuing to receive title IV-E subsidies, aggregate data are to be reported. For a child adopted out-of-State, the State which placed the child submits the data.

(b) *Foster care and adoption reporting requirements.* (1) The State agency shall transmit semi-annually, within 45 days of the end of the reporting period (i.e., by May 15 and November 14), information on each child in foster care and each child adopted during the reporting period. The information to be reported consists of the data elements found in appendices A and B to this part. The data must be extracted from the data

system as of the last day of the reporting period and must be submitted in electronic form as described in appendix C to this part and in record layouts as delineated in appendix D to this part.

(2) For foster care information, the child-specific data to be transmitted must reflect the data in the information system when the data are extracted. Dates of removal from the home and discharge from foster care must be entered in accordance with paragraph (d)(1) of this section. The date of the most recent periodic review (either administrative or court) must be entered for children who have been in foster care for more than nine months. Entry of this date constitutes State certification that the data on the child have been reviewed and are current.

(3) Adoption data are to be reported during the reporting period in which the adoption is legalized or, at the State's option, in the following reporting period if the adoption is legalized within the last 60 days of the reporting period. For a semi-annual period in which no adoptions have been legalized, States must report such an occurrence.

(4) A summary file of the semi-annual data transmission must be submitted and will be used to verify the completeness of the State's detailed submission for the reporting period.

(5) A variety of internal data consistency checks will be used to judge the internal consistency of the semi-annual detailed data submission. These are specified in Appendix E to this part.

(c) *Missing data standards.* (1) The term ''missing data'' refers to instances where no data have been entered, if applicable, for a particular data element. In addition, all data elements which fail a consistency check for a particular case will be converted to missing data. All data which are ''out of range'' (i.e., the response is beyond the parameters allowed for that particular data element) will also be converted to missing data. Details of the circumstances under which data will be converted to missing data are specified in appendix E to this part. Data elements with responses of ''cannot be determined'' or ''not yet determined'' are not considered as having missing data.

(2) For missing data in excess of 10 percent for any one data element, the penalty will be applied.

(3) The penalties for missing data are specified in paragraph (e) of this section.

(d) *Timeliness of foster care data reports.* (1) For each child, a computer generated transaction date must reflect the actual date of data entry and must accompany the date of latest removal from the home and the date of exit from foster care. Ninety percent of the subject transactions must have been entered into the system within 60 days of the event (removal from home or discharge from foster care).

(2) Penalties shall be invoked as provided in paragraph (e) of this section.

(e) *Penalties.* (1) Failure by a State to meet any of the standards described in paragraphs (a) through (d) of this section is considered a substantial failure to meet the requirements of the title IV-E State plan. Penalties for substantial noncompliance will be assessed semi-annually against a State's title IV-E administrative cost reimbursement in an amount that is equal to no more than 10 percent of the State's annual share of title IV-B funds above the base appropriation of $141 million. The amount of incentive funds, section 427 of the Act, against which a penalty can be assessed will remain the same as the amount promulgated as being available to the States as of June 30, 1993, the date of issuance of the amount of section 427 funds for fiscal year 1993 (see Appendix F to this part). The penalties will be calculated and applied regardless of any determination of compliance with the requirements of section 427, and regardless of whether any State has withdrawn its certification with respect to section 427. Years One through three (October 1, 1994 through September 30, 1997) will be three penalty-free years of operation. Year Four (October 1, 1997 through September 30, 1998) will be at half penalty and Year Five (October 1, 1998 through September 30, 1999) and thereafter will be at full penalty. The maximum annual penalty is 20 percent.

(2) Penalties will be assessed semi-annually against a State's title IV-E administrative cost reimbursement for the period in which the noncompliance occurred and any subsequent period of noncompliance. Following a decision sustaining ACYF's proposed action, funds will be recovered until the State demonstrates, by submitting an acceptable report, that it will no longer fail to comply.

(3) Half of the maximum allowable assessed penalty for a given reporting period is applicable to foster care reporting and half to adoption reporting.

(4) The penalty for foster care reporting will be applied for any semi-annual period when a State fails to meet one or more of the following criteria:

(i) Fails to submit the report within 45 days of the end of the reporting period as specified in paragraphs (b)(1) and (b)(2) of this section; or

(ii) There is one or more element which exceeds the level of tolerance for missing data as specified in paragraphs (c)(1) and (c)(2) of this section; or

(iii) Fails to meet the timeliness standards as specified in paragraph (d)(1) of this section.

(5) The penalty for adoption reporting will be applied for any semi-annual period when a State fails to meet one or more of the following criteria:

(i) Fails to submit the report within 45 days of the end of the reporting period as specified in paragraphs (b)(1) and (b)(3) of this section; or

(ii) There is one or more element which exceeds the level of tolerance for missing data as specified in paragraphs (c)(1) and (c)(2) of this section.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0267. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[58 FR 67924, Dec. 22, 1993, as amended at 60 FR 40507, Aug. 9, 1995; 65 FR 4084, Jan. 25, 2000; 66 FR 58676, Nov. 23, 2001]

§ 1355.50 Purpose of this part.

This part sets forth the requirements and procedures States must meet in order to receive Federal financial participation for the planning, design, development, installation and operation of statewide automated child welfare information systems authorized under section 474(a)(3)(c) of the Act.

[58 FR 67945, Dec. 22, 1993]

§ 1355.52 Funding authority for statewide automated child welfare information systems (SACWIS).

(a) States may receive Federal reimbursement at the 75 percent match rate for FY 1994, FY 1995 and FY 1996, and at the 50 percent level thereafter for expenditures related to the planning, design, development and installation of a statewide automated child welfare information system, to the extent such system:

(1) Provides for the State to collect and electronically report certain data required by section 479(b) of the Act and § 1355.40 of this part;

(2) To the extent practicable, provides for an interface with the State data collection system for child abuse and neglect;

(3) To the extent practicable, provides for an interface with and retrieval of information from the State automated information system that collects information relating to the eligibility of individuals under title IV-A of the Act; and

(4) Provides for more efficient, economical and effective administration of the programs carried out under a State plan approved under title IV-B and title IV-E.

(b) States may also be reimbursed for the full amount of expenditures for the hardware components for such systems at the rates provided under paragraph (a) of this section.

(c) Expenditures for the operation of the automated information system described in paragraph (a) of this section are eligible for FFP at the 50 percent matching rate.

[58 FR 67945, Dec. 22, 1993]

§ 1355.53 Conditions for approval of funding.

(a) As a condition of funding, the SACWIS must be designed, developed (or an existing system enhanced), and installed in accordance with an approved advance planning document

(APD). The APD must provide for a design which, when implemented, will produce a comprehensive system, which is effective and efficient, to improve the program management and administration of the State plans for titles IV-B and IV-E as provided under this section.

(b) At a minimum, the system must provide for effective management, tracking and reporting by providing automated procedures and processes to:

(1) Meet the Adoption and Foster Care reporting requirements through the collection, maintenance, integrity checking and electronic transmission of the data elements specified by the Adoption and Foster Care Analysis and Reporting System (AFCARS) requirements mandated under section 479(b) of the Act and § 1355.40 of this part;

(2) Provide, for electronic exchanges and referrals, as appropriate, with the following systems within the State, unless the State demonstrates that such interface or integration would not be practicable because of systems limitations or cost constraints:

(i) Systems operated under title IV-A,

(ii) National Child Abuse and Neglect Data Systems (NCANDS),

(iii) Systems operated under title XIX, and

(iv) Systems operated under title IV-D;

(3) Support the provisions of section 422(a) by providing for the automated collection, maintenance, management and reporting of information on all children in foster care under the responsibility of the State, including statewide data from which the demographic characteristics, location, and goals for foster care children can be determined;

(4) Collect and manage information necessary to facilitate the delivery of client services, the acceptance and referral of clients, client registration, and the evaluation of the need for services, including child welfare services under title IV-B Subparts 1 and 2, family preservation and family support services, family reunificication and permanent placement;

(5) Collect and manage information necessary to determine eligibility for:

(i) The foster care program,

(ii) The adoption assistance program, and

(iii) The independent living program;

(6) Support necessary case assessment activities;

(7) Monitor case plan development, payment authorization and issuance, review and management, including eligibility determinations and redeterminations; and

(8) Ensure the confidentiality and security of the information and the system.

(c) A system established under paragraph (a) of this section may also provide support in meeting the following program functions:

(1) Resource management, including automated procedures to assist in managing service providers, facilities, contracts and recruitment activities associated with foster care and adoptive families;

(2) Tracking and maintenance of legal and court information, and preparation of appropriate notifications to relevant parties;

(3) Administration and management of staff and workloads;

(4) Licensing verification; and

(5) Risk analysis.

(d) The system may also provide for interface with other automated information systems, including, but not limited to, accounting and licensing systems, court and juvenile justice systems, vital statistics and education, as appropriate.

(e) If the cost benefit analysis submitted as part of the APD indicates that adherence to paragraphs (c) and (d) of this section would not be cost beneficial, final approval of the APD may be withheld until resolution is reached on the level of automation appropriate to meet the State's needs.

(f) A Statewide automated child welfare information system may be designed, developed and installed on a phased basis, in order to allow States to implement AFCARS requirements expeditiously, in accordance with section 479(b) of the Act, as long as the approved APD includes the State's plan for full implementation of a comprehensive system which meets all functional and data requirements as specified in paragraphs (a) and (b) of this section, and a system design which

will support these enhancements on a phased basis.

(g) The system must perform Quality Assurance functions to provide for the review of case files for accuracy, completeness and compliance with Federal requirements and State standards.

[58 FR 67945, Dec. 22, 1993, as amended at 60 FR 26839, Mar. 19, 1995]

§ 1355.54 Submittal of advance planning documents.

The State title IV-E agency must submit an APD for a statewide automated child welfare information system, signed by the appropriate State official, in accordance with procedures specified by 45 CFR part 95, subpart F.

[58 FR 67946, Dec. 22, 1993]

§ 1355.55 Review and assessment of the system developed with enhanced funds.

(a) ACF will, on a continuing basis, review, assess and inspect the planning, design, development, installation and operation of the SACWIS to determine the extent to which such systems:

(1) Meet § 1355.53 of this chapter,

(2) Meet the goals and objectives stated in the approved APD,

(3) Meet the schedule, budget, and other conditions of the approved APD, and

(4) Comply with the automated data processing services and acquisitions procedures and requirements of 45 CFR part 95, subpart F.

(b) [Reserved]

[58 FR 67946, Dec. 22, 1993]

§ 1355.56 Failure to meet the conditions of the approved APD.

(a) If ACF finds that the State fails to meet any of the conditions cited in § 1355.53, or to substantially comply with the criteria, requirements and other undertakings prescribed by the approved APD, approval of the APD may be suspended.

(b) If the approval of an APD is suspended during the planning, design, development, installation, or operation of the system:

(1) The State will be given written notice of the suspension. This notice shall state:

(i) The reason for the suspension,

(ii) The date of the suspension,

(iii) Whether the suspended system complies with criteria for 50 percent FFP, and

(iv) The actions required by the State for future enhanced funding.

(2) The suspension will be effective as of the date the State failed to comply with the approved APD;

(3) The suspension shall remain in effect until ACF determines that such system complies with prescribed criteria, requirements, and other undertakings for future Federal funding.

(4) Should a State cease development of an approved system, either by voluntary withdrawal or as a result of Federal suspension, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be subject to recoupment.

[58 FR 67946, Dec. 22, 1993]

§ 1355.57 Cost allocation.

(a) All expenditures of a State to plan, design, develop, install, and operate the data collection and information retrieval system described in § 1355.53 of this part shall be treated as necessary for the proper and efficient administration of the State plan under title IV-E, without regard to whether the system may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under the State plan.

(b) Cost allocation and distribution for the planning, design, development, installation and operation must be in accordance with § 95.631 of this title and section 474(e) of the Act, if the SACWIS includes functions, processing, information collection and management, equipment or services that are not directly related to the administration of the programs carried out under the State plan approved under title IV-B or IV-E.

[58 FR 67946, Dec. 22, 1993]

APPENDIX A TO PART 1355—FOSTER CARE DATA ELEMENTS

Section I—Foster Care Data Elements

Data elements preceded by ''**'' are the only data elements required for children who

have been in care less than 30 days. For children who entered care prior to October 1, 1995, data elements preceded by either ''**'' and ''***'' are the only data elements required. This means that, for these two categories of children, these are the only data elements to which the missing data standard will be applied.

I. General Information
**A. State _____
**B. Report date____ (mo.) ____ (yr.)
**C. Local Agency (County or Equivalent Jurisdiction) _____
**D. Record Number _____
E. Date of Most Recent Periodic Review (If Applicable)____ (mo.) ____ (day) ____ (yr.)

II. Child's Demographic Information
**A. Date of Birth ____ (mo.) ____ (day) ____ (yr.)
**B. Sex _____
Male: 1
Female: 2
C. Race/Ethnicity
1. Race
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
2. Hispanic or Latino Ethnicity_____
Yes: 1
No: 2
Unable to Determine: 3
D. Has this child been clinically diagnosed as having a disability(ies)? _____
Yes: 1
No: 2
Not Yet Determined: 3
1. If yes, indicate *each* type of disability found with a ''1''
Mental Retardation _____
Visually or Hearing Impaired _____
Physically Disabled _____
Emotionally Disturbed (DSM III)
Other Medically Diagnosed Condition Requiring Special Care _____
E. 1. Has this child ever been adopted? _____
Yes: 1
No: 2
Unable to Determine: 3
2. If yes, how old was the child when the adoption was legalized? _____
Less than 2 years old: 1
2 to 5 years old: 2
6 to 12 years old: 3
13 years old or older: 4
Unable to Determine: 5

III. Removal/Placement Setting Indicators
A. Removal Episodes
Date of First Removal From Home ____ (mo.) ____ (day) ____ (yr.)
Total Number of Removals From Home to Date _____
Date Child was Discharged From Last Foster Care Episode (If Applicable) ____ (mo.) ____ (day) ____ (yr.)
**Date of Latest Removal From Home ____ (mo.) ____ (day) ____ (yr.)
** Transaction Date ____ (mo.) ____ (day) ____ (yr.)
B. Placement Settings
Date of Placement in Current Foster Care Setting ____ (mo.) ____ (day) _____ (yr.)
Number of Previous Placement Settings During This Removal Episode _____

IV. Circumstances of Removal
A. Manner of Removal From Home for Current Placement Episode _____
Voluntary: 1
Court Ordered: 2
Not Yet Determined: 3
B. Actions or Conditions Associated With Child's Removal: (Indicate all that apply with a ''1'')
Physical Abuse (Alleged/Reported) _____
Sexual Abuse (Alleged/Reported) _____
Neglect (Alleged/Reported) _____
Alcohol Abuse (Parent) _____
Drug Abuse (Parent) _____
Alcohol Abuse (Child) _____
Drug Abuse (Child) _____
Child's Disability _____
Child's Behavior Problem _____
Death of Parent(s) _____
Incarceration of Parent(s) _____
Caretaker's Inability to Cope Due to Illness or Other Reasons _____
Abandonment _____
Relinquishment _____
Inadequate Housing _____

**V. Current Placement Setting _____
**A. Pre-Adoptive Home: 1
Foster Family Home (Relative): 2
Foster Family Home (Non-Relative): 3
Group Home: 4
Institution: 5
Supervised Independent Living: 6
Runaway: 7
Trial Home Visit: 8
**B. Is Current Placement Out-of-State? __
Yes (Out-of-State Placement): 1
No (In State Placement): 2

***VI. Most Recent Case Plan Goal _____
Reunify With Parent(s) or Principal Caretaker(s): 1
Live With Other Relative(s): 2
Adoption: 3
Long Term Foster Care: 4
Emancipation: 5
Guardianship: 6
Case Plan Goal Not Yet Established: 7

VII. Principal Caretaker(s) Information
A. Caretaker Family Structure _____
Married Couple: 1
Unmarried Couple: 2
Single Female: 3
Single Male: 4
Unable to Determine: 5
B. Year of Birth
1st Principal Caretaker _____

2nd Principal Caretaker (If Applicable) ____

VIII. Parental Rights Termination (If Applicable)

A. Mother ____ (mo.) ____ (day) ____ (yr.)

B. Legal or Putative Father ____ (mo.) ____ (day) ____ (yr.)

IX. Foster Family Home—Parent(s) Data (To be answered only if Section V., Part A. CURRENT PLACEMENT SETTING is 1, 2 or 3)

A. Foster Family Structure _____

Married Couple: 1

Unmarried Couple: 2

Single Female: 3

Single Male: 4

B. Year of Birth

1st Foster Caretaker _____

2nd Foster Caretaker (If Applicable) _____

C. Race/Ethnicity

1. Race of 1st Foster Caretaker

a. American Indian or Alaska Native

b. Asian

c. Black or African American

d. Native Hawaiian or Other Pacific Islander

e. White

f. Unable to Determine

2. Hispanic or Latino Ethnicity of 1st Foster Caretaker_____

Yes: 1

No: 2

Unable to Determine: 3

3. Race of 2nd Foster Caretaker (If Applicable)

a. American Indian or Alaska Native

b. Asian

c. Black or African American

d. Native Hawaiian or Other Pacific Islander

e. White

f. Unable to Determine

4. Hispanic or Latino Ethnicity of 2nd Foster Caretaker (If applicable)_____ _____

Yes: 1

No: 2

Unable to Determine: 3

X. Outcome Information

**A. Date of Discharge From Foster Care ____ (mo.) ____ (day) ____ (yr.)

**Transaction Date ____ (mo.) ____ (day) ____ (yr.)

**B. Reason for Discharge _____

Reunification With Parents or Primary Caretakers: 1

Living With Other Relative(s): 2

Adoption: 3

Emancipation: 4

Guardianship: 5

Transfer to Another Agency: 6

Runaway: 7

Death of Child: 8

XI. Source(s) of Federal Financial Support/Assistance for Child (Indicate all that apply with a ''1'')

Title IV-E (Foster Care) _____

Title IV-E (Adoption Assistance) _____

Title IV-A (Aid to Families with Dependent Children) _____

Title IV-D (Child Support) _____

Title XIX (Medicaid) _____

SSI or Other Social Security Act Benefits

None of the Above _____

XII. Amount of the monthly foster care payment (regardless of sources). _____.

Section II—Definitions of and Instructions for Foster Care Data Elements

Reporting population. The population to be included in this reporting system includes all children in foster care under the responsibility of the State agency administering or supervising the administration of the title IV-B Child and Family Services State plan and the title IV-E State plan; that is, all children who are required to be provided the assurances of section 422(b)(10) of the Social Security Act.

This population includes all children supervised by or under the responsibility of another public agency with which the title IV-B/IV-E State agency has an agreement under title IV-E and on whose behalf the State makes title IV-E foster care maintenance payments.

Foster care is defined as 24 hour substitute care for children outside their own homes. The reporting system includes all children who have or had been in foster care at least 24 hours. The foster care settings include, but are not limited to:

—Family foster homes
—Relative foster homes (whether payments are being made or not)
—Group homes
—Emergency shelters
—Residential facilities
—Child care institutions
—Pre-adoptive homes

Foster care does not include children who are in their own homes under the responsibility of the State agency. However, children who are at home on a trial basis may be included even though they are not considered to be in foster care. If they are included, element number V. CURRENT PLACEMENT SETTING must be given the value of ''8''.

I. General Information

A. State**—U.S. Postal Service two letter abbreviation for the State submitting the report.

B. Report Date**—The last month and the year for the reporting period.

C. Local Agency**—Identity of the county or equivalent unit which has responsibility for the case. The 5 digit Federal Information Processing Standard (FIPS) must be used.

D. Record Number**—The sequential number which the State uses to transmit data to

the Department of Health and Human Services (DHHS) or a unique number which follows the child as long as he or she is in foster care. The record number cannot be linked to the child's case I.D. number except at the State or local level.

E. Date of Most Recent Periodic Review (If applicable)—For children who have been in care seven months or longer, enter the month, day and year of the most recent administrative or court review, including dispositional hearing. For children who have been in care less than seven months, leave the field blank. An entry in this field certifies that the child's computer record is current up to this date.

II. Child's Demographic Information

A. Date of Birth**—Month, day and year of the child's birth. If the child is abandoned or the date of birth is otherwise unknown, enter an approximate date of birth. Use the 15th as the day of birth.

B. Sex**—Indicate as appropriate.

C. Race/Ethnicity**

1. Race—In general, a person's race is determined by how they define themselves or by how others define them. In the case of young children, parents determine the race of the child. Indicate all races (a through e) that apply with a ''1.'' For those that do not apply, indicate a ''0.'' Indicate ''f. Unable to Determine'' with a ''1'' if it applies and a ''0'' if it does not.

American Indian or Alaska Native—A person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American—A person having origins in any of the black racial groups of Africa.

Native Hawaiian or Other Pacific Islander—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Unable to Determine—The specific race category is ''unable to determine'' because the child is very young or is severely disabled and no person is available to identify the child's race. ''Unable to determine'' is also used if the parent, relative or guardian is unwilling to identify the child's race.

2. Hispanic or Latino Ethnicity—Answer ''yes'' if the child is of Mexican, Puerto Rican, Cuban, Central or South American origin, or a person of other Spanish cultural origin regardless of race. Whether or not a person is Hispanic or Latino is determined by how they define themselves or by how others define them. In the case of young children, parents determine the ethnicity of the child. ''Unable to Determine'' is used because the child is very young or is severely disabled and no person is available to determine whether or not the child is Hispanic or Latino. ''Unable to determine'' is also used if the parent, relative or guardian is unwilling to identify the child's ethnicity.

D. Has the child been clinically diagnosed as having a disability(ies)? ''Yes'' indicates that a qualified professional has clinically diagnosed the child as having at least one of the disabilities listed below. ''No'' indicates that a qualified professional has conducted a clinical assessment of the child and has determined that the child has no disabilities. ''Not Yet Determined'' indicates that a clinical assessment of the child by a qualified professional has not been conducted.

1. Indicate Each Type of Disability With a ''1''

Mental Retardation—Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.

Visually or Hearing Impaired—Having a visual impairment that may significantly affect educational performance or development; or a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

Physically Disabled—A physical condition that adversely affects the child's day-to-day motor functioning, such as cerebral palsy, spina bifida, multiple sclerosis, orthopedic impairments, and other physical disabilities.

Emotionally Disturbed (DSM III)—A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: An inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed. The diagnosis is based on the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) (DSM III) or the most recent edition.

Other Medically Diagnosed Conditions Requiring Special Care—Conditions other than those noted above which require special medical care such as chronic illnesses. Included are children diagnosed as HIV positive or with AIDS.

E. 1. Has this child ever been adopted? If this child has ever been legally adopted, enter ''yes.'' If the child has never been legally adopted, enter ''no''. Enter ''Unable to Determine'' if the child has been abandoned or the child's parent(s) are otherwise not available to provide the information.

2. If yes, how old was the child when the adoption was legalized? Enter the number which represents the appropriate age range. If uncertain, use an estimate. If no one is available to provide the information, enter ''Unable to Determine.''

III. Removal/Placement Setting Indicators

A. Removal Episodes—The removal of the child from his/her normal place of residence resulting in his/her placement in a foster care setting.

Date of First Removal From Home—Month, day and year the child was removed from home for the first time for purpose of placement in a foster care setting. If the current[1] removal is the first removal, enter the date of the current removal.

Total Number of Removals from Home to Date—The number of times the child was removed from home, including the current removal.

Date Child was Discharged From Last Foster Care Episode (If Applicable)—For children with prior removals, enter the month, day and year they were discharged from care for the episode immediately prior to the current episode. For children with no prior removals, leave blank.

Date of Latest Removal From Home**—Month, day and year the child was last removed from his/her home for the purpose of being placed in foster care. This would be the date for the current episode or, if the child has exited foster care, the date of removal for the most recent removal.

Transaction Date**—A computer generated date which accurately indicates the month, day and year the response to ''Date of Latest Removal From Home'' was entered into the information system.

B. Placement Settings.

Date of Placement in Current Foster Care Setting—Month, day and year the child moved into the current foster home, facility, residence, shelter, institution, etc. for purposes of continued foster care.

Number of Previous Placement Settings During This Removal Episode—Enter the number of places the child has lived, including the current setting, during the current removal episode. Do not include trial home visits as a placement setting.

[1] For children who have exited foster care, ''current'' refers to the most recent removal episode and the most recent placement setting.

IV. Circumstances of Removal

A. Manner of Removal From Home for Current Placement Episode.

Voluntary Placement Agreement—An official voluntary placement agreement has been executed between the caretaker and the agency. The placement remains voluntary even if a subsequent court order is issued to continue the child in foster care.

Court Ordered—The court has issued an order which is the basis of the child's removal.

Not Yet Determined—A voluntary placement agreement has not been signed or a court order has not been issued. This will mostly occur in very short-term cases. When either a voluntary placement agreement is signed or a court order issued, the record should be updated to reflect the manner of removal at that time.

B. Actions or Conditions Associated With Child's Removal (Indicate all that apply with a ''1''.)

Physical Abuse—Alleged or substantiated physical abuse, injury or maltreatment of the child by a person responsible for the child's welfare.

Sexual Abuse—Alleged or substantiated sexual abuse or exploitation of a child by a person who is responsible for the child's welfare.

Neglect—Alleged or substantiated negligent treatment or maltreatment, including failure to provide adequate food, clothing, shelter or care.

Alcohol Abuse (Parent)—Principal caretaker's compulsive use of alcohol that is not of a temporary nature.

Drug Abuse (Parent)—Principal caretaker's compulsive use of drugs that is not of a temporary nature.

Alcohol Abuse (Child)—Child's compulsive use of or need for alcohol. This element should include infants addicted at birth.

Drug Abuse (Child)—Child's compulsive use of or need for narcotics. This element should include infants addicted at birth.

Child's Disability—Clinical diagnosis by a qualified professional of one or more of the following: Mental retardation; emotional disturbance; specific learning disability; hearing, speech or sight impairment; physical disability; or other clinically diagnosed handicap. Include only if the disability(ies) was at least one of the factors which led to the child's removal.

Child's Behavior Problem—Behavior in the school and/or community that adversely affects socialization, learning, growth, and moral development. These may include adjudicated or nonadjudicated child behavior problems. This would include the child's running away from home or other placement.

Death of Parent(s)—Family stress or inability to care for child due to death of a parent or caretaker.

Incarceration of Parent(s)—Temporary or permanent placement of a parent or caretaker in jail that adversely affects care for the child.

Caretaker's Inability to Cope Due to Illness or Other Reasons—Physical or emotional illness or disabling condition adversely affecting the caretaker's ability to care for the child.

Abandonment—Child left alone or with others; caretaker did not return or make whereabouts known.

Relinquishment—Parent(s), in writing, assigned the physical and legal custody of the child to the agency for the purpose of having the child adopted.

Inadequate Housing—Housing facilities were substandard, overcrowded, unsafe or otherwise inadequate resulting in their not being appropriate for the parents and child to reside together. Also includes homelessness.

V. Current Placement Setting**

A. Identify the type of setting in which the child currently lives.

Pre-Adoptive Home—A home in which the family intends to adopt the child. The family may or may not be receiving a foster care payment or an adoption subsidy on behalf of the child.

Foster Family Home (Relative)—A licensed or unlicensed home of the child's relatives regarded by the State as a foster care living arrangement for the child.

Foster Family Home (Non-Relative)—A licensed foster family home regarded by the State as a foster care living arrangement.

Group Home—A licensed or approved home providing 24-hour care for children in a small group setting that generally has from seven to twelve children.

Institution—A child care facility operated by a public or private agency and providing 24-hour care and/or treatment for children who require separation from their own homes and group living experience. These facilities may include: Child care institutions; residential treatment facilities; maternity homes; etc.

Supervised Independent Living—An alternative transitional living arrangement where the child is under the supervision of the agency but without 24 hour adult supervision, is receiving financial support from the child welfare agency, and is in a setting which provides the opportunity for increased responsibility for self care.

Runaway—The child has run away from the foster care setting.

Trial Home Visit—The child has been in a foster care placement, but, under State agency supervision, has been returned to the principal caretaker for a limited and specified period of time.

B. Is current placement setting out of State?

''Yes'' indicates that the current placement setting is located outside of the state making the report.

''No'' indicates that the child continues to reside within the state making the report.

NOTE: Only the state with placement and care responsibility for the child should include the child in this reporting system.

VI. Most Recent Case Plan Goal***

Indicate the most recent case plan goal for the child based on the latest review of the child's case plan—whether a court review or an administrative review. If the child has been in care less than six months, enter the goal in the case record as determined by the caseworker.

Reunify With Parents or Principal Caretaker(s)—The goal is to keep the child in foster care for a limited time to enable the agency to work with the family with whom the child had been living prior to entering foster care in order to reestablish a stable family environment.

Live With Other Relatives—The goal is to have the child live permanently with a relative or relatives other than the ones from whom the child was removed. This could include guardianship by a relative(s).

Adoption—The goal is to facilitate the child's adoption by relatives, foster parents or other unrelated individuals.

Long Term Foster Care—Because of specific factors or conditions, it is not appropriate or possible to return the child home or place her or him for adoption, and the goal is to maintain the child in a long term foster care placement.

Emancipation—Because of specific factors or conditions, it is not appropriate or possible to return the child home, have a child live permanently with a relative or have the child be adopted; therefore, the goal is to maintain the child in a foster care setting until the child reaches the age of majority.

Guardianship—The goal is to facilitate the child's placement with an agency or unrelated caretaker, with whom he or she was not living prior to entering foster care, and whom a court of competent jurisdiction has designated as legal guardian.

Case Plan Goal Not Yet Established—No case plan goal has yet been established other then the care and protection of the child.

VII. Principal Caretaker(s) Information

A. Caretaker Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the type of adult caretaker(s) from whom the child was removed for the current foster care episode. Enter ''Unable to Determine'' if the child has been abandoned or the child's caretakers are otherwise unknown.

B. Year of Birth—Enter the year of birth for up to two caretakers. If the response to data element VII. A—Caretaker Family Structure, was 1 or 2, enter data for two caretakers. If the response was 3 or 4, enter data only for the first caretaker. If the exact year of birth is unknown, enter an estimated year of birth.

VIII. Parental Rights Termination

Enter the month, day and year that the court terminated the parental rights. If the parents are known to be deceased, enter the date of death.

IX. Family Foster Home—Parent(s) Data

Provide information only if data element in Section V., Part A. CURRENT PLACEMENT SETTING is 1, 2, or 3.

A. Foster Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the nature of the foster parents with whom the child is living in the current foster care episode.

B. Year of Birth—Enter the year of birth for up to two foster parents. If the response to data element IX. A.—Foster Family Structure, was 1 or 2, enter data for two caretakers. If the response was 3 or 4, enter data only for the first caretaker. If the exact year of birth is unknown, enter an estimated year of birth.

C. Race—Indicate the race for each of the foster parent(s). See instructions and definitions for the race categories under data element II.C.1. Use ''f. Unable to Determine'' only when a parent is unwilling to identify his or her race. Hispanic or Latino Ethnicity—Indicate the ethnicity for each of the foster parent(s). See instructions and definitions under data element II.C.2. Use ''f. Unable to Determine'' only when a parent is unwilling to identify his or her ethnicity.

X. Outcome Information

Enter data only for children who have exited foster care during the reporting period.

A. Date of Discharge From Foster Care**—Enter the month, day and year the child was discharged from foster care. If the child has not been discharged from care, leave blank.

Transaction Date**—A computer generated date which accurately indicates the month, day and year the response to ''Date of Discharge from Foster Care'' was entered into the information system.

B. Reason for Discharge**.

Reunification With Parents or Primary Caretakers—The child was returned to his or her principal caretaker(s)' home.

Living With Other Relatives—The child went to live with a relative other than the one from whose home he or she was removed.

Adoption—The child was legally adopted.

Emancipation—The child reached majority according to State law by virtue of age, marriage, etc.

Guardianship—Permanent custody of the child was awarded to an individual.

Transfer to Another Agency—Responsibility for the care of the child was awarded to another agency—either in or outside of the State.

Runaway—The child ran away from the foster care placement.

Death of Child—The child died while in foster care.

XI. Source(s) of Federal Support/Assistance for Child (Indicate All That Apply With a ''1''.)

Title IV-E (Foster Care)—Title IV-E foster care maintenance payments are being paid on behalf of the child.

Title IV-E (Adoption Subsidy)—Title IV-E adoption subsidy is being paid on behalf of the child who is in an adoptive home, but the adoption has not been legalized.

Title IV-A (Aid to Families With Dependent Children)—Child is living with relative(s) whose source of support is an AFDC payment for the child.

Title IV-D (Child Support)—Child support funds are being paid to the State agency on behalf of the child by assignment from the receiving parent.

Title XIX (Medicaid)—Child is eligible for and may be receiving assistance under title XIX.

SSI or Other Social Security Act Benefits—Child is receiving support under title XVI or other Social Security Act titles not included in this section.

None of the Above—Child is receiving support only from the State or from some other source (Federal or non-Federal) which is not indicated above.

XII. Amount of the Monthly Foster Care Payment (Regardless of Sources)

Enter the monthly payment paid on behalf of the child regardless of source (i.e., Federal, State, county, municipality, tribal, and private payments). If title IV-E is paid on behalf of the child the amount indicated should be the total computable amount. If the payment made on behalf of the child is not the same each month, indicate the amount of the last full monthly payment made during the reporting period. If no monthly payment has been made during the period, enter all zeros.

[58 FR 67926, Dec. 22, 1993; 59 FR 13535, Mar. 22, 1994; 59 FR 42520, Aug. 18, 1994; 60 FR 40507, Aug. 9, 1995; 60 FR 46887, Sept. 8, 1995; 65 FR 4084, Jan. 25, 2000]

APPENDIX B TO PART 1355—ADOPTION DATA ELEMENTS

Section I—Adoption Data Elements

I. General Information
A. State _____
B. Report Date ____(mo.) ____(day) ____(yr.)
C. Record Number _____
D. Did the State Agency Have any Involvement in This Adoption? _____
Yes: 1
No: 2
II. Child's Demographic Information
A. Date of Birth ____(mo) ____(day) ____(yr.)
B. Sex ____
Male: 1
Female: 2
C. Race/Ethnicity
1. Race
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
2. Hispanic or Latino Ethnicity_____
Yes: 1
No: 2
Unable to determine: 3
III. Special Needs Status
A. Has the State child welfare agency determined that this child has special needs? _____
Yes: 1
No: 2
B. If yes, indicate the primary basis for determining that this child has special needs _____
Racial/Original Background: 1
Age: 2
Membership in a Sibling Group to be Placed for Adoption Together: 3
Medical Conditions or Mental, Physical or Emotional Disabilities: 4
Other: 5
1. If III. B was ''4,'' indicate with a ''1'' the type(s) of disability(ies)
Mental Retardation _____
Visually or Hearing Impaired _____
Physically Disabled _____
Emotionally Disturbed (DSM III) _____
Other Medically Diagnosed Condition Requiring Special Care _____
IV. Birth Parents
A. Year of Birth _____
Mother, If known _____
Father (Putative or Legal), if known _____
B. Was the mother married at the time of the child's birth? _____
Yes: 1
No: 2
Unable to Determine: 3
V. Court Actions
A. Dates of Termination of Parental Rights
Mother ____(mo.) ____(day) ____(yr.)
Father ____(mo.) ____(day) ____(yr.)
B. Date Adoption Legalized ____(mo.) ____(day) ____(yr.)
VI. Adoptive Parents
A. Family Structure _____
Married Couple: 1
Unmarried Couple: 2
Single Female: 3
Single Male: 4
B. Year of Birth
Mother (if Applicable) _____
Father (if Applicable) _____
C. Race/Ethnicity
1. Adoptive Mother's Race (If Applicable)
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
2. Hispanic or Latino Ethnicity of Mother (If Applicable)_____
Yes: 1
No: 2
Unable to Determine: 3
3. Adoptive Father's Race (If Applicable)
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
4. Hispanic or Latino Ethnicity of Father (If Applicable)_____
Yes: 1
No: 2
Unable to Determine: 3
D. Relationship of Adoptive Parent(s) to the Child (Indicate with a ''1'' all that apply)
Stepparent
Other Relative of Child by Birth or Marriage _____
Foster Parent of Child _____
Non-Relative _____
VII. Placement Information
A. Child Was Placed From _____
Within State: 1
Another State: 2
Another Country: 3
B. Child Was Placed by _____
Public Agency: 1
Private Agency: 2
Tribal Agency: 3
Independent Person: 4
Birth Parent: 5
VIII. Federal/State Financial Adoption Support
A. Is a monthly financial subsidy being paid for this child? _____
Yes: 1
No: 2
B. If yes, the monthly amount _____

C. If VIII. A is yes, is the subsidy paid under Title IV-E adoption assistance?

Yes: 1
No: 2

Section II—Definitions of Instructions for Adoption Data Elements

Reporting population

The State must report on all children who are adopted in the State during the reporting period and in whose adoption the State title IV-B/IV-E agency has had any involvement. All adoptions which occurred on or after October 1, 1994 and which meet the criteria set forth in this regulation must be reported. Failure to report on these adoptions will result in penalties being assessed. Reports on all other adoptions are encouraged but are voluntary. Therefore, reports on the following are mandated:

(a) All children adopted who had been in foster care under the responsibility and care of the State child welfare agency and who were subsequently adopted whether special needs or not and whether subsidies are provided or not;

(b) All special needs children who were adopted in the State, whether or not they were in the public foster care system prior to their adoption and for whom non-recurring expenses were reimbursed; and

(c) All children adopted for whom an adoption assistance payment or service is being provided based on arrangements made by or through the State agency.

These children must be identified by answering ''yes'' to data element I.D. Children who are reported by the State, but for whom there has not been any State involvement, and whose reporting, therefore, has not been mandated, are identified by answering ''no'' to element I.D.

I. General Information

A. State—U.S. Postal Service two letter abbreviation for the State submitting the report.

B. Report Date—The last month and the year for the reporting period.

C. Record Number—The sequential number which the State uses to transmit data to the Department of Health and Human Services (DHHS). The record number cannot be linked to the child except at the State or local level.

D. Did the State Agency Have Any Involvement in This Adoption?

Indicate whether the State Title IV-B/IV-E agency had any involvement in this adoption, that is, whether the adopted child belongs to one of the following categories:

- A child who had been in foster care under the responsibility and care of the State child welfare agency and who was subsequently adopted whether special needs or not and whether a subsidy was provided or not;
- A special needs child who was adopted in the State, whether or not he/she was in the public foster care system prior to his/her adoption and for whom non-recurring expenses were reimbursed; or
- A child for whom an adoption assistance payment or service is being provided based on arrangements made by or through the State agency.

II. Child's Demographic Information

A. Date of Birth—Month and year of the child's birth. If the child was abandoned or the date of birth is otherwise unknown, enter an approximate date of birth.

B. Sex—Indicate as appropriate.

C. Race/Ethnicity

1. Race—In general, a person's race is determined by how they define themselves or by how others define them. In the case of young children, parents determine the race of the child. Indicate all races (a-e) that apply with a ''1.'' For those that do not apply, indicate a ''0.'' Indicate ''f. Unable to Determine'' with a 1'' if it applies and a ''0'' if it does not.

American Indian or Alaska Native—A person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American—A person having origins in any of the black racial groups of Africa.

Native Hawaiian or Other Pacific Islander—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Unable to Determine—The specific race category is ''unable to determine'' because the child is very young or is severely disabled and no person is available to identify the child's race. ''Unable to determine'' is also used if the parent, relative or guardian is unwilling to identify the child's race.

2. Hispanic or Latino Ethnicity—Answer ''yes'' if the child is of Mexican, Puerto Rican, Cuban, Central or South American origin, or a person of other Spanish cultural origin regardless of race. Whether or not a person is Hispanic or Latino is determined by how they define themselves or by how others define them. In the case of young children, parents determine the ethnicity of the child. ''Unable to Determine'' is used because

the child is very young or is severely disabled and no other person is available to determine whether or not the child is Hispanic or Latino. ''Unable to determine'' is also used if the parent, relative or guardian is unwilling to identify the child's ethnicity.

III. Special Needs Status

A. Has the State Agency Determined That the Child has Special Needs?

Use the State definition of special needs as it pertains to a child eligible for an adoption subsidy under title IV-E.

B. Primary Factor or Condition for Special Needs—Indicate only the primary factor or condition for categorization as special needs and only as it is defined by the State.

Racial/Original Background—Primary condition or factor for special needs is racial/original background as defined by the State.

Age—Primary factor or condition for special needs is age of the child as defined by the State.

Membership in a Sibling Group to be Placed for Adoption Together—Primary factor or condition for special needs is membership in a sibling group as defined by the State.

Medical Conditions of Mental, Physical, or Emotional Disabilities—Primary factor or condition for special needs is the child's medical condition as defined by the State, but clinically diagnosed by a qualified professional.

When this is the response to question B, then item 1 below must be answered.

1. Types of Disabilities—Data are only to be entered if response to III.B was ''4.'' Indicate with a ''1'' the types of disabilities.

Mental Retardation—Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.

Visually or Hearing Impaired—Having a visual impairment that may significantly affect educational performance or development; or a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

Physically Disabled—A physical condition that adversely affects the child's day-to-day motor functioning, such as cerebral palsy, spina bifida, multiple sclerosis, orthopedic impairments, and other physical disabilities.

Emotionally Disturbed (DSM III)—A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: An inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed. Diagnosis is based on the *Diagnostic and Statistical Manual of Mental Disorders (Third Edition)* (DSM III) or the most recent edition.

Other Medically Diagnosed Conditions Requiring Special Care—Conditions other than those noted above which require special medical care such as chronic illnesses. Included are children diagnosed as HIV positive or with AIDS.

IV. Birth Parents

A. Year of Birth—Enter the year of birth for both parents, if known. If the child was abandoned and no information was available on either one or both parents, leave blank for the parent(s) for which no information was available.

B. Was the Mother Married at the Time of the Child's Birth?

Indicate whether the mother was married at time of the child's birth; include common law marriage if legal in the State. If the child was abandoned and no information was available on the mother, enter ''Unable to Determine.''

V. Court Actions

A. Dates of Termination of Parental Rights—Enter the month, day and year that the court terminated parental rights. If the parents are known to be deceased, enter the date of death.

B. Date Adoption Legalized—Enter the date the court issued the final adoption decree.

VI. Adoptive Parents

A. Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the nature of the adoptive parent(s) family structure.

B. Year of Birth—Enter the year of birth for up to two adoptive parents. If the response to data element IV.A—Family Structure, was 1 or 2, enter data for two parents. If the response was 3 or 4, enter data only for the appropriate parent. If the exact year of birth is unknown, enter an estimated year of birth.

C. Race/Ethnicity—Indicate the race/ethnicity for each of the adoptive parent(s). See instructions and definitions for the race/ethnicity categories under data element II.C. Use ''f. Unable to Determine'' only when a parent is unwilling to identify his or her race or ethnicity.

D. Relationship to Adoptive Parent(s)—Indicate the prior relationship(s) the child had with the adoptive parent(s).

Stepparent—Spouse of the child's birth mother or birth father.

Other Relative of Child by Birth or Marriage—A relative through the birth parents by blood or marriage.

Foster Parent of Child—Child was placed in a non-relative foster family home with a family which later adopted him or her. The initial placement could have been for the purpose of adoption or for the purpose of foster care.

Non-Relative—Adoptive parent fits into none of the categories above.

VII. Placement Information

A. Child Was Placed From: Indicate the location of the individual or agency that had custody or responsibility for the child at the time of initiation of adoption proceedings.

Within State—Responsibility for the child resided with an individual or agency within the State filing the report.

Another State—Responsibility for the child resided with an individual or agency in another State or territory of the United States.

Another Country—Immediately prior to the adoptive placement, the child was residing in another country and was not a citizen of the United States.

B. Child Was Placed By: Indicate the individual or agency which placed the child for adoption.

Public Agency—A unit of State or local government.

Private Agency—A for-profit or non-profit agency or institution.

Tribal Agency—A unit within one of the Federally recognized Indian Tribes or Indian Tribal Organizations.

Independent Person—A doctor, a lawyer or some other individual.

Birth Parent—The parent(s) placed the child directly with the Adoptive parent(s).

VIII. State/Federal Adoption Support

A. Is The Child Receiving a Monthly Subsidy?

Enter ''yes'' if this child was adopted with an adoption assistance agreement under which regular subsidies (Federal or State) are paid.

B. Monthly Amount—Indicate the monthly amount of the subsidy. The amount of the subsidy should be rounded to the nearest dollar. Indicate ''0'' if the subsidy includes only benefits under titles XIX or XX of the Social Security Act.

C. If VIII.A is ''Yes,'' is Child Receiving Title IV-E Adoption Subsidy?

If VIII.A is ''yes,'' indicate whether the subsidy is claimed by the State for reimbursement under title IV-E. Do not include title IV-E non-recurring costs in this item.

[58 FR 67929, Dec. 22, 1993; 59 FR 42520, Aug. 18, 1994; 65 FR 4084, Jan. 25, 2000]

APPENDIX C TO PART 1355—ELECTRONIC DATA TRANSMISSION FORMAT

All AFCARS data to be sent from State agencies/Indian Tribes to the Department are to be in electronic form. In order to meet this general specification, the Department will offer as much flexibility as possible. Technical assistance will be provided to negotiate a method of transmission best suited to the States' environment.

There will be four semi-annual electronic data transmissions from the States to the Administration for Children and Families (ACF). The Summary Submission File, one each for Foster Care and Adoption, and the Detail Submission File, one each for Foster Care and Adoption. The Summary File must be transmitted first, followed immediately by the Detail File. See appendix D for Foster Care and Adoption Detail and Summary record layout formats.

There are four methods for electronic data exchange currently operating for other Departmental programs of a similar nature. These methods are: (1) MITRON tape-to-tape transfer, (2) mainframe-to-mainframe data transfer, (3) personal computer (PC) to mainframe data transmission using a data transfer protocol, and (4) a personal computer to personal computer protocol. A general description of these methods is provided below:

1. MITRON, Tape-to-Tape Data Transmission

In order to use the MITRON system, both the sender and receiver must have MITRON equipment (tape drive and main unit) and software. The MITRON system is capable of handling a large volume of data but is limited to one reel of tape per transmission session. (If the data quantity exceeds one tape, a header/trailer record must be placed on each physical tape reel.) These are standard 2400 foot tapes, using standard labels. The tape density is limited to the 1600 bits per inch (bpi) specification.

2. Mainframe-to-Mainframe

The ACF has installed a mainframe-to-mainframe data exchange system using the Sterling Software data transfer package called ''SUPERTRACS.'' This package will allow data exchange between most computer platforms (both mini and mainframe) and the Department's mainframe in a dial-up mode. No additional software is needed by the remote computer site beyond what the Department will supply. This method has proven effective for small to moderate amounts (100 to 5,000 records) of data.

3. Electronic File Transfer Between PC and Mainframe

This method uses the SIMPC software package on the personal computer and the

host mainframe. The software will be provided by the Department. This method is best suited for small to moderate (100 to 5,000) records transmissions. The advantages of Electronic File Transfer are the elimination of tapes and associated problems and the advantage of automatic record checking during the transmission session. If a State is currently maintaining the AFCARS data on a personal computer and is unable to download and upload to its mainframe, Electronic File Transfer is an appropriate transmission mechanism.

4. Personal Computer to Personal Computer

This method uses the SIMPC software package on the sending personal computer and the receiving personal computer. The software will be provided by the Department. This method is best suited for small to moderate (100 to 5,000) records transmissions. The advantages of Electronic File Transfer are the elimination of tapes and associated problems and the advantage of automatic record checking during the transmission session. If a State is currently maintaining the AFCARS data on a personal computer, the personal computer to personal computer transfer is an appropriate transmission mechanism.

In conjunction with Departmental staff, State agencies and Indian Tribes should review their resources and select the system that will best suit their data transmission needs. Over time, State agencies and Indian Tribes can change their transmission methods, provided that proper notification is provided.

Regardless of the electronic data transmission methodology selected, certain criteria must be met by the State agencies and Indian Tribes:

(1) Records must be written using ASCII standard character format.

(2) All elements must be comprised of integer (numeric) value(s). Element character length specifications refer to the maximum number of numeric values permitted for that element. See appendix D.

(3) All records must be a fixed length. The Foster Care Detailed Data Elements Record is 150 characters long and the Adoption Detailed Data Elements Record is 72 characters long. The Foster Care Summary Data Elements Record and the Adoption Summary Data Elements Record are each 172 characters long.

(4) All States and Indian Tribes must inform the Department, in writing, of the method of transfer they intend to use.

[58 FR 67931, Dec. 22, 1993; 59 FR 42520, Aug. 18, 1994, as amended at 60 FR 40507, Aug. 9, 1995]

APPENDIX D TO PART 1355—FOSTER CARE AND ADOPTION RECORD LAYOUTS

A. Foster Care

1. Foster Care Semi-Annual Detailed Data Elements Record

a. The record will consist of 66 data elements.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) All data must be numeric. Enter the appropriate value for each element.

(2) Enter date values in year, month and day order (YYYYMMDD), e.g., 19991030 for October 30, 1999, or year and month order (YYYYMM), e.g., 199910 for October 1999. Leave the element value blank if dates are not applicable.

(3) For elements 8, 11–15, 26–40, 52, 54 and 59–65, which are ''select all that apply'' elements, enter a ''1'' for each element that applies, enter a zero for non-applicable elements.

(4) Transaction Date—is a computer generated date indicating when the datum (Elements 21 or 55) is entered into the State's automated information system.

(5) Report the status of all children in foster care as of the last day of the reporting period. Also, provide data for all children who were discharged from foster care at any time during the reporting period, or in the previous reporting period, if not previously reported.

c. Foster Care Semi-Annual Detailed Data Elements Record Layout follows:

Element No.	Appendix A data element	Data element description	No. of numeric characters
01	I.A.	State	2
02	I.B.	Report period ending date	6
03	I.C.	Local Agency FIPS code (county or equivalent jurisdiction)	5
04	I.D.	Record number	12
05	I.E.	Date of most recent periodic review	8
06	II.A.	Child's date of birth	8
07	II.B.	Sex	1
08	II.C.1.	Race.	
08a		American Indian or Alaska native	1
08b		Asian	1
08c		Black or African American	1
08d		Native Hawaiian or Other Pacific Islander	1

Element No.	Appendix A data element	Data element description	No. of numeric characters
08e		White	1
08f		Unable to Determine	1
09	II.C.2.	Hispanic or Latino Ethnicity	1
10	II.D.	Has this child been clinically diagnosed as having a disability(ies)	1
		Indicate each type of disability of the child with a ''1'' for elements 11–15 and a zero for disabilities that do not apply.	
11	II.D.1.a.	Mental retardation	1
12	II.D.1.b.	Visually or hearing impaired	1
13	II.D.1.c.	Physically disabled	1
14	II.D.1.d.	Emotionally disturbed (DSM III)	1
15	II.D.1.e	Other medically diagnosed condition requiring special care	1
16	II.E.1.	Has this child ever been adopted	1
17	II.E.2.	If yes, how old was the child when the adoption was legalized?	1
18	III.A.1.	Date of first removal from home	8
19	III.A.2.	Total number of removals from home to date	2
20	III.A.3.	Date child was discharged from last foster care episode	8
21	III.A.4.	Date of latest removal from home	8
22	III.A.5.	Removal transaction date	8
23	III.B.1.	Date of placement in current foster care setting	8
24	III.B.2.	Number of previous placement settings during this removal episode.	2
25	IV.A.	Manner of removal from home for current placement episode	1
		Actions or conditions associated with child's removal: Indicate with a ''1'' for elements 26–40 and a zero for conditions that do not apply.	
26	IV.B.1.	Physical abuse (alleged/reported)	1
27	IV.B.2.	Sexual abuse (alleged/reported)	1
28	IV.B.3.	Neglect (alleged/reported)	1
29	IV.B.4.	Alcohol abuse (parent)	1
30	IV.B.5.	Drug abuse (parent)	1
31	IV.B.6.	Alcohol abuse (child)	1
32	IV.B.7.	Drug abuse (child)	1
33	IV.B.8.	Child's disability	1
34	IV.B.9.	Child's behavior problem	1
35	IV.B.10.	Death of parent(s)	1
36	IV.B.11.	Incarceration of parent(s)	1
37	IV.B.12.	Caretaker's inability to cope due to illness or other reasons	1
38	IV.B.13.	Abandonment	1
39	IV.B.14.	Relinquishment	1
40	IV.B.15.	Inadequate housing	1
41	V.A.	Current placement setting	1
42	V.B.	Out of State placement	1
43	VI.	Most recent case plan goal	1
44	VII.A.	Caretaker family structure	1
45	VII.B.1.	Year of birth (1st principal caretaker)	4
46	VII.B.2.	Year of birth (2nd principal caretaker)	4
47	VIII.A.	Date of mother's parental rights termination	8
48	VIII.B.	Date of legal or putative father's parental rights	8
49	IX.A.	Foster family structure	1
50	IX.B.1.	Year of birth (1st foster caretaker)	4
51	IX.B.2.	Year of birth (2nd foster caretaker)	4
52	IX.C.1.	Race of 1st foster caretaker.	
52a		American Indian or Alaska Native	1
52b		Asian	1
52c		Black or Asian American	1
52d		Native Hawaiian or Other Pacific Islander	1
52e		White	1
52f		Unable to Determine	1
53	IX.C.2.	Hispanic or Latino ethnicity of 1st foster caretaker	1
54	IX.C.3.	Race of 2nd foster caretaker.	
54a		American Indian or Alaska Native	1
54b		Asian	1
54c		Black or African American	1
54d		Native Hawaiian or Other pacific islander	1
54e		White	1
54f		Unable to Determine	1
55	IX.C.4.	Hispanic or Latino ethnicity of 2nd foster caretaker	1
56	X.A.1.	Date of discharge from foster care	8
57	X.A.2.	Foster care discharge transaction date	8
58	X.B.	Reason for discharge	1
		Sources of Federal support/assistance for child; indicate with a ''1'' for elements 58–64 and a zero for sources that do not apply.	

Element No.	Appendix A data element	Data element description	No. of numeric characters
59	XI.A.	Title IV-E (Foster Care)	1
60	XI.B.	Title IV-E (Adoption Assistance)	1
61	XI.C.	Title IV-A (Aid to Families With Dependent Children)	1
62	XI.D.	Title IV-D (Child Support)	1
63	XI.E.	Title XIX (Medicaid)	1
64	XI.F.	SSI or other Social Security Act benefits	1
65	XI.G.	None of the above	1
66	XII	Amount of monthly foster care payment (regardless of source)	5
		Total characters	197

2. Foster Care Semi-Annual Summary Data Elements Record

a. The record will consist of 22 data elements.

The values for these data elements are generated by processing all records in the semi-annual detailed data transmission and computing the summary values for Elements 1 and 3–22. Element 2 is the semi-annual report period ending date. In calculating the age range for the child, the last day of the reporting period is to be used.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) For all elements where the total is zero, enter a numeric zero.

(3) Enter date values in year, month order (YYYYMM), e.g.,199912 for December 1999.

c. Foster Care Semi-Annual Summary Data Elements Record Layout follows:

Element No.	Summary data file	No. of characters
01	Number of records	8
02	Report period ending date (YYYYMM)	6
03	Children in care under 1 year	8
04	Children in care 1 year old	8
05	Children in care 2 years old	8
06	Children in care 3 years old	8
07	Children in care 4 years old	8
08	Children in care 5 years old	8
09	Children in care 6 years old	8
10	Children in care 7 years old	8
11	Children in care 8 years old	8
12	Children in care 9 years old	8
13	Children in care 10 years old	8
14	Children in care 11 years old	8
15	Children in care 12 years old	8
16	Children in care 13 years old	8
17	Children in care 14 years old	8
18	Children in care 15 years old	8
19	Children in care 16 years old	8
20	Children in care 17 years old	8
21	Children in care 18 years old	8
22	Children in care over 18 years old	8
	Record Length	174

B. Adoption

1. Adoption Semi-Annual Detailed Data Elements Record

a. The record will consist of 37 data elements.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) Enter date values in year, month and day order (YYYYMMDD), e.g., 19991030 for October 30, 1999, or year and month (YYYYMM), e.g., 199910 for October 1999. Leave the element value blank if dates are not applicable.

(3) For elements 7, 11–15, 25, 27 and 29–32 which are ''select all that apply'' elements, enter a ''1'' for each element that applies; enter a zero for non-applicable elements.

c. Adoption Semi-Annual Detailed Data Elements Record Layout follows:

Element No.	Appendix B data element	Data element description	No. of numeric characters
01	I.A.	State	2
02	I.B.	Report period ending date	6
03	I.C.	Record number	6
04	I.D.	State Agency involvement	1
05	II.A.	Date of birth	6
06	II.B.	Sex	1
07	II.C.1.	Race.	
07a		American Indian or Alaska Native	1
07b		Asian	1
07c		Black or African American	1
07d		Native Hawaiian or Other Pacific Islander	1
07e		White	1
07f		Unable to Determine	1
08	II.C.2.	Hispanic or Latino ethnicity	1
09	III.A	Has the State Agency determined that this child has special needs	1
10	III.B	Primary basis for special needs	1
		Indicate a primary basis of special needs with a ''1'' for elements 11–15. Enter a zero for special needs that do not apply.	
11	III.B.1.a	Mental retardation	1
12	III.B.1.b.	Visually or hearing impaired	1
13	III.B.1.c	Physically disabled	1
14	III.B.1.d	Emotionally disturbed (DSM III)	1
15	III.B.1.e.	Other medically diagnosed condition requiring special care	1
16	IV.A.1.	Mother's year of birth	4
17	IV.A.2.	Father's (Putative or legal) year of birth	4
18	IV.B.	Was the mother married at time of child's birth	1
19	V.A.1.	Date of mother's termination of parental rights	8
20	V.A.2.	Date of father's termination of parental rights	8
21	V.B.	Date adoption legalized	8
22	VI.A.	Adoptive parents family structure	1
23	VI.B.1	Mother's year of birth (if applicable)	4
24	VI.B.2	Father's year of birth (if applicable)	4
25	VI.C.1.	Adoptive mother's race.	
25a		American Indian or Alaska Native	1
25b		Asian	1
25c		Black or African American	1
25d		Native Hawaiian or Other Pacific Islander	1
25e		White	1
25f		Unable to Determine	1
26	VI.C.2	Hispanic or Latino Ethnicity	1
27	VI.C.3	Adoptive father's race.	
27a		American Indian or Alaska Native	1
27b		Asian	1
27c		Black or African American	1
27d		Native Hawaiian or Other Pacific Islander	1
27e		White	1
27f		Unable to Determine	1
28	VI.C.4	Hispanic or Latino Ethnicity	1
		Indicate each type of relationship of adoptive parent(s) to the child with a ''1'' for elements 29–32. Enter a zero for relationships that do not apply below.	
29	VI.D.1	Stepparent	1
30	VI.D.2.	Other relative of child by birth or marriage	1
31	VI.D.3	Foster parent of child	1
32	VI.D.4	Other non-relative	1
33	VII.A.	Child was placed from	1
34	VII.B.	Child was placed by	1
35	VIII.A.	Is this child receiving a monthly subsidy	1
36	VIII.B.	If VIII.B is ''yes.'' What is the monthly amount	5
37	VIII.C	If VII.B is ''yes.'' Is the child receiving title IV-E adoption assistance?.	1
		Total Characters	111

2. Adoption Semi-Annual Summary Data Elements Record

a. The record will consist of 22 data elements.

The values for these data elements are generated by processing all records in the semi-annual detailed data transmission and computing the summary values for Elements 1 and 3–22. Element 2 is the semi-annual report

period ending date. In calculating the age range for the child, the last day of the reporting period is to be used.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) For all elements where the total is zero, enter a numeric zero.

(3) Enter data values in year, month order (YYYYMM), e.g., 199912 for December 1999.

c. Adoption Semi-Annual Summary Data Element Record Layout follows:

Element No.	Summary data file	No. of characters
01	Number of records	8
02	Report period ending date (YYYYMM)	6
03	Children adopted Under 1 year old	8
04	Children adopted 1 year old	8
05	Children adopted 2 years old	8
06	Children adopted 3 years old	8
07	Children adopted 4 years old	8
08	Children adopted 5 years old	8
09	Children adopted 6 years old	8
10	Children adopted 7 years old	8
11	Children adopted 8 years old	8
12	Children adopted 9 years old	8
13	Children adopted 10 years old	8
14	Children adopted 11 years old	8
15	Children adopted 12 years old	8
16	Children adopted 13 years old	8
17	Children adopted 14 years old	8
18	Children adopted 15 years old	8
19	Children adopted 16 years old	8
20	Children adopted 17 years old	8
21	Children adopted 18 years old	8
22	Children adopted over 18 years old	8
	Record Length	174

[58 FR 67931, Dec. 22, 1993; 59 FR 13535, Mar. 22, 1994; 59 FR 42520, Aug. 18, 1994, as amended at 60 FR 40507, Aug. 9, 1995; 65 FR 4085, Jan. 25, 2000]

APPENDIX E TO PART 1355—DATA STANDARDS

All data submissions will be evaluated to determine the completeness and internal consistency of the data. Four types of assessments will be conducted on both the foster care and adoption data submissions. The results of these assessments will determine the applicability of the penalty provisions. (See §1355.40(e) for penalty provision description.) The four types of assessments are:

- Comparisons of the detailed data to summary data;
- Internal consistency checks of the detailed data;
- An assessment of the status of missing data; and
- Timeliness, an assessment of how current the submitted data are.

A. Foster Care

1. Summary Data Elements Submission Standards

A summary file must accompany the Detailed Data Elements submission. Both transmissions must be sent through electronic means (see appendix C for details). This summary will be used to verify basic counts of records on the detailed data received.

a. The summary file must be a discrete file separate from the semi-annual reporting period detailed data file. The record layout for the summary file is included in appendix D. section A.2.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

b. The Department will develop a second summary file by computing the values from the detailed data file received from the State. The two summary files (the one submitted by the State and the one created during Federal processing) will be compared, field by field. If the two files match, further validation of the detailed data elements will commence. (See Section A.2 below.) If the two summary files do not match, we will assume that there has been an error in transmission and will request a retransmission from the State within 24 hours of the time the State has been notified. In addition, a log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

2. Detailed Data File Submission Standards

a. Internal Consistency Validations.

Internal consistency validations involve evaluating the logical relationships between data elements in a detailed record. For example, a child cannot be discharged from foster care before he or she has been removed from his or her home. Thus, the Date of Latest Removal From Home data element must be a date prior to the Date of Discharge. If this is not case, an internal inconsistency will be detected and an ''error'' indicated in the detailed data file.

A number of data elements have ''if applicable'' contingency relationships with other data elements in the detailed record. For example, if the Foster Family Structure has only a single parent, then the appropriate sex of the Single Female/Male element in the ''Year of Birth'' and ''Race/Origin'' elements must be completed and the ''non-applicable'' fields for these elements are to be filled with zero's or, for dates, left blank.

The internal consistency validations that will be performed on the foster care detailed data are as follows:

(1) The Local Agency must be the county or a county equivalent unit which has responsibility for the case. The 5 digit Federal Information Processing Standard (FIPS) code must be used.

(2) If Date of Latest Removal From Home (Element 21) is less than nine months prior to the Report Period Ending Date (Element 2) then the Date of Most Recent Periodic Review (Element 5) may be left blank.

(3) If Date of Latest Removal From Home (Element 21) is greater than nine months from Report Date (Element 2) then the Date of Most Recent Periodic Review (Element 5) must not be more than nine months prior to the Report Date (Element 2).

(4) If a child is identified as having a disability(ies) (Element 10), at least one Type of Disability Condition (Elements 11–15) must be indicated. Enter a zero (0) for disabilities that do not apply.

(5) If the Total Number of Removals From Home to Date (Element 19) is one (1), the Date Child was Discharged From Last Foster Care Episode (Element 20) must be blank.

(6) If the Total Number of Removals From Home to Date (Element 19) is two or more, then the Date Child was Discharged From Last Foster Care Episode (Element 20) must *not* be blank.

(7) If Data Child was Discharged From Last Foster Care Episode (Element 20) exists, then this date must be a date prior to the Date of Latest Removal From Home (Element 21).

(8) The Date of Latest Removal From Home (Element 21) must be prior to the Date of Placement in Current Foster Care Setting (Element 23).

(9) At least one element between elements 26 and 40 must be answered by selecting a ''1''. Enter a zero (0) for conditions that do not apply.

(10) If Current Placement Setting (Element 41) is a value that indicates that the child is not in a foster family or a pre-adoptive home, then elements 49–55 must be zero (0).

(11) At least one element between elements 59 and 65 must be answered by selecting a ''1''. Enter a zero for sources that do not apply.

(12) If the answer to the question, ''Has this child ever been adopted?'' (Element 16) is ''1'' (Yes), then the question, ''How old was the child when the adoption was legalized?'' (Element 17) must have an answer from ''1'' to ''5.''

(13) If the Date of Most Recent Periodic Review (Element 5) is not blank, then Manner of Removal From Home for Current Placement Episode (Element 25) cannot be option 3, ''Not Yet Determined.''

(14) If Reason for Discharge (Element 58) is option 3, ''Adoption,'' then Parental Rights Termination dates (Elements 46 and 47) must not be blank.

(15) If the Date of Latest Removal From Home (Element 21) is present, the Date of Latest Removal From Home Transaction Date (Element 22) must be present and must be later than or equal to the Date of Latest Removal From Home (Element 21).

(16) If the Date of Discharge From Foster Care (Element 56) is present, the Date of Discharge From Foster Care Transaction Date (Element 57) must be present and must be later than or equal to the Date of Discharge From Foster Care (Element 56).

(17) If the Date of Discharge From Foster Care (Element 56) is present, it must be after the Date of Latest Removal From Home (Element 21).

(18) In Elements 8, 52, and 54, race categories (''a'' through ''e'') and ''f. Unable to Determine'' cannot be coded ''0,'' for it does not apply. If any of the race categories apply and are coded as ''1'' then ''f. Unable to Determine'' cannot also apply.

b. Out-of-Range Standards.

Out-of-range standards relate to the occurrence of values in response to data elements that exceed, either positively or negatively, the acceptable range of responses to the question. For example, if the acceptable responses to the element, Sex of the Adoptive Child, is ''1'' for a male and ''2'' for a female, but the datum provided in the element is ''3,'' this represents an out-of-range response situation.

Out-of-range comparisons will be made for all elements. The acceptable values are described in Appendix A, Section I.

3. Missing Data Standards

The term ''missing data'' refers to instances where data for an element are required but are not present in the submission.

Data elements with values of ''Unable to Determine,'' ''Not Yet Determined'' or which are not applicable, are not considered missing.

a. In addition, the following situations will result in converting data values to a missing data status:

(1) Data elements whose values fail internal consistency validations as outlined in A.2.a.(1)–(18) above, and

(2) Data elements whose values are out-of-range.

b. The maximum amount of allowable missing data is dependent on the data elements as described below:

(1) No Missing Data.

The data for the elements listed below must be present in all records in the submission. If any record contains missing data for any of these elements, the entire submission will be considered missing and processing will not proceed.

Element No.	Element name
01	State.
02	Report date.
03	Local agency FIPS code.
04	Record number.

(2) Less Than Ten Percent Missing Data.

The data for the elements listed below cannot have ten percent or more missing data without incurring a penalty.

Element No.	Element description
05	Date of most recent periodic, review.
06	Child's date of birth.
07	Child's sex.
08	Child's race.
09	Child's Hispanic or Latino Ethnicity
10	Does child have a disability(ies)?
11–15	Type of disability (at least one must be selected).
16	Has child been adopted?
17	How old was child when adoption was legalized?
18	Date of first removal from home.
19	Total number of removals from home to date.
20	Date child was discharged from last foster care.
21	Date of latest removal from home.
22	Removal transaction date.
23	Date of placement in current foster care setting.
24	Number of previous placement settings during this removal episode.
25	Manner of removal from home for current placement episode.
26–40	Actions or conditions associated with child's removal (at least one must be selected).
41	Current placement setting.
42	Out of State placement.
43	Most recent case plan goal.
44	Caretaker family structure.
45	Year of birth of 1st principal caretaker.
46	Year of birth of 2nd principal caretaker.
47	Date of mother's parental rights termination.
48	Legal of putative father parental rights termination date.
49	Foster family structure.
50	Year of birth of 1st foster caretaker.
51	Year of birth of 2nd foster caretaker.
52	Race of 1st foster caretaker.
53	Hispanic or Latino Ethnicity of 1st foster caretaker
54	Race of 2nd foster caretaker.
55	Hispanic or Latino Ethnicity of 2nd foster caretaker
56	Date of discharge from foster care.
57	Foster care discharge transaction date.
58	Reason for discharge.
59–65	Sources of Federal support/assistance for child (at least one must be selected).
66	Amount of monthly foster care payment (regardless of source).

c. Penalty Processing.

Missing data are a major factor in determining the application of the penalty provisions of this regulation.

(1) Selection Rules.

All data elements will be used in calculating the missing data provision of the penalty unless one of the following limiting rules applies to the detailed case record.

(a) If Date of Latest Removal From Home (Element 21) and the Date of Discharge From Foster Care (Element 56) is less than 30 days, then the following date elements are the only ones to be used in evaluating the missing data provisions for purposes of penalty calculation:

Elements
1 to 4
6 to 9
21 and 22
41 and 42
56 to 58

(b) If Date of Latest Removal From Home (Element 18) is prior to October 1, 1995, then the following data elements are the only ones to be used in evaluating the missing data provisions for purposes of penalty calculation:

Elements
1 to 4
6 to 9
21 and 22
41 and 43
56 to 58

(2) Penalty Calculations.

The percentage calculation will be performed for each data element. The total number of detailed records that are included by the selection rules in 3.c.(1), will serve as the denominator. The number of missing data occurrences for each element will serve as the numerator. The result will be multiplied by one hundred. The penalty is invoked when any one element's missing data percentage is ten percent or greater.

4. Timeliness of Foster Care Data Reports

The semi-annual reporting periods will be as of the end of March and September for each year. The States are required to submit reports within 45 calendar days after the end of the semi-annual reporting period.

Computer generated transaction dates indicate the date when key foster care events are entered into the State's computer system. The intent of these transaction dates is to ensure that information about the status of children in foster care is recorded and, thus, reported in a timely manner.

a. Date of Latest Removal From Home

The Date of Latest Removal From Home Transaction Date (Element 22) must not be more than 60 days after the Date of Latest Removal From Home (Element 21) event.

b. Date of Discharge From Foster Care

The Date of Discharge From Foster Care Transaction Date (Element 57) must not be more than 60 days after the Date of Discharge From Foster Care (Element 56) event.

For purposes of penalty processing, ninety percent of the records in a detailed data submission, must indicate that:

(1) The difference between the Date of Latest Removal From Home Transaction Date (Element 22) and the Date of Latest Removal From Home (Element 21) event is 60 days or less;

and, where applicable,

(2) The difference between the Date of Discharge From Foster Care Transaction Date (Element 57), and the Date of Discharge From Foster Care (Element 56) event is 60 days or less.

B. Adoption

1. Summary Data Elements File Submission Standards

A summary file must accompany the detailed Data Elements File submission. Both files must be sent through electronic means (see appendix C for details). This summary will be used to verify the completeness of the Detailed Data File submission received.

a. The summary file should be a discrete file separate from the semi-annual reporting period detailed data file. The record layout for the summary file is included in appendix D, section B.2.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

b. The Department will develop a second summary file by computing the values from the detailed data file received from the State. The two summary files (the one submitted by the State and the one created during Federal processing) will be compared, field by field. If the two files match, further validation of the detailed data elements will commence. (See section B.2 below.) If the two summary files do not match, we will assume that there has been an error in transmission and will request a retransmission from the State within 24 hours of the time the State has been notified. In addition, a log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

2. Detailed Data Elements File Submission Standards

a. Internal Consistency Validations

Internal consistency validations involve evaluating the logical relationships between data elements in a detailed record. For example, an adoption cannot be finalized until parental rights have been terminated. Thus, the dates of Mother/Father Termination of Parental Rights, elements must be present and the dates must be prior to the ''Date Adoption Legalized.'' If this is not the case, an internal inconsistency will be detected and an ''error'' indicated in the detailed data file.

A number of data elements have ''if applicable'' contingency relationships with other data elements in the detailed record. For example, if the Adoptive Parent is single, then the appropriate sex of the single female/male element in the ''Family Structure,'' ''Year of Birth'' and ''Race/Origin'' elements must be completed and the ''non-applicable'' fields for these elements are to be filled with zeros or left blank.

The internal consistency validations that will be performed on the adoption detailed data are as follows:

(1) The Child's Date of Birth (Element 5) must be later than both the Mother's and Father's Year of Birth (Elements 16 and 17) unless either of these is unknown.)

(2) If the State child welfare agency has determined that the child is a special needs child (Element 9), then ''the primary basis for determining that this child has special needs'' (Element 10) must be completed. If ''the primary basis for determining that this child has special needs'' (Element 10) is answered by option ''4,'' then at least one element between Elements 11–15, ''Type of Disability,'' must be selected. Enter a zero (0) for disabilities that do not apply.

(3) Dates of Parental Rights Termination (Elements 19 and 20) must be completed and must be prior to the Date Adoption Legalized (Element 21).

(4) If ''Is a monthly financial subsidy being paid for this child'' (Element 35) is answered negatively, ''2'', then Element 36 must be zero (0) and ''Is the subsidy paid under Title IV-E adoption assistance'' (Element 37) must be a ''2''.

(5) If the ''Child Was Placed By'' (Element 34) is answered with option 1, ''Public Agency,'' then the question, ''Did the State Agency Have any Involvement in This Adoption'' (Element 4) must be ''1''.

(6) If the ''Relationship of Adoptive Parent(s) to the Child,'' ''Foster Parent of

Child'' (Element 31) is selected, then the question, ''Did the State Agency Have any Involvement in This Adoption'' (Element 4) must be ''1''.

(7) If ''Is a monthly financial subsidy being paid for this child?'' (Element 35) answered ''1,'' then the question, ''Did the State Agency Have any Involvement in This Adoption'' (Element 4) must be ''1.''

(8) If the ''Family Structure'' (Element 22) is option 3, Single Female, then the Mother's Year of Birth (Element 23), the ''Adoptive Mother's Race'' (Element 25) and ''Hispanic or Latino Ethnicity'' (Element 26) must be completed. Similarly, if the ''Family Structure'' (Element 22) is option 4, Single Male, then the Father's Year of Birth (Element 24), the Adoptive Father's Race'' (Element 27) and ''Hispanic or Latino Ethnicity'' (Element 28) must be completed. If the ''Family Structure'' (Element 22) is option 1 or 2, then both Mother's and Father's ''Year of Birth,'' ''Race'' and ''Hispanic or Latino Ethnicity'' must be completed.

(9) In Elements 7, 25, and 27, race categories (''a'' through ''e'') and ''f. Unable to Determine'' cannot be coded ''0,'' for it does not apply. If any of the race categories apply and are coded as ''1'' then ''f. Unable to Determine'' cannot also apply.

b. Out-of-Range Standards.

Out-of-range standards relate to the occurrence of values in response to data elements that exceed, either positively or negatively, the acceptable range of responses to the question. For example, if the acceptable response to the element, Sex of the Adoptive Child, is ''1'' for a male and ''2'' for a female, but the datum provided in the element is ''3,'' this represents an out-of-range response situation.

Out-of-range comparisons will be made for all elements. The acceptable values are described in appendix B, section I.

3. Missing Data Standards

The term ''missing data'' refers to instances where data for an element are required but are not present in the submission. Data elements with values of ''Unable to Determine,'' ''Other'' or which are not applicable, are *not* considered missing.

a. In addition, the following situations will result in converting data values to a missing data status:

(1) Data elements whose values fail internal consistency validations as outlined in 2.a.(1)–(9) above, and

(2) Data elements whose values are out-of-range.

b. The maximum amount of allowable missing data is dependent on the data elements as described below.

(1) No Missing Data.

The data for the elements listed below must be present in all records in the submission. If any record contains missing data for any of these elements, the entire submission will be considered missing and processing will not proceed.

Element No.	Element name
01	State.
02	Report date.
03	Record number.
04	Did the State agency have any involvement in this adoption?

(2) Less Than Ten Percent Missing Data

The data for the elements listed below cannot have ten percent or more missing data without incurring a penalty.

Element No.	Element name
05	Child's date of birth.
06	Child's sex.
07	Child's race.
08	Is the child of Hispanic or Latino ethnicity?
09	Does child have special needs?
10	Indicate the primary basis for determining that the child has special needs. (If Element 09 is yes, you must answer this question.)
11–15	Type of special need (at least one must be selected.)
16	Mother's year of birth.
17	Father's year of birth.
18	Was mother married at time of child's birth?
19	Date of mother's termination of parental rights.
20	Date of father's termination of parental rights.
21	Date adoption legalized.
22	Adoptive parent(s)' family structure.
23	Mother's year of birth.
24	Father's year of birth.
25	Adoptive mother's race.
26	Hispanic or Latino ethnicity of mother
27	Adoptive father's race.
28	Hispanic or Latino ethnicity of father
29–32	Relationship of adoptive parent(s) to child (at least one must be selected.)
33	Child placed from.
34	Child placed by.
35	Is a monthly financial subsidy paid for this child?
36	If yes, the monthly amount is?
37	Is the child receiving Title IV-E adoption assistance? (If Element 35 is a ''1'' (Yes) an answer to this question is required.)

c. Penalty Processing.

Missing data are a major factor in determining the application of the penalty provisions of this regulation.

(1) Selection Rules.

Only the adoption records with a ''1'' (Yes) answer in Element 4, ''Did the State Agency have any Involvement in this adoption'' will be subject to the penalty assessment process.

(2) Penalty Calculations.

The percentage calculation will be performed for each data element. The total number of detailed records will serve as the denominator and the number of missing data occurrences for each element will serve as the numerator. The result will be multiplied by one hundred. The penalty is invoked when

any one element's missing data percentage is ten percent or greater.

4. TIMELINESS OF ADOPTION DATA REPORTS

The semi-annual reporting periods will be as of the end of March and September for each year. The States are required to submit reports within 45 calendar days after the end of the semi-annual reporting period.

For penalty assessment purposes, however, no specific timeliness of data standards apply. Data on adoptions should be submitted as promptly after finalization as possible.

The desired approach to reporting adoption data is that adoptions should be reported during the reporting period in which the adoption is legalized. Or, at the State's option, they can be reported in the following reporting period if the adoption is legalized within the last 60 days of the reporting period.

Negative reports must be submitted for any semi-annual period in which no adoptions have been legalized.

[58 FR 67934, Dec. 22, 1993; 59 FR 13535, Mar. 22, 1994, as amended at 60 FR 40508, Aug. 9, 1995]

APPENDIX F TO PART 1355

ALLOTMENT OF FUNDS WITH 427 INCENTIVE FUNDS TITLE IV-B CHILD WELFARE SERVICES FISCAL YEAR 1993

Name of State	Allotment at $294,624,000 [1]	Allotment at $141,000,000 [1]	427 incentive funds
Alabama	5,798,251	2,771,128	3,027,123
Alaska	674,777	355,179	319,598
Arizona	4,781,390	2,291,632	2,489,758
Arkansas	3,495,975	1,685,501	1,810,474
California	30,048,818	14,206,363	15,842,455
Colorado	3,844,876	1,850,024	1,994,852
Connecticut	2,065,826	1,011,122	1,054,704
Delaware	763,822	397,168	366,654
Dist of Col	448,212	248,344	199,868
Florida	12,946,006	6,141,615	6,804,391
Georgia	8,386,050	3,991,391	4,394,659
Hawaii	1,281,048	641,063	639,985
Idaho	1,734,494	854,884	879,610
Illinois	12,157,021	5,769,574	6,387,447
Indiana	7,115,189	3,392,123	3,723,066
Iowa	3,565,712	1,718,385	1,847,327
Kansas	3,083,341	1,490,926	1,592,415
Kentucky	5,192,133	2,485,316	2,706,817
Louisiana	6,750,330	3,220,076	3,530,254
Maine	1,533,067	759,902	773,165
Maryland	4,256,288	2,044,023	2,212,265
Massachusetts	4,566,755	2,190,422	2,376,333
Michigan	10,860,253	5,158,089	5,702,164
Minnesota	5,092,532	2,438,349	2,654,183
Mississippi	4,437,556	2,129,499	2,308,057
Missouri	6,217,709	2,968,921	3,248,788
Montana	1,211,809	608,414	603,395
Nebraska	2,136,670	1,044,528	1,092,142
Nevada	1,326,362	662,431	663,931
New Hampshire	1,078,123	545,375	532,748
New Jersey	5,307,662	2,539,793	2,767,869
New Mexico	2,493,475	1,212,778	1,280,697
New York	15,530,358	7,360,253	8,170,105
North Carolina	8,326,069	3,963,107	4,362,962
North Dakota	982,955	500,499	482,456
Ohio	13,052,582	6,191,871	6,860,711
Oklahoma	4,428,365	2,125,165	2,303,200
Oregon	3,576,418	1,723,434	1,852,984
Pennsylvania	12,649,960	6,002,017	6,647,943
Rhode Island	1,070,439	541,752	528,687
South Carolina	5,101,221	2,442,447	2,658,774
South Dakota	1,107,009	558,996	548,013
Tennessee	6,328,617	3,021,219	3,307,398
Texas	23,687,998	11,206,947	12,481,051
Utah	3,478,384	1,667,206	1,801,178
Vermont	749,584	390,454	359,130
Virginia	6,321,841	3,018,024	3,303,817
Washington	5,667,518	2,709,481	2,958,037
West Virginia	2,564,554	1,246,294	1,318,260

ALLOTMENT OF FUNDS WITH 427 INCENTIVE FUNDS TITLE IV-B CHILD WELFARE SERVICES FISCAL YEAR 1993—Continued

Name of State	Allotment at $294,624,000 [1]	Allotment at $141,000,000 [1]	427 incentive funds
Wisconsin	6,033,052	2,881,847	3,151,205
Wyoming	751,264	391,247	360,017

[1] These totals include allotments to the United States Territories. Therefore, the summation of the States' allotments will not be equivalent.

[58 FR 67937, Dec. 22, 1993, as amended at 65 FR 4087, Jan. 25, 2000]

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV-E

Sec.

1356.10 Scope.
1356.20 State plan document and submission requirements.
1356.21 Foster care maintenance payments program implementation requirements.
1356.22 Implementation requirements for children voluntarily placed in foster care.
1356.30 Safety requirements for foster care and adoptive home providers.
1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.
1356.41 Nonrecurring expenses of adoption.
1356.50 Withholding of funds for non-compliance with the approved title IV-E State plan.
1356.60 Fiscal requirements (title IV-E).
1356.65–1356.70 [Reserved]
1356.71 Federal review of the eligibility of children in foster care and the eligibility of foster care providers in title IV-E programs.
1356.80 Scope of the National Youth in Transition Database.
1356.81 Reporting population.
1356.82 Data collection requirements.
1356.83 Reporting requirements and data elements.
1356.84 Sampling.
1356.85 Compliance.
1356.86 Penalties for noncompliance.
APPENDIX A TO PART 1356—NYTD DATA ELEMENTS
APPENDIX B TO PART 1356—NYTD YOUTH OUTCOME SURVEY
APPENDIX C TO PART 1356—CALCULATING SAMPLE SIZE FOR NYTD FOLLOW-UP POPULATIONS

AUTHORITY: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

§ 1356.10 Scope.

This part applies to State programs for foster care maintenance payments, adoption assistance payments, related foster care and adoption administrative and training expenditures, and the independent living services program under title IV-E of the Act.

[61 FR 58655, Nov. 18, 1996]

§ 1356.20 State plan document and submission requirements.

(a) To be in compliance with the State plan requirements and to be eligible to receive Federal financial participation (FFP) in the costs of foster care maintenance payments and adoption assistance under this part, a State must have a State plan approved by the Secretary that meets the requirements of this part, part 1355 and section 471(a) of the Act. The title IV-E State plan must be submitted to the appropriate Regional Office, ACYF, in a form determined by the State.

(b) Failure by a State to comply with the requirements and standards for the data reporting system for foster care and adoption (§ 1355.40 of this chapter) shall be considered a substantial failure by the State in complying with the State plan for title IV-E. Penalties as described in § 1355.40(e) of this chapter shall apply.

(c) If a State chooses to claim FFP for voluntary foster care placements, the State must meet the requirements of paragraph (a) of this section and section 102 of Pub. L. 96–272, the Adoption Assistance and Child Welfare Act of 1980, as it amends section 472 of the Act.

(d) The following procedures for approval of State plans and amendments apply to the title IV-E program:

(1) The State plan consists of written documents furnished by the State to cover its program under part E of title IV. After approval of the original plan

by the Commissioner, ACYF, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that ACYF may determine whether the plan continues to meet Federal requirements and policies.

(2) *Submittal.* State plans and revisions of the plans are submitted first to the State governor or his designee for review and then to the regional office, ACYF. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(3) *Review.* Staff in the regional offices are responsible for review of State plans and amendments. They also initiate discussion with the State agency on clarification of significant aspects of the plan which come to their attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the State agency.

(4) *Action.* Each Regional Administrator, ACF, has the authority to approve State plans and amendments thereto which provide for the administration of foster care maintenance payments and adoption assistance programs under section 471 of the Act. The Commissioner, ACYF, retains the authority to determine that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval. The Regional Office, ACYF, formally notifies the State agency of the actions taken on State plans or revisions.

(5) *Basis for approval.* Determinations as to whether State plans (including plan amendments and administrative practice under the plans) originally meet or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations.

(6) *Prompt approval of State plans.* The determination as to whether a State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 45th day following the date on which the plan submittal is received in the regional office, unless the Regional Office, ACYF, has secured from the State agency a written agreement to extend that period.

(7) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendment be so considered the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 45th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Office, ACYF, has secured from the State agency a written agreement to extend that period. In absence of request by a State that an amendment of an approved State plan shall be considered as a submission of a new State plan, the procedures under § 201.6 (a) and (b) shall be applicable.

(8) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis. The same applies with respect to plan amendments.

(e) Once the title IV-E State plan has been submitted and approved, it shall remain in effect until amendments are required. An amendment is required if there is any significant and relevant change in the information or assurances in the plan, or the organization,

policies or operations described in the plan.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0141. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[48 FR 23115, May 23, 1983, as amended at 58 FR 67938, Dec. 22, 1993; 65 FR 4088, Jan. 25, 2000; 66 FR 58676, Nov. 23, 2001]

§ 1356.21 Foster care maintenance payments program implementation requirements.

(a) *Statutory and regulatory requirements of the Federal foster care program.* To implement the foster care maintenance payments program provisions of the title IV-E State plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a State must meet the requirements of this section, 45 CFR 1356.22, 45 CFR 1356.30, and sections 472, 475(1), 475(4), 475(5) and 475(6) of the Act.

(b) *Reasonable efforts.* The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the ''reasonable efforts'' requirements of section 471(a)(15) (as implemented through section 472(a)(1) of the Act), the State must meet the requirements of paragraphs (b) and (d) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the State's paramount concern.

(1) *Judicial determination of reasonable efforts to prevent a child's removal from the home.* (i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

(2) *Judicial determination of reasonable efforts to finalize a permanency plan.* (i) The State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

(ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the schedule prescribed in paragraph (b)(2)(i) of this section, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

(3) *Circumstances in which reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family.* Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the State agency obtains a judicial determination that such efforts are not required because:

(i) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) A court of competent jurisdiction has determined that the parent has been convicted of:

(A) Murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(B) Voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or

(D) A felony assault that results in serious bodily injury to the child or another child of the parent; or,

(iii) The parental rights of the parent with respect to a sibling have been terminated involuntarily.

(4) *Concurrent planning.* Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.

(5) *Use of the Federal Parent Locator Service.* The State agency may seek the services of the Federal Parent Locator Service to search for absent parents at any point in order to facilitate a permanency plan.

(c) *Contrary to the welfare determination.* Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.

(d) *Documentation of judicial determinations.* The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

(1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations.

(3) Court orders that reference State law to substantiate judicial determinations are not acceptable, even if State law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

(e) *Trial home visits.* A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

(f) *Case review system.* In order to satisfy the provisions of section 471(a)(16) of the Act regarding a case review system, each State's case review system must meet the requirements of sections 475(5) and 475(6) of the Act.

(g) *Case plan requirements.* In order to satisfy the case plan requirements of sections 471(a)(16), 475(1) and 475(5) (A) and (D) of the Act, the State agency must promulgate policy materials and instructions for use by State and local staff to determine the appropriateness

of and necessity for the foster care placement of the child. The case plan for each child must:

(1) Be a written document, which is a discrete part of the case record, in a format determined by the State, which is developed jointly with the parent(s) or guardian of the child in foster care; and

(2) Be developed within a reasonable period, to be established by the State, but in no event later than 60 days from the child's removal from the home pursuant to paragraph (k) of this section;

(3) Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interests and special needs of the child. (FFP is not available when a court orders a placement with a specific foster care provider);

(4) Include a description of the services offered and provided to prevent removal of the child from the home and to reunify the family; and

(5) Document the steps to finalize a placement when the case plan goal is or becomes adoption or placement in another permanent home in accordance with sections 475(1)(E) and (5)(E) of the Act. When the case plan goal is adoption, at a minimum, such documentation shall include child-specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0140. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

(h) *Application of the permanency hearing requirements.* (1) To meet the requirements of the permanency hearing, the State must, among other requirements, comply with section 475(5)(C) of the Act.

(2) In accordance with paragraph (b)(3) of this section, when a court determines that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are not required.

(3) If the State concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the State must document to the court the compelling reason for the alternate plan. Examples of a compelling reason for establishing such a permanency plan may include:

(i) The case of an older teen who specifically requests that emancipation be established as his/her permanency plan;

(ii) The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him/her to the age of majority and to facilitate visitation with the disabled parent; or,

(iii) the Tribe has identified another planned permanent living arrangement for the child.

(4) When an administrative body, appointed or approved by the court, conducts the permanency hearing, the procedural safeguards set forth in the definition of *permanency hearing* must be so extended by the administrative body.

(i) *Application of the requirements for filing a petition to terminate parental rights at section 475(5)(E) of the Social Security Act.* (1) Subject to the exceptions in paragraph (i)(2) of this section, the State must file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

(i) Whose child has been in foster care under the responsibility of the State for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the State:

(A) Must calculate the 15 out of the most recent 22 month period from the date the child is considered to have entered foster care as defined at section 475(5)(F) of the Act and § 1355.20 of this part;

(B) Must use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period;

(C) Must not include trial home visits or runaway episodes in calculating 15 months in foster care; and,

(D) Need only apply section 475(5)(E) of the Act to a child once if the State does not file a petition because one of the exceptions at paragraph (i)(2) of this section applies;

(ii) Whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State law). The petition to terminate parental rights must be filed within 60 days of the judicial determination that the child is an abandoned infant; or,

(iii) Who has been convicted of one of the felonies listed at paragraph (b)(3)(ii) of this section. Under such circumstances, the petition to terminate parental rights must be filed within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

(2) The State may elect not to file or join a petition to terminate the parental rights of a parent per paragraph (i)(1) of this section if:

(i) At the option of the State, the child is being cared for by a relative;

(ii) The State agency has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child. Compelling reasons for not filing a petition to terminate parental rights include, but are not limited to:

(A) Adoption is not the appropriate permanency goal for the child; or,

(B) No grounds to file a petition to terminate parental rights exist; or,

(C) The child is an unaccompanied refugee minor as defined in 45 CFR 400.111; or

(D) There are international legal obligations or compelling foreign policy reasons that would preclude terminating parental rights; or

(iii) The State agency has not provided to the family, consistent with the time period in the case plan, services that the State deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

(3) When the State files or joins a petition to terminate parental rights in accordance with paragraph (i)(1) of this section, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child.

(j) *Child of a minor parent in foster care.* Foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, who is the parent of a son or daughter in the same home or institution, must include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter. Said costs must be limited to funds expended on items listed in the definition of *foster care maintenance payments* in § 1355.20 of this part.

(k) *Removal from the home of a specified relative.* (1) For the purposes of meeting the requirements of section 472(a)(1) of the Act, a removal from the home must occur pursuant to:

(i) A voluntary placement agreement entered into by a parent or guardian which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or

(ii) A judicial order for a physical or constructive removal of the child from a parent or specified relative.

(2) A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the State agency.

(3) A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.

(l) *Living with a specified relative.* For purposes of meeting the requirements for living with a specified relative prior

to removal from the home under section 472(a)(1) of the Act and all of the conditions under section 472(a)(4), one of the two following situations must apply:

(1) The child was living with the parent or specified relative, and was AFDC eligible in that home in the month of the voluntary placement agreement or initiation of court proceedings; or

(2) The child had been living with the parent or specified relative within six months of the month of the voluntary placement agreement or the initiation of court proceedings, and the child would have been AFDC eligible in that month if s/he had still been living in that home.

(m) *Review of payments and licensing standards.* In meeting the requirements of section 471(a)(11) of the Act, the State must review at reasonable, specific, time-limited periods to be established by the State:

(1) The amount of the payments made for foster care maintenance and adoption assistance to assure their continued appropriateness; and

(2) The licensing or approval standards for child care institutions and foster family homes.

(n) *Foster care goals.* The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law by statute or administrative regulation with the force of law.

(o) *Notice and opportunity to be heard.* The State must provide the foster parent(s) of a child and any preadoptive parent or relative providing care for the child with timely notice of and an opportunity to be heard in permanency hearings and six-month periodic reviews held with respect to the child during the time the child is in the care of such foster parent, preadoptive parent, or relative caregiver. Notice of and an opportunity to be heard does not include the right to standing as a party to the case.

[65 FR 4088, Jan. 25, 2000, as amended at 66 FR 58677, Nov. 23, 2001]

§ 1356.22 Implementation requirements for children voluntarily placed in foster care.

(a) As a condition of receipt of Federal financial participation (FFP) in foster care maintenance payments for a dependent child removed from his home under a voluntary placement agreement, the State must meet the requirements of:

(1) Section 472 of the Act, as amended;

(2) Sections 422(b)(10) and 475(5) of the Act;

(3) 45 CFR 1356.21(e), (f), (g), (h), and (i); and

(4) The requirements of this section.

(b) Federal financial participation is available only for voluntary foster care maintenance expenditures made within the first 180 days of the child's placement in foster care unless there has been a judicial determination by a court of competent jurisdiction, within the first 180 days of such placement, to the effect that the continued voluntary placement is in the best interests of the child.

(c) The State agency must establish and maintain a uniform procedure or system, consistent with State law, for revocation by the parent(s) of a voluntary placement agreement and return of the child.

[65 FR 4090, Jan. 25, 2000, as amended at 66 FR 58677, Nov. 23, 2001]

§ 1356.30 Safety requirements for foster care and adoptive home providers.

(a) Unless an election provided for in paragraph (d) of this section is made, the State must provide documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents.

(b) The State may not approve or license any prospective foster or adoptive parent, nor may the State claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the State finds that, based on a criminal records check conducted in accordance with paragraph (a) of this section, a court of competent jurisdiction has determined that the prospective foster or adoptive parent has been convicted of a felony involving:

(1) Child abuse or neglect;

(2) Spousal abuse;

(3) A crime against a child or children (including child pornography); or,

(4) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

(c) The State may not approve or license any prospective foster or adoptive parent, nor may the State claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the State finds, based on a criminal records check conducted in accordance with paragraph (a) of this section, that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has, within the last five years, been convicted of a felony involving:

(1) Physical assault;

(2) Battery; or,

(3) A drug-related offense.

(d)(1) The State may elect not to conduct or require criminal records checks on prospective foster or adoptive parents by:

(i) Notifying the Secretary in a letter from the Governor; or

(ii) Enacting State legislation.

(2) Such an election also removes the State's obligation to comport with paragraphs (b) and (c) of this section.

(e) In all cases where the State opts out of the criminal records check requirement, the licensing file for that foster or adoptive family must contain documentation which verifies that safety considerations with respect to the caretaker(s) have been addressed.

(f) In order for a child care institution to be eligible for title IV-E funding, the licensing file for the institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed.

[65 FR 4090, Jan. 25, 2000]

§ 1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.

(a) To implement the adoption assistance program provisions of the title IV-E State plan and to be eligible for Federal financial participation in adoption assistance payments under this part, the State must meet the requirements of this section and sections 471(a), 473 and 475(3) of the Act.

(b) The adoption assistance agreement for payments pursuant to section 473(a)(2) must meet the requirements of section 475(3) of the Act and must:

(1) Be signed and in effect at the time of or prior to the final decree of adoption. A copy of the signed agreement must be given to each party; and

(2) Specify its duration; and

(3) Specify the nature and amount of any payment, services and assistance to be provided under such agreement and, for purposes of eligibility under title XIX of the Act, specify that the child is eligible for Medicaid services; and

(4) Specify, with respect to agreements entered into on or after October 1, 1983, that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time.

(c) There must be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments.

(d) In the event an adoptive family moves from one State to another State, the family may apply for social services on behalf of the adoptive child in the new State of residence. However, for agreements entered into on or after October 1, 1983, if a needed service(s) specified in the adoption assistance agreement is not available in the new State of residence, the State making the original adoption assistance payment remains financially responsible for providing the specified service(s).

(e) A State may make an adoption assistance agreement with adopting parent(s) who reside in another State. If so, all provisions of this section apply.

(f) The State agency must actively seek ways to promote the adoption assistance program.

[48 FR 23116, May 23, 1983, as amended at 53 FR 50220, Dec. 14, 1988]

§ 1356.41 Nonrecurring expenses of adoption.

(a) The amount of the payment made for nonrecurring expenses of adoption shall be determined through agreement between the adopting parent(s) and the State agency administering the program. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

(b) The agreement for nonrecurring expenses may be a separate document or a part of an agreement for either State or Federal adoption assistance payments or services. The agreement for nonrecurring expenses must be signed prior to the final decree of adoption, with two exceptions:

(1) Cases in which the final decree of adoption was entered into on or after January 1, 1987 and within six months after the effective date of the final rule; or

(2) Cases in which a final decree was entered into before January 1, 1987 but nonrecurring adoption expenses were paid after January 1, 1987.

(c) There must be no income eligibility requirement (means test) for adopting parents in determining whether payments for nonrecurring expenses of adoption shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

(d) For purposes of payment of nonrecurring expenses of adoption, the State must determine that the child is a ''child with special needs'' as defined in section 473(c) of the Act, and that the child has been placed for adoption in accordance with applicable State and local laws; the child need not meet the categorical eligibility requirements at section 473(a)(2).

(e)(1) The State agency must notify all appropriate courts and all public and licensed private nonprofit adoption agencies of the availability of funds for the nonrecurring expenses of adoption of children with special needs as well as where and how interested persons may apply for these funds. This information should routinely be made available to all persons who inquire about adoption services after the publication date of this final rule.

(2) The State agency must send a notice to all public and private nonprofit adoption agencies directing them to notify all their clients who adopted a special needs child between January 1, 1986 and six months following the effective date of this rule of the availability of reimbursement for nonrecurring expenses paid after January 1, 1987.

(3) For adoptions in which a final decree is entered between January 1, 1987 and six months after the effective date of this rule, or where a final decree was entered before January 1, 1987 but nonrecurring adoption expenses were paid after January 1, 1987, individuals who seek reimbursement must enter into an agreement with the State agency and file a claim with the State agency within two years of the effective date of this rule. For adoptions in which a final decree is entered more than six months after the effective date of this rule, the agreement must be signed at the time of or prior to the final decree of adoption. In such cases, claims must be filed with the State agency within two years of the date of the final decree of adoption.

(f)(1) Funds expended by the State under an adoption assistance agreement, with respect to nonrecurring adoption expenses incurred by or on behalf of parents who adopt a child with special needs, shall be considered an administrative expenditure of the title IV-E Adoption Assistance Program. Federal reimbursement is available at a 50 percent matching rate, for State expenditures up to $2,000, for any adoptive placement.

(2) States may set a reasonable lower maximum which must be based on reasonable charges, consistent with State and local practices, for special needs adoptions within the State. The basis for setting a lower maximum must be documented and available for public inspection.

(3) In cases where siblings are placed and adopted, either separately or as a unit, each child is treated as an individual with separate reimbursement for nonrecurring expenses up to the maximum amount allowable for each child.

(g) Federal financial participation for nonrecurring expenses of adoption is limited to costs incurred by or on behalf of adoptive parents that are not otherwise reimbursed from other

sources. Payments for nonrecurring expenses shall be made either directly by the State agency or through another public or licensed nonprofit private agency.

(h) When the adoption of the child involves interstate placement, the State that enters into an adoption assistance agreement under section 473(a)(1)(B)(ii) of the Act or under a State subsidy program will be responsible for paying the nonrecurring adoption expenses of the child. In cases where there is interstate placement but no agreement for other Federal or State adoption assistance, the State in which the final adoption decree is issued will be responsible for reimbursement of nonrecurring expenses if the child meets the requirements of section 473(c).

(i) The term ''nonrecurring adoption expenses'' means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State or Federal law, and which have not been reimbursed from other sources or other funds. ''Other expenses which are directly related to the legal adoption of a child with special needs'' means the costs of the adoption incurred by or on behalf of the parents and for which parents carry the ultimate liability for payment. Such costs may include the adoption study, including health and psychological examination, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process.

(j) When State statutes must be amended in order to reimburse parents for nonrecurring expenses in the adoption of eligible children, legislation must be enacted before the close of the second general session following publication of the final rule and must apply retroactively to January 1, 1987. Failure to honor all eligible claims will be considered non-compliance by the State with Title IV-E of the Act.

(k) A State expenditure is considered made in the quarter during which the payment was made by a State agency to a private nonprofit agency, individual or vendor payee.

[53 FR 50220, Dec. 14, 1988]

§ 1356.50 Withholding of funds for noncompliance with the approved title IV-E State plan.

(a) To be in compliance with the title IV-E State plan requirements, a State must meet the requirements of the Act and 45 CFR 1356.20, 1356.21, 1356.30, and 1356.40 of this part.

(b) To be in compliance with the title IV-E State plan requirements, a State that chooses to claim FFP for voluntary placements must meet the requirements of the Act, 45 CFR 1356.22 and paragraph (a) of this section; and

(c) For purposes of this section, the procedures in § 1355.39 of this chapter apply.

[48 FR 23117, May 23, 1983, as amended at 65 FR 4091, Jan. 25, 2000; 66 FR 58677, Nov. 23, 2001]

§ 1356.60 Fiscal requirements (title IV-E).

(a) *Federal matching funds for foster care maintenance and adoption assistance payments.* (1) Effective October 1, 1980, Federal financial participation (FFP) is available to States under an approved title IV-E State plan for allowable costs in expenditures for:

(i) Foster care maintenance payments as defined in section 475(4) of the Act, made in accordance with 45 CFR 1356.20 through 1356.30 of this part, section 472 of the Act and section 102(d) of Pub. L. 96–272, the Adoption Assistance and Child Welfare Act of 1980;

(ii) Adoption assistance payments made in accordance with 45 CFR 1356.20 and 1356.40 and sections 473 and 475(3) of the Act.

(2) Federal financial participation is available at the rate of the Federal medical assistance percentage as defined in section 1905(b) of the Act, Definitions, and pertinent regulations as promulgated by the Secretary, or his designee.

(b) *Federal matching funds for State and local training for foster care and adoption assistance under title IV-E.* (1) Federal financial participation is available at the rate of seventy-five percent (75%) in the costs of:

(i) Training personnel employed or preparing for employment by the State or local agency administering the plan, and;

(ii) Providing short-term training (including travel and per diem expenses) to current or prospective foster or adoptive parents and the members of the state licensed or approved child care institutions providing care to foster and adopted children receiving title IV-E assistance.

(2) All training activities and costs funded under title IV-E shall be included in the State agency's training plan for title IV-B.

(3) Short and long term training at educational institutions and in-service training may be provided in accordance with the provisions of §§ 235.63 through 235.66(a) of this title.

(c) *Federal matching funds for other State and local administrative expenditures for foster care and adoption assistance under title IV-E.* Federal financial participation is available at the rate of fifty percent (50%) for administrative expenditures necessary for the proper and efficient administration of the title IV-E State plan. The State's cost allocation plan shall identify which costs are allocated and claimed under this program.

(1) The determination and redetermination of eligibility, fair hearings and appeals, rate setting and other costs directly related only to the administration of the foster care program under this part are deemed allowable administrative costs under this paragraph. They may not be claimed under any other section or Federal program.

(2) The following are examples of allowable administrative costs necessary for the administration of the foster care program:

(i) Referral to services;

(ii) Preparation for and participation in judicial determinations;

(iii) Placement of the child;

(iv) Development of the case plan;

(v) Case reviews;

(vi) Case management and supervision;

(vii) Recruitment and licensing of foster homes and institutions;

(viii) Rate setting; and

(ix) A proportionate share of related agency overhead.

(x) Costs related to data collection and reporting.

(3) Allowable administrative costs do not include the costs of social services provided to the child, the child's family or foster family which provide counseling or treatment to ameliorate or remedy personal problems, behaviors or home conditions.

(d) *Cost of the data collection system.* (1) Costs related to data collection system initiation, implementation and operation may be charged as an administrative cost of title IV-E at the 50 percent matching rate subject to the restrictions in paragraph (d) (2) of this section

(2) For information systems used for purposes other than those specified by section 479 of the Act, costs must be allocated and must bear the same ratio as the foster care and adoption population bears to the total population contained in the information system as verified by reports from all other programs included in the system.

(e) *Federal matching funds for SACWIS.* All expenditures of a State to plan, design, develop, install and operate the Statewide automated child welfare information system approved under § 1355.52 of this chapter, shall be treated as necessary for the proper and efficient administration of the State plan without regard to whether the system may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance or adoption assistance payments may be made under this part.

[47 FR 30925, July 15, 1982, as amended at 48 FR 23117, May 23, 1983; 53 FR 50221, Dec. 14, 1988; 58 FR 67938, 67947, Dec. 22, 1993; 65 FR 4091, Jan. 25, 2000; 66 FR 58677, Nov. 23, 2001]

§§ 1356.65–1356.70 [Reserved]

§ 1356.71 Federal review of the eligibility of children in foster care and the eligibility of foster care providers in title IV-E programs.

(a) *Purpose, scope and overview of the process.* (1) This section sets forth requirements governing Federal reviews of State compliance with the title IV-E eligibility provisions as they apply to children and foster care providers under paragraphs (a) and (b) of section 472 of the Act.

(2) The requirements of this section apply to State agencies that receive Federal payments for foster care under title IV-E of the Act.

(3) The review process begins with a primary review of foster care cases for the title IV-E eligibility requirements.

(i) *States in substantial compliance.* States determined to be in substantial compliance based on the primary review will be subject to another review in three years.

(ii) *States not in substantial compliance.* States that are determined not to be in substantial compliance based on the primary review will develop and implement a program improvement plan designed to correct the areas of noncompliance. A secondary review will be conducted after the completion of the program improvement plan. A subsequent primary review will be held three years from the date of the secondary review.

(b) *Composition of review team and preliminary activities preceding an on-site review.* (1) The review team must be composed of representatives of the State agency, and ACF's Regional and Central Offices.

(2) The State must provide ACF with the complete payment history for each of the sample and oversample cases prior to the on-site review.

(c) *Sampling guidance and conduct of review.* (1) The list of sampling units in the target population (*i.e.*, the sampling frame) will be drawn by ACF statistical staff from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data which are transmitted by the State agency to ACF. The sampling frame will consist of cases of children who were eligible for foster care maintenance payments during the reporting period reflected in a State's most recent AFCARS data submission. For the initial primary review, if these data are not available or are deficient, an alternative sampling frame, consistent with one AFCARS six-month reporting period, will be selected by ACF in conjunction with the State agency.

(2) A sample of 80 cases (plus a 10 percent oversample of eight cases) from the title IV-E foster care program will be selected for the primary review utilizing probability sampling methodologies. Usually, the chosen methodology will be simple random sampling, but other probability samples may be utilized, when necessary and appropriate.

(3) Cases from the oversample will be substituted and reviewed for each of the original sample of 80 cases which is found to be in error.

(4) At the completion of the primary review, the review team will determine the number of ineligible cases. When the total number of ineligible cases does not exceed eight, ACF can conclude with a probability of 88 percent that in a population of 1000 or more cases the population ineligibility case error rate is less than 15 percent and the State will be considered in substantial compliance. For primary reviews held subsequent to the initial primary reviews, the acceptable population ineligibility case error rate threshold will be reduced from less than 15 percent (eight or fewer ineligible cases) to less than 10 percent (four or fewer ineligible cases)). A State agency which meets this standard is considered to be in ''substantial compliance'' (see paragraph (h) of this section). A disallowance will be assessed for the ineligible cases for the period of time the cases are ineligible.

(5) A State which has been determined to be in ''noncompliance'' (*i.e.*, not in substantial compliance) will be required to develop a program improvement plan according to the specifications discussed in paragraph (i) of this section, as well as undergo a secondary review. For the secondary review, a sample of 150 cases (plus a 10 percent oversample of 15 cases) will be drawn from the most recent AFCARS submission. Usually, the chosen methodology will be simple random sampling, but other probability samples may be utilized, when necessary and appropriate. Cases from the oversample will be substituted and reviewed for each of the original sample of 150 cases which is found to be in error.

(6) At the completion of the secondary review, the review team will calculate both the sample case ineligibility and dollar error rates for the cases determined ineligible during the review. An extrapolated disallowance equal to the lower limit of a 90 percent confidence interval for the population

total dollars in error for the amount of time corresponding to the AFCARS reporting period will be assessed if both the child/provider (case) ineligibility and dollar error rates exceed 10 percent. If neither, or only one, of the error rates exceeds 10 percent, a disallowance will be assessed for the ineligible cases for the period of time the cases are ineligible.

(d) *Requirements subject to review.* States will be reviewed against the requirements of title IV-E of the Act regarding:

(1) The eligibility of the children on whose behalf the foster care maintenance payments are made (section 472(a)(1)–(4) of the Act) to include:

(i) Judicial determinations regarding ''reasonable efforts'' and ''contrary to the welfare'' in accordance with § 1356.21(b) and (c), respectively;

(ii) Voluntary placement agreements in accordance with § 1356.22;

(iii) Responsibility for placement and care vested with the State agency;

(iv) Placement in a licensed foster family home or child care institution; and,

(v) eligibility for AFDC under such State plan as it was in effect on July 16, 1996.

(2) Allowable payments made to foster care providers who comport with sections 471(a)(10), 471(a)(20), 472(b) and (c) of the Act and § 1356.30.

(e) *Review instrument.* A title IV-E foster care eligibility review checklist will be used when conducting the eligibility review.

(f) *Eligibility determination—child.* The case record of the child must contain sufficient documentation to verify a child's eligibility in accordance with paragraph (d)(1) of this section, in order to substantiate payments made on the child's behalf.

(g) *Eligibility determination—provider.* (1) For each case being reviewed, the State agency must make available a licensing file which contains the licensing history, including a copy of the certificate of licensure/approval or letter of approval, for each of the providers in the following categories:

(i) Public child care institutions with 25 children or less in residence;

(ii) Private child care institutions;

(iii) Group homes; and

(iv) Foster family homes, including relative homes.

(2) The licensing file must contain documentation that the State has complied with the safety requirements for foster and adoptive placements in accordance with § 1356.30.

(3) If the licensing file does not contain sufficient information to support a child's placement in a licensed facility, the State agency may provide supplemental information from other sources (*e.g.*, a computerized database).

(h) *Standards of compliance.* (1) Disallowances will be taken, and plans for program improvement required, based on the extent to which a State is not in substantial compliance with recipient or provider eligibility provisions of title IV-E, or applicable regulations in 45 CFR parts 1355 and 1356.

(2) Substantial compliance and noncompliance are defined as follows:

(i) *Substantial compliance*—For the primary review (of the sample of 80 cases), no more than eight of the title IV-E cases reviewed may be determined to be ineligible. (This critical number of allowable ''errors,'' *i.e.*, ineligible cases, is reduced to four errors or less in primary reviews held subsequent to the initial primary review). For the secondary review (if required), *substantial compliance* means either the case ineligibility or dollar error rate does not exceed 10 percent.

(ii) *Noncompliance*—means not in substantial compliance. For the primary review (of the sample of 80 cases), nine or more of the title IV-E cases reviewed must be determined to be ineligible. (This critical number of allowable ''errors,'' *i.e.*, ineligible cases, is reduced to five or more in primary reviews subsequent to the initial primary review). For the secondary review (if required), *noncompliance* means both the case ineligibility and dollar error rates exceed 10 percent.

(3) ACF will notify the State in writing within 30 calendar days after the completion of the review of whether the State is, or is not, operating in substantial compliance.

(4) States which are determined to be in substantial compliance must undergo a subsequent review after a minimum of three years.

(i) *Program improvement plans.* (1) States which are determined to be in noncompliance with recipient or provider eligibility provisions of title IV-E, or applicable regulations in 45 CFR Parts 1355 and 1356, will develop a program improvement plan designed to correct the areas determined not to be in substantial compliance. The program improvement plan will:

(i) Be developed jointly by State and Federal staff;

(ii) Identify the areas in which the State's program is not in substantial compliance;

(iii) Not extend beyond one year. A State will have a maximum of one year in which to implement and complete the provisions of the program improvement plan unless State legislative action is required. In such instances, an extension may be granted with the State and ACF negotiating the terms and length of such extension that shall not exceed the last day of the first legislative session after the date of the program improvement plan; and

(iv) Include:

(A) Specific goals;

(B) The action steps required to correct each identified weakness or deficiency; and,

(C) a date by which each of the action steps is to be completed.

(2) States determined not to be in substantial compliance as a result of a primary review must submit the program improvement plan to ACF for approval within 90 calendar days from the date the State receives written notification that it is not in substantial compliance. This deadline may be extended an additional 30 calendar days when a State agency submits additional documentation to ACF in support of cases determined to be ineligible as a result of the on-site eligibility review.

(3) The ACF Regional Office will intermittently review, in conjunction with the State agency, the State's progress in completing the prescribed action steps in the program improvement plan.

(4) If a State agency does not submit an approvable program improvement plan in accordance with the provisions of paragraphs (i)(1) and (2) of this section, ACF will move to a secondary review in accordance with paragraph (c) of this section.

(j) *Disallowance of funds.* The amount of funds to be disallowed will be determined by the extent to which a State is not in substantial compliance with recipient or provider eligibility provisions of title IV-E, or applicable regulations in 45 CFR parts 1355 and 1356.

(1) States which are in found to be in substantial compliance during the primary or secondary review will have disallowances (if any) determined on the basis of individual cases reviewed and found to be in error. The amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time that each case has been ineligible.

(2) States which are found to be in noncompliance during the primary review will have disallowances determined on the basis of individual cases reviewed and found to be in error, and must implement a program improvement plan in accordance with the provisions contained within it. A secondary review will be conducted no later than during the AFCARS reporting period which immediately follows the program improvement plan completion date on a sample of 150 cases drawn from the State's most recent AFCARS data. If both the case ineligibility and dollar error rates exceed 10 percent, the State is not in compliance and an additional disallowance will be determined based on extrapolation from the sample to the universe of claims paid for the duration of the AFCARS reporting period (*i.e.*, all title IV-E funds expended for a case during the quarter(s) that case is ineligible, including administrative costs). If either the case ineligibility or dollar rate does not exceed 10 percent, the amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time the case has been determined to be ineligible.

(3) The State agency will be liable for interest on the amount of funds disallowed by the Department, in accordance with the provisions of 45 CFR 30.13.

(4) States may appeal any disallowance actions taken by ACF to the HHS

Departmental Appeals Board in accordance with regulations at 45 CFR part 16.

[65 FR 4091, Jan. 25, 2000, as amended at 66 FR 58677, Nov. 23, 2001]

§ 1356.80 Scope of the National Youth in Transition Database.

The requirements of the National Youth in Transition Database (NYTD) §§ 1356.81 through 1356.86 of this part apply to the agency in any State, the District of Columbia, or Territory, that administers, or supervises the administration of the Chafee Foster Care Independence Program (CFCIP) under section 477 of the Social Security Act (the Act).

[73 FR 10365, Feb. 26, 2008]

§ 1356.81 Reporting population.

The reporting population is comprised of all youth in the following categories:

(a) *Served population*. Each youth who receives an independent living service paid for or provided by the State agency during the reporting period.

(b) *Baseline population*. Each youth who is in foster care as defined in 45 CFR 1355.20 and reaches his or her 17th birthday during Federal fiscal year (FFY) 2011, and such youth who reach a 17th birthday during every third year thereafter.

(c) *Follow-up population*. Each youth who reaches his or her 19th or 21st birthday in a Federal fiscal year and had participated in data collection as part of the baseline population, as specified in section 1356.82(a)(2) of this part. A youth has participated in the outcomes data collection if the State agency reports to ACF a valid response (*i.e.*, a response option other than ''declined'' and ''not applicable'') to any of the outcomes-related elements described in section 1356.83(g)(37) through (g)(58) of this part.

[73 FR 10365, Feb. 26, 2008]

§ 1356.82 Data collection requirements.

(a) The State agency must collect applicable information as specified in section 1356.83 of this part on the reporting population defined in section 1356.81 of this part in accordance with the following:

(1) For each youth in the served population, the State agency must collect information for the data elements specified in section 1356.83(b) and 1356.83(c) of this part on an ongoing basis, for as long as the youth receives services.

(2) For each youth in the baseline population, the State agency must collect information for the data elements specified in section 1356.83(b) and 1356.83(d) of this part. The State agency must collect this information on a new baseline population every three years.

(i) For each youth in foster care who turns age 17 in FFY 2011, the State agency must collect this information within 45 days following the youth's 17th birthday, but not before that birthday.

(ii) Every third Federal fiscal year thereafter, the State agency must collect this information on each youth in foster care who turns age 17 during the year within 45 days following the youth's 17th birthday, but not before that birthday.

(iii) The State agency must collect this information using the survey questions in appendix B of this part entitled ''Information to collect from all youth surveyed for outcomes, whether in foster care or not.''

(3) For each youth in the follow-up population, the State agency must collect information on the data elements specified in sections 1356.83(b) and 1356.83(e) of this part within the reporting period of the youth's 19th and 21st birthday. The State agency must collect the information using the appropriate survey questions in appendix B of this part, depending upon whether the youth is in foster care.

(b) The State agency may select a sample of the 17-year-olds in the baseline population to follow over time consistent with the sampling requirements described in section 1356.84 of this part to satisfy the data collection requirements in paragraph (a)(3) of this section for the follow-up population. A State that samples must identify the youth at age 19 who participated in the outcomes data collection as part of the baseline population at age 17 who are not in the sample in accordance with 45 CFR 1356.83(e).

[73 FR 10365, Feb. 26, 2008]

§ 1356.83 Reporting requirements and data elements.

(a) *Reporting periods and deadlines.* The six-month reporting periods are from October 1 to March 31 and April 1 to September 30. The State agency must submit data files that include the information specified in this section to ACF on a semi-annual basis, within 45 days of the end of the reporting period (*i.e.*, by May 15 and November 14).

(b) *Data elements for all youth.* The State agency must report the data elements described in paragraphs (g)(1) through (g)(13) of this section for each youth in the entire reporting population defined in section 1356.81 of this part.

(c) *Data elements for served youth.* The State agency must report the data elements described in paragraphs (g)(14) through (g)(33) of this section for each youth in the served population defined in section 1356.81(a) of this part.

(d) *Data elements for baseline youth.* The State agency must report the data elements described in paragraphs (g)(34) through (g)(58) of this section for each youth in the baseline population defined in section 1356.81(b) of this part.

(e) *Data elements for follow-up youth.* The State agency must report the data elements described in paragraphs (g)(34) through (g)(58) of this section for each youth in the follow-up population defined in section 1356.81(c) of this part or alternatively, for each youth selected in accordance with the sampling procedures in section 1356.84 of this part. A State that samples must identify in the outcomes reporting status element described in paragraph (g)(34), the 19-year-old youth who participated in the outcomes data collection as a part of the baseline population at age 17, who are not in the sample.

(f) *Single youth record.* The State agency must report all applicable data elements for an individual youth in one record per reporting period.

(g) *Data element descriptions.* For each element described in paragraphs (g)(1) through (58) of this section, the State agency must indicate the applicable response as instructed.

(1) *State.* State means the State responsible for reporting on the youth. Indicate the first two digits of the State's Federal Information Processing Standard (FIPS) code for the State submitting the report to ACF.

(2) *Report date.* The report date corresponds with the end of the current reporting period. Indicate the last month and the year of the reporting period.

(3) *Record number.* The record number is the encrypted, unique person identification number for the youth. The State agency must apply and retain the same encryption routine or method for the person identification number across all reporting periods. The record number must be encrypted in accordance with ACF standards. Indicate the record number for the youth.

(i) If the youth is in foster care as defined in 45 CFR 1355.20 or was during the current or previous reporting period, the State agency must use and report to the NYTD the same person identification number for the youth the State agency reports to AFCARS. The person identification number must remain the same for the youth wherever the youth is living and in any subsequent NYTD reports.

(ii) If the youth was never in the State's foster care system as defined in 45 CFR 1355.20, the State agency must assign a person identification number that must remain the same for the youth wherever the youth is living and in any subsequent reports to NYTD.

(4) *Date of birth.* The youth's date of birth. Indicate the year, month, and day of the youth's birth.

(5) *Sex.* The youth's sex. Indicate whether the youth is male or female as appropriate.

(6) *Race: American Indian or Alaska Native.* In general, a youth's race is determined by the youth or the youth's parent(s). An American Indian or Alaska Native youth has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment. Indicate whether this racial category applies for the youth, with a ''yes'' or ''no.''

(7) *Race: Asian.* In general, a youth's race is determined by the youth or the youth's parent(s). An Asian youth has origins in any of the original peoples of the Far East, Southeast Asia, or the

Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam. Indicate whether this racial category applies for the youth, with a ''yes'' or ''no.''

(8) *Race: Black or African American*. In general, a youth's race is determined by the youth or the youth's parent(s). A Black or African American youth has origins in any of the black racial groups of Africa. Indicate whether this racial category applies for the youth, with a ''yes'' or ''no.''

(9) *Race: Native Hawaiian or Other Pacific Islander*. In general, a youth's race is determined by the youth or the youth's parent(s). A Native Hawaiian or Other Pacific Islander youth has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands. Indicate whether this racial category applies for the youth, with a ''yes'' or ''no.''

(10) *Race: White*. In general, a youth's race is determined by the youth or the youth's parent(s). A White youth has origins in any of the original peoples of Europe, the Middle East, or North Africa. Indicate whether this racial category applies for the youth, with a ''yes'' or ''no.''

(11) *Race: unknown*. The race, or at least one race of the youth is unknown, or the youth and/or parent is not able to communicate the youth's race. Indicate whether this category applies for the youth, with a ''yes'' or ''no.''

(12) *Race: declined*. The youth or parent has declined to identify a race. Indicate whether this category applies for the youth, with a ''yes'' or ''no.''

(13) *Hispanic or Latino ethnicity*. In general, a youth's ethnicity is determined by the youth or the youth's parent(s). A youth is of Hispanic or Latino ethnicity if the youth is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate which category applies, with ''yes,'' ''no,'' ''unknown'' or ''declined,'' as appropriate. ''Unknown'' means that the youth and/or parent is unable to communicate the youth's ethnicity. ''Declined'' means that the youth or parent has declined to identify the youth's Hispanic or Latino ethnicity.

(14) *Foster care status—services*. The youth receiving services is or was in foster care during the reporting period if the youth is or was in the placement and care responsibility of the State title IV–B/IV–E agency in accordance with the definition of foster care in 45 CFR 1355.20. Indicate whether the youth is or was in foster care at any point during the reporting period, with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(15) *Local agency*. The local agency is the county or equivalent jurisdictional unit that has primary responsibility for placement and care of a youth who is in foster care consistent with the definition in 45 CFR 1355.20, or that has primary responsibility for providing services to a youth who is not in foster care. Indicate the five-digit Federal Information Processing Standard (FIPS) code(s) that corresponds to the identity of the county or equivalent unit jurisdiction(s) that meets these criteria during the reporting period. If a youth who is not in foster care is provided services by a centralized unit only, rather than a county agency, indicate ''centralized unit.'' If the youth is not in the served population this element must be left blank.

(16) *Federally recognized tribe*. The youth is enrolled in or eligible for membership in a federally recognized tribe. The term ''federally recognized tribe'' means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450 *et seq.*). Indicate ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(17) *Adjudicated delinquent*. Adjudicated delinquent means that a State or Federal court of competent jurisdiction has adjudicated the youth as a delinquent. Indicate ''yes,'' or ''no'' as

appropriate. If the youth is not in the served population this element must be left blank.

(18) *Educational level.* Educational level means the highest educational level completed by the youth. For example, for a youth currently in 11th grade, ''10th grade'' is the highest educational level completed. Post-secondary education or training refers to any post-secondary education or training, other than an education pursued at a college or university. College refers to completing at least a semester of study at a college or university. Indicate the highest educational level completed by the youth during the reporting period. If the youth is not in the served population this element must be left blank.

(19) *Special education.* The term ''special education,'' means specifically designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. Indicate whether the youth has received special education instruction during the reporting period with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(20) *Independent living needs assessment.* An independent living needs assessment is a systematic procedure to identify a youth's basic skills, emotional and social capabilities, strengths, and needs to match the youth with appropriate independent living services. An independent living needs assessment may address knowledge of basic living skills, job readiness, money management abilities, decision-making skills, goal setting, task completion, and transitional living needs. Indicate whether the youth received an independent living needs assessment that was paid for or provided by the State agency during the reporting period with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(21) *Academic support.* Academic supports are services designed to help a youth complete high school or obtain a General Equivalency Degree (GED). Such services include the following: Academic counseling; preparation for a GED, including assistance in applying for or studying for a GED exam; tutoring; help with homework; study skills training; literacy training; and help accessing educational resources. Academic support does not include a youth's general attendance in high school. Indicate whether the youth received academic supports during the reporting period that were paid for or provided by the State agency with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(22) *Post-secondary educational support.* Post-secondary educational support are services designed to help a youth enter or complete a post-secondary education and include the following: Classes for test preparation, such as the Scholastic Aptitude Test (SAT); counseling about college; information about financial aid and scholarships; help completing college or loan applications; or tutoring while in college. Indicate whether the youth received post-secondary educational support during the reporting period that was paid for or provided by the State agency with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(23) *Career preparation.* Career preparation services focus on developing a youth's ability to find, apply for, and retain appropriate employment. Career preparation includes the following types of instruction and support services: Vocational and career assessment, including career exploration and planning, guidance in setting and assessing vocational and career interests and skills, and help in matching interests and abilities with vocational goals; job seeking and job placement support, including identifying potential employers, writing resumes, completing job applications, developing interview skills, job shadowing, receiving job referrals, using career resource libraries, understanding employee benefits coverage, and securing work permits; retention support, including job coaching; learning how to work with employers and other employees; understanding workplace values such as timeliness and appearance; and understanding authority and customer relationships. Indicate whether the youth

received career preparation services during the reporting period that was paid for or provided by the State agency with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(24) *Employment programs or vocational training*. Employment programs and vocational training are designed to build a youth's skills for a specific trade, vocation, or career through classes or on-site training. Employment programs include a youth's participation in an apprenticeship, internship, or summer employment program and do not include summer or after-school jobs secured by the youth alone. Vocational training includes a youth's participation in vocational or trade programs and the receipt of training in occupational classes for such skills as cosmetology, auto mechanics, building trades, nursing, computer science, and other current or emerging employment sectors. Indicate whether the youth attended an employment program or received vocational training during the reporting period that was paid for or provided by the State agency, with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(25) *Budget and financial management*. Budget and financial management assistance includes the following types of training and practice: Living within a budget; opening and using a checking and savings account; balancing a checkbook; developing consumer awareness and smart shopping skills; accessing information about credit, loans and taxes; and filling out tax forms. Indicate whether the youth received budget and financial management assistance during the reporting period that was paid for or provided by the State agency with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(26) *Housing education and home management training*. Housing education includes assistance or training in locating and maintaining housing, including filling out a rental application and acquiring a lease, handling security deposits and utilities, understanding practices for keeping a healthy and safe home, understanding tenants rights and responsibilities, and handling landlord complaints. Home management includes instruction in food preparation, laundry, housekeeping, living cooperatively, meal planning, grocery shopping and basic maintenance and repairs. Indicate whether the youth received housing education or home management training during the reporting period that was paid for or provided by the State agency with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(27) *Health education and risk prevention*. Health education and risk prevention includes providing information about: Hygiene, nutrition, fitness and exercise, and first aid; medical and dental care benefits, health care resources and insurance, prenatal care and maintaining personal medical records; sex education, abstinence education, and HIV prevention, including education and information about sexual development and sexuality, pregnancy prevention and family planning, and sexually transmitted diseases and AIDS; substance abuse prevention and intervention, including education and information about the effects and consequences of substance use (alcohol, drugs, tobacco) and substance avoidance and intervention. Health education and risk prevention does not include the youth's actual receipt of direct medical care or substance abuse treatment. Indicate whether the youth received these services during the reporting period that were paid for or provided by the State agency with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(28) *Family support and healthy marriage education*. Such services include education and information about safe and stable families, healthy marriages, spousal communication, parenting, responsible fatherhood, childcare skills, teen parenting, and domestic and family violence prevention. Indicate whether the youth received these services that were paid for or provided by the State agency during the reporting period with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(29) *Mentoring*. Mentoring means that the youth has been matched with a screened and trained adult for a one-on-one relationship that involves the two meeting on a regular basis. Mentoring can be short-term, but it may also support the development of a long-term relationship. While youth often are connected to adult role models through school, work, or family, this service category only includes a mentor relationship that has been facilitated, paid for or provided by the State agency or its staff. Indicate whether the youth received mentoring services that were paid for or provided by the State agency during the reporting period with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(30) *Supervised independent living*. Supervised independent living means that the youth is living independently under a supervised arrangement that is paid for or provided by the State agency. A youth in supervised independent living is not supervised 24 hours a day by an adult and often is provided with increased responsibilities, such as paying bills, assuming leases, and working with a landlord, while under the supervision of an adult. Indicate whether the youth was living in a supervised independent living setting that was paid or provided by the State agency during the reporting period with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(31) *Room and board financial assistance*. Room and board financial assistance is a payment that is paid for or provided by the State agency for room and board, including rent deposits, utilities, and other household start-up expenses. Indicate whether the youth received financial assistance for room and board that was paid for or provided by during the reporting period with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(32) *Education financial assistance*. Education financial assistance is a payment that is paid for or provided by the State agency for education or training, including allowances to purchase textbooks, uniforms, computers, and other educational supplies; tuition assistance; scholarships; payment for educational preparation and support services (i.e., tutoring), and payment for GED and other educational tests. This financial assistance also includes vouchers for tuition or vocational education or tuition waiver programs paid for or provided by the State agency. Indicate whether the youth received education financial assistance during the reporting period that was paid for or provided by the State agency with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(33) *Other financial assistance*. Other financial assistance includes any other payments made or provided by the State agency to help the youth live independently. Indicate whether the youth received any other financial assistance that was paid for or provided by the State agency during the reporting period with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(34) *Outcomes reporting status*. The outcomes reporting status represents the youth's participation, or lack thereof, in the outcomes data collection. If the State agency collects and reports information on any of the data elements in paragraphs (g)(37) through (g)(58) of this section for a youth in the baseline or follow-up sample or population, indicate that the youth participated. If a youth is in the baseline or follow-up sample or population, but the State agency is unable to collect the information, indicate the reason and leave the data elements in paragraph (g)(37) through (g)(58) of this section blank. If a 19-year old youth in the follow-up population is not in the sample, indicate that the youth is not in the sample. If the youth is not in the baseline or follow-up population this element must be left blank.

(i) *Youth participated*. The youth participated in the outcome survey, either fully or partially.

(ii) *Youth declined*. The State agency located the youth successfully and invited the youth's participation, but the youth declined to participate in the data collection.

(iii) *Parent declined*. The State agency invited the youth's participation, but the youth's parent/guardian declined to grant permission. This response may be used only when the youth has not reached the age of majority in the State and State law or policy requires a parent/guardian's permission for the youth to participate in information collection activities.

(iv) *Incapacitated*. The youth has a permanent or temporary mental or physical condition that prevents him or her from participating in the outcomes data collection.

(v) *Incarcerated*. The youth is unable to participate in the outcomes data collection because of his or her incarceration.

(vi) *Runaway/missing*. A youth in foster care is known to have run away or be missing from his or her foster care placement.

(vii) *Unable to locate/invite*. The State agency could not locate a youth who is not in foster care or otherwise invite such a youth's participation.

(viii) *Death*. The youth died prior to his participation in the outcomes data collection.

(ix) *Not in sample*. The 19-year-old youth participated in the outcomes data collection as a part of the baseline population at age 17, but the youth is not in the State's follow-up sample. This response option applies only when the outcomes data collection is required on the follow-up population of 19-year-old youth.

(35) *Date of outcome data collection*. The date of outcome data collection is the latest date that the agency collected data from a youth for the elements described in paragraphs (g)(38) through (g)(58) of this section. Indicate the month, day and year of the outcomes data collection. If the youth is not in the baseline or follow-up population this element must be left blank.

(36) *Foster care status—outcomes*. The youth is in foster care if the youth is under the placement and care responsibility of the State title IV–B/IV–E agency in accordance with the definition of foster care in 45 CFR 1355.20. Indicate whether the youth is in foster care on the date of outcomes data collection with a ''yes'' or ''no'' as appropriate. If the youth is not in the baseline or follow-up population this element must be left blank.

(37) *Current full-time employment*. A youth is employed full-time if employed at least 35 hours per week, in one or multiple jobs, as of the date of the outcome data collection. Indicate whether the youth is employed full-time, with a ''yes'' or ''no'' as appropriate. If the youth does not answer this question indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(38) *Current part-time employment*. A youth is employed part-time if employed between one and 34 hours per week, in one or multiple jobs, as of the date of the outcome data collection. Indicate whether the youth is employed part-time, with a ''yes'' or ''no.'' If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(39) *Employment-related skills*. A youth has obtained employment-related skills if the youth completed an apprenticeship, internship, or other on-the-job training, either paid or unpaid, in the past year. The experience must help the youth acquire employment-related skills, such as specific trade skills such as carpentry or auto mechanics, or office skills such as word processing or use of office equipment. Indicate whether the youth has obtained employment-related skills, with a ''yes'' or ''no'' as appropriate. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(40) *Social Security*. A youth is receiving some form of Social Security if receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), either directly or as a dependent beneficiary as of the date of the outcome data collection. SSI payments are made to eligible low-income persons with disabilities. SSDI payments are made to persons with a certain amount of work history who become disabled. A youth may receive SSDI payments through a parent. Indicate whether the youth is receiving a form of Social Security payments, with

a ''yes'' or ''no'' as appropriate. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(41) *Educational aid.* A youth is receiving educational aid if using a scholarship, voucher (including education or training vouchers pursuant to section 477(h)(2) of the Social Security Act), grant, stipend, student loan, or other type of educational financial aid to cover educational expenses as of the date of the outcome data collection. Scholarships, grants, and stipends are funds awarded for spending on expenses related to gaining an education. ''Student loan'' means a government-guaranteed, low-interest loan for students in post-secondary education. Indicate whether the youth is receiving educational aid with a ''yes'' or ''no'' as appropriate. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(42) *Public financial assistance.* A youth is receiving public financial assistance if receiving ongoing cash welfare payments from the government to cover some of his or her basic needs, as of the date of the outcome data collection. Public financial assistance does not include government payments or subsidies for specific purposes, such as unemployment insurance, child care subsidies, education assistance, food stamps or housing assistance. Indicate whether the youth is receiving public financial assistance, with ''yes'' or ''no'' as appropriate, and ''not applicable'' for a youth still in foster care. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(43) *Public food assistance.* A youth is receiving public food assistance if receiving food stamps in any form (i.e., government-sponsored checks, coupons or debit cards) to buy eligible food at authorized stores as of the date of the outcome data collection. This definition includes receiving public food assistance through the Women, Infants, and Children (WIC) program. Indicate whether the youth is receiving some form of public food assistance with ''yes'' or ''no,'' and ''not applicable'' for a youth still in foster care. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(44) *Public housing assistance.* A youth is receiving public housing assistance if the youth is living in government-funded public housing, or receiving a government-funded housing voucher to pay for part of his/her housing costs as of the date of the outcome data collection. CFCIP room and board payments are not included in this definition. Indicate whether the youth is receiving housing assistance with ''yes'' or ''no'' and ''not applicable'' for a youth still in foster care. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(45) *Other financial support.* A youth has other financial support if receiving any other periodic and/or significant financial resources or support from another source not listed in the elements described in paragraphs (g)(41) through (g)(44) of this section as of the date of outcome data collection. Such support can include payments from a spouse or family member (biological, foster or adoptive), child support that the youth receives for him or herself, or funds from a legal settlement. This definition does not include occasional gifts, such as birthday or graduation checks or small donations of food or personal incidentals, child care subsidies, child support for a youth's child, or other financial support which does not benefit the youth directly in supporting himself or herself. Indicate whether the youth is receiving any other financial support with a ''yes'' or ''no.'' If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(46) *Highest educational certification received.* A youth has received an education certificate if the youth has a high school diploma or general equivalency degree (GED), vocational certificate, vocational license, associate's degree (e.g., A.A.), bachelor's degree (e.g., B.A. or B.S.), or a higher degree as of

the date of the outcome data collection. Indicate the highest degree that the youth has received. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(i) A vocational certificate is a document stating that a person has received education or training that qualifies him or her for a particular job, e.g., auto mechanics or cosmetology.

(ii) A vocational license is a document that indicates that the State or local government recognizes an individual as a qualified professional in a particular trade or business.

(iii) An associate's degree is generally a two-year degree from a community college.

(iv) A bachelor's degree is a four-year degree from a college or university.

(v) A higher degree indicates a graduate degree, such as a Master's Degree or a Juris Doctor (J.D.).

(vi) None of the above means that the youth has not received any of the above educational certifications.

(47) *Current enrollment and attendance.* Indicate whether the youth is enrolled in and attending high school, GED classes, or postsecondary vocational training or college, as of the date of the outcome data collection. A youth is still considered enrolled in and attending school if the youth would otherwise be enrolled in and attending a school that is currently out of session. Indicate whether the youth is currently enrolled and attending school with a ''yes'' or ''no.'' If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(48) *Connection to adult.* A youth has a connection to an adult if, as of the date of the outcome data collection, the youth knows an adult who he or she can go to for advice or guidance when there is a decision to make or a problem to solve, or for companionship when celebrating personal achievements. The adult must be easily accessible to the youth, either by telephone or in person. This can include, but is not limited to adult relatives, parents or foster parents. The definition excludes spouses, partners, boyfriends or girlfriends and current caseworkers. Indicate whether the youth has such a connection with an adult with a ''yes'' or ''no.'' If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(49) *Homelessness.* A youth is considered to have experienced homelessness if the youth had no regular or adequate place to live. This definition includes situations where the youth is living in a car or on the street, or staying in a homeless or other temporary shelter. For a 17-year-old youth in the baseline population, the data element relates to a youth's lifetime experiences. For a 19- or 21-year-old youth in the follow-up population, the data element relates to the youth's experience in the past two years. Indicate if the youth has been homeless with a ''yes'' or ''no.'' If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(50) *Substance abuse referral.* A youth has received a substance abuse referral if the youth was referred for an alcohol or drug abuse assessment or counseling. For a 17-year-old youth in the baseline population, the data element relates to a youth's lifetime experience. For a 19-or 21-year-old youth in the follow-up population, the data element relates to the youth's experience in the past two years. This definition includes either a self-referral or referral by a social worker, school staff, physician, mental health worker, foster parent, or other adult. Alcohol or drug abuse assessment is a process designed to determine if someone has a problem with alcohol or drug use. Indicate whether the youth had a substance abuse referral with a ''yes'' or ''no.'' If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(51) *Incarceration.* A youth is considered to have been incarcerated if the youth was confined in a jail, prison, correctional facility, or juvenile or community detention facility in connection with allegedly committing a

crime (misdemeanor or felony). For a 17-year-old youth in the baseline population, the data element relates to a youth's lifetime experience. For a 19-or 21-year-old youth in the follow-up population, the data element relates to the youth's experience in the past two years. Indicate whether the youth was incarcerated with a ''yes'' or ''no''. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(52) *Children*. A youth is considered to have a child if the youth has given birth herself, or the youth has fathered any children who were born. For a 17-year-old youth in the baseline population, the data element relates to a youth's lifetime experience. For a 19-or 21-year-old youth in the follow-up population, the data element refers to children born to the youth in the past two years only. This refers to biological parenthood. Indicate whether the youth had a child with a ''yes'' or ''no.'' If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(53) *Marriage at child's birth*. A youth is married at the time of the child's birth if he or she was united in matrimony according to the laws of the State to the child's other parent. Indicate whether the youth was married to the child's other parent at the time of the birth of any child reported in the element described in paragraph (g)(52) of this section with a ''yes'' or ''no''. If the youth does not answer this question, indicate ''declined.'' If the answer to the element described in paragraph (g)(52) of this section is ''no,'' indicate ''not applicable.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(54) *Medicaid*. A youth is receiving Medicaid if the youth is participating in a Medicaid-funded State program, which is a medical assistance program supported by the Federal and State government under title XIX of the Social Security Act as of the date of outcomes data collection. Indicate whether the youth receives Medicaid with ''yes,'' ''no,'' or ''don't know'' as appropriate. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(55) *Other health insurance coverage*. A youth has other health insurance if the youth has a third party pay (other than Medicaid) for all or part of the costs of medical care, mental health care, and/or prescription drugs, as of the date of the outcome data collection. This definition includes group coverage offered by employers, schools or associations, an individual health plan, self-employed plans, or inclusion in a parent's insurance plan. This also could include access to free health care through a college, Indian Health Service, or other source. Medical or drug discount cards or plans are not insurance. Indicate ''yes'', ''no,'' or ''don't know,'' as appropriate, or ''not applicable'' for youth participating solely in Medicaid. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(56) *Health insurance type: Medical*. If the youth has indicated that he or she has health insurance coverage in the element described in paragraph (g)(55) of this section, indicate whether the youth has insurance that pays for all or part of medical health care services. Indicate ''yes'', ''no'', or ''don't know'' as appropriate, or ''not applicable'' if the youth did not indicate any health insurance coverage. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(57) *Health insurance type: Mental health*. If the youth has indicated that he or she has medical health insurance coverage as described in paragraph (g)(56) of this section, indicate whether the youth has insurance that pays for all or part of the costs for mental health care services, such as counseling or therapy. Indicate ''yes'', ''no'', or ''don't know'' as appropriate, or ''not applicable'' if the youth did not indicate having medical health insurance coverage. If the youth does not answer this question, indicate ''declined.'' If

the youth is not in the baseline or follow-up population this element must be left blank.

(58) *Health insurance type: Prescription drugs.* If the youth has indicated that he or she has medical health insurance coverage as described in paragraph (g)(56) of this section, indicate whether the youth has insurance coverage that pays for part or all of the costs of some prescription drugs. Indicate ''yes'', ''no'', or ''don't know'' as appropriate, or ''not applicable'' if the youth did not indicate having medical health insurance coverage. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(h) *Electronic reporting.* The State agency must report all data to ACF electronically according to ACF's specifications and appendix A of this part.

[73 FR 10365, Feb. 26, 2008]

§ 1356.84 Sampling.

(a) The State agency may collect and report the information required in section 1356.83(e) of this part on a sample of the baseline population consistent with the sampling requirements described in paragraphs (b) and (c) of this section.

(b) The State agency must select the follow-up sample using simple random sampling procedures based on random numbers generated by a computer program, unless ACF approves another sampling procedure. The sampling universe consists of youth in the baseline population consistent with 45 CFR 1356.81(b) who participated in the State agency's data collection at age 17.

(c) The sample size is based on the number of youth in the baseline population who participated in the State agency's data collection at age 17.

(1) If the number of youth in the baseline population who participated in the outcome data collection at age 17 is 5,000 or less, the State agency must calculate the sample size using the formula in appendix C of this part, with the Finite Population Correction (FPC). The State agency must increase the resulting number by 30 percent to allow for attrition, but the sample size may not be larger than the number of youth who participated in data collection at age 17.

(2) If the number of youth in the baseline population who participated in the outcome data collection at age 17 is greater than 5,000, the State agency must calculate the sample size using the formula in appendix C of this part, without the FPC. The State agency must increase the resulting number by 30 percent to allow for attrition, but the sample size must not be larger than the number of youth who participated in data collection at age 17.

[73 FR 10365, Feb. 26, 2008]

§ 1356.85 Compliance.

(a) *File submission standards.* A State agency must submit a data file in accordance with the following file submission standards:

(1) *Timely data.* The data file must be received in accordance with the reporting period and timeline described in section 1356.83(a) of this part;

(2) *Format.* The data file must be in a format that meets ACF's specifications; and

(3) *Error-free information.* The file must contain data in the general and demographic elements described in section 1356.83(g)(1) through (g)(5), (g)(14), and (g)(36) of this part that is 100 percent error-free as defined in paragraph (c) of this section.

(b) *Data standards.* A State agency also must submit a file that meets the following data standards:

(1) *Error-free.* The data for the applicable demographic, service and outcomes elements defined in section 1356.83(g)(6) through (13), (g)(15) through (35) and (g)(37) through (58) of this part must be 90 percent error-free as described and assessed according to paragraph (c) of this section.

(2) *Outcomes universe.* In any Federal fiscal year for which the State agency is required to submit information on the follow-up population, the State agency must submit a youth record containing at least outcomes data for the outcomes status element described in section 1356.83(g)(34) of this part on each youth for whom the State agency reported outcome information as part of the baseline population. Alternatively, if the State agency has elected to conduct sampling in accordance

with section 1356.84 of this part, the State agency must submit a record containing at least outcomes data for the outcomes status element described in section 1356.83(g)(34) of this part on each 19-year-old youth in the follow-up population, inclusive of those youth who are not in the sample, and each 21-year-old youth in the follow-up sample.

(3) *Outcomes participation rate.* The State agency must report outcome information on each youth in the follow-up population at the rates described in paragraphs (b)(3)(i) through (iii) of this section. A youth has participated in the outcomes data collection if the State agency collected and reported a valid response (i.e., a response option other than ''declined'' or ''not applicable'') to any of the outcomes-related elements described in section 1356.83(g)(37) through (g)(58) of this part. ACF will exclude from the calculation of the participation rate any youth in the follow-up population who is reported as deceased, incapacitated or incarcerated in section 1356.83(g)(34) at the time information on the follow-up population is required.

(i) *Foster care youth participation rate.* The State agency must report outcome information on at least 80 percent of youth in the follow-up population who are in foster care on the date of outcomes data collection as indicated in section 1356.83(g)(35) and (g)(36) of this part.

(ii) *Discharged youth participation rate.* The State agency must report outcome information on at least 60 percent of youth in the follow-up population who are not in foster care on the date of outcomes data collection as indicated in section 1356.83(g)(35) and (g)(36) of this part.

(iii) *Effect of sampling on participation rates.* For State agencies electing to sample in accordance with section 1356.84 and appendix C of this part, ACF will apply the outcome participation rates in paragraphs (b)(2)(i) and (ii) of this section to the required sample size for the State.

(c) *Errors.* ACF will assess each State agency's data file for the following types of errors: Missing data, out-of-range data, or internally inconsistent data. The amount of errors acceptable for each reporting period is described in paragraphs (a) and (b) of this section.

(1) Missing data is any element that has a blank response when a blank response is not a valid response option as described in section 1356.83(g) of this part.

(2) Out-of-range data is any element that contains a value that is outside the parameters of acceptable responses or exceeds, either positively or negatively, the acceptable range of response options as described in section 1356.83(g) of this part; and

(3) Internally inconsistent data is any element that fails an internal consistency check designed to evaluate the logical relationship between elements in each record. The evaluation will identify all elements involved in a particular check as in error.

(d) *Review for compliance.* (1) ACF will determine whether a State agency's data file for each reporting period is in compliance with the file submission standards and data standards in paragraphs (a) and (b) of this section.

(i) For State agencies that achieve the file submission standards, ACF will determine whether the State agency's data file meets the data standards.

(ii) For State agencies that do not achieve the file submission standards or data standards, ACF will notify the State agency that they have an opportunity to submit a corrected data file by the end of the subsequent reporting period in accordance with paragraph (e) of this section.

(2) ACF may use monitoring tools or assessment procedures to determine whether the State agency is meeting all the requirements of section 1356.81 through 1356.85 of this part.

(e) *Submitting corrected data and noncompliance.* A State agency that does not submit a data file that meets the standards in section 1356.85 of this part will have an opportunity to submit a corrected data file in accordance with paragraphs (e)(1) and (e)(2) of this section.

(1) A State agency must submit a corrected data file no later than the end of the subsequent reporting period as defined in section 1356.83(a) of this part (i.e., by September 30 or March 31).

(2) If a State agency fails to submit a corrected data file that meets the compliance standards in section 1356.85 of this part and the deadline in paragraph (e)(1) of this section, ACF will make a final determination that the State is out of compliance, notify the State agency, and apply penalties as defined in section 1356.86 of this part.

[73 FR 10365, Feb. 26, 2008]

§ 1356.86 Penalties for noncompliance.

(a) *Definition of Federal funds subject to a penalty*. The funds that are subject to a penalty are the CFCIP funds allocated or reallocated to the State agency under section 477(c)(1) of the Act for the Federal fiscal year that corresponds with the reporting period for which the State agency was required originally to submit data according to section 1356.83(a) of this part.

(b) *Assessed penalty amounts*. ACF will assess penalties in the following amounts, depending on the area of noncompliance:

(1) *Penalty for not meeting file submission standards*. ACF will assess a penalty in an amount equivalent to two and one half percent (2.5%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the file submission standards defined in section 1356.85(a) of this part.

(2) *Penalty for not meeting certain data standards*. ACF will assess a penalty in an amount equivalent to:

(i) One and one quarter percent (1.25%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the data standard for error-free data as defined in section 1356.85(b)(1) of this part.

(ii) One and one quarter percent (1.25%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the outcome universe standard defined in section 1356.85(b)(2) of this part.

(iii) One half of one percent (0.5%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the participation rate for youth in foster care standard defined in section 1356.85(b)(3)(i) of this part.

(iv) One half of one percent (0.5%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the participation rate for discharged youth standard defined in section 1356.85(b)(3)(ii) of this part.

(c) *Calculation of the penalty amount*. ACF will add together any assessed penalty amounts described in paragraphs (b)(1) or (b)(2) of this section to determine the total calculated penalty result. If the total calculated penalty result is less than one percent of the funds subject to a penalty, the State agency will be penalized in the amount of one percent.

(d) *Notification of penalty amount*. ACF will advise the State agency in writing of a final determination of noncompliance and the amount of the total calculated penalty as determined in paragraph (c) of this section.

(e) *Interest*. The State agency will be liable for interest on the amount of funds penalized by the Department, in accordance with the provisions of 45 CFR 30.13.

(f) *Appeals*. The State agency may appeal, pursuant to 45 CFR part 16, ACF's final determination to the HHS Departmental Appeals Board.

[73 FR 10365, Feb. 26, 2008]

APPENDIX A TO PART 1356—NYTD DATA ELEMENTS

Element #	Element name	Responses options	Applicable population
1	State	2 digit FIPS code.	
2	Report date	CYYMM. CC= century year (i.e., 20). YY = decade year (00–99). MM = month (01–12).	

Element #	Element name	Responses options	Applicable population
3	Record number	Encrypted, unique person identification number.	
4	Date of birth	CCYYMMDD. CC= century year (i.e., 20). YY = decade year (00–99). MM = month (01–12). DD= day (01–31).	
5	Sex	Male. Female.	
6	Race—American Indian or Alaska Native	Yes No.	All youth in served, baseline and follow-up populations.
7	Race—Asian	Yes. No.	
8	Race—Black or African American	Yes. No.	
9	Race—Native Hawaiian or Other Pacific Islander.	Yes. No.	
10	Race—White	Yes. No.	
11	Race—Unknown	Yes. No.	
12	Race—Declined	Yes. No.	
13	Hispanic or Latino Ethnicity	Yes. No. Unknown. Declined.	
14	Foster care status—services	Yes No.	Served population only.
15	Local agency	FIPS code(s). Centralized unit.	
16	Federally-recognized tribe	Yes. No.	
17	Adjudicated delinquent	Yes. No.	
18	Education level	Less than 6th grade 6th grade. 7th grade. 8th grade. 9th grade. 10th grade. 11th grade. 12th grade. Postsecondary education or training College, at least one semester.	Served population only.
19	Special education	Yes. No.	
20	Independent living needs assessment	Yes. No.	
21	Academic support	Yes. No.	
22	Post-secondary educational support	Yes. No.	
23	Career preparation	Yes. No.	
24	Employment programs or vocational training	Yes. No.	
25	Budget and financial management	Yes. No.	
26	Housing education and home management training.	Yes. No.	
27	Health education and risk prevention	Yes. No.	
28	Family Support/Healthy Marriage Education	Yes.	

Element #	Element name	Responses options	Applicable population
		No.	
29	Mentoring	Yes.	
		No.	
30	Supervised independent living	Yes.	
		No.	
31	Room and board financial assistance	Yes.	
		No.	
32	Education financial assistance	Yes.	
		No.	
33	Other financial assistance	Yes.	
		No.	
34	Outcomes reporting status	Youth Participated Youth Declined Parent Declined Youth Incapacitated Incarcerated. Runaway/Missing. Unable to locate/invite. Death. Not in sample.	Baseline and follow-up populations (with the exception of the response option ''not in sample'' which is applicable to 19-year olds in the follow-up only).
35	Date of outcome data collection	CCYYMMDD CC= century year (i.e., 20). YY = decade year (00–99). MM = month (01–12). DD= day (01–31).	Baseline and follow-up populations.
36	Foster care status-outcomes	Yes.	
		No.	
37	Current full-time employment	Yes.	
		No.	
		Declined.	
38	Current part-time employment	Yes.	
		No.	
		Declined.	
39	Employment-related skills	Yes.	
		No.	
		Declined.	
40	Social Security	Yes.	
		No.	
		Declined.	
41	Educational aid	Yes.	
		No.	
		Declined.	
42	Public financial assistance	Yes	Follow-up population *not* in foster care.
		No.	
		Not applicable.	
		Declined.	
43	Public food assistance	Yes.	
		No.	
		Not applicable.	
		Declined.	
44	Public housing assistance	Yes.	
		No.	
		Not applicable.	
		Declined.	
45	Other financial support	Yes	Baseline and follow-up population.
		No.	
		Declined.	
46	Highest educational certification received	High school diploma/GED. Vocational certificate. Vocational license. Associate's degree. Bachelor's degree. Higher degree. None of the above. Declined.	
47	Current enrollment and attendance	Yes.	

Element #	Element name	Responses options	Applicable population
		No. Declined.	
48	Connection to adult	Yes. No. Declined.	
49	Homelessness	Yes. No. Declined.	
50	Substance abuse referral	Yes. No. Declined.	
51	Incarceration	Yes. No. Declined.	
52	Children	Yes. No. Declined.	
53	Marriage at child's birth	Yes. No. Not applicable. Declined.	
54	Medicaid	Yes. No. Don't know. Declined.	
55	Other health insurance coverage	Yes ..... No. Don't know. Not applicable. Declined.	Baseline and follow-up population.
56	Health insurance type—medical	Yes. Don't know. Not applicable. Declined.	
57	Health insurance type—mental health	Yes. No. Don't know. Not applicable. Declined.	
58	Health insurance type—prescription drugs	Yes. No. Don't know. Not applicable. Declined.	

[73 FR 10372, Feb. 26, 2008]

APPENDIX B TO PART 1356—NYTD YOUTH OUTCOME SURVEY

Topic/element #	Question to youth and response options	Definition
INFORMATION TO COLLECT FROM ALL YOUTH SURVEYED FOR OUTCOMES, WHETHER IN FOSTER CARE OR NOT		
Current full-time employment (37)	Currently are you employed full-time? __Yes ..... __No ..... __Declined	''Full-time'' means working at least 35 hours per week at one or multiple jobs.
Current part-time employment (38)	Currently are you employed part-time? __Yes ..... __No ..... __Declined	''Part-time'' means working at least 1–34 hours per week at one or multiple jobs.
Employment-related skills (39)	In the past year, did you complete an apprenticeship, internship, or other on-the-job training, either paid or unpaid? __Yes ..... __No ..... __Declined	This means apprenticeships, internships, or other on-the-job trainings, either paid or unpaid, that helped the youth acquire employment-related skills (which can include specific trade skills such as carpentry or auto mechanics, or office skills such as word processing or use of office equipment).

Topic/element #	Question to youth and response options	Definition
Social Security (40)	Currently are you receiving social security payments (Supplemental Security Income (SSI, Social Security Disability Insurance (SSDI), or dependents' payments)? __Yes __No __Declined	These are payments from the government to meet basic needs for food, clothing, and shelter of a person with a disability. A youth may be receiving these payments because of a parent or guardian's disability, rather than his/her own.
Educational Aid (41)	Currently are you using a scholarship, grant, stipend, student loan, voucher, or other type of educational financial aid to cover any educational expenses? __Yes __No __Declined	Scholarships, grants, and stipends are funds awarded for spending on expenses related to gaining an education. ''Student loan'' means a government-guaranteed, low-interest loan for students in post-secondary education.
Other financial support (45)	Currently are you receiving any periodic and/or significant financial resources or support from another source not previously indicated and excluding paid employment? __Yes __No __Declined	This means periodic and/or significant financial support from a spouse or family member (biological, foster or adoptive), child support that the youth receives or funds from a legal settlement. This does not include occasional gifts, such as birthday or graduation checks or small donations of food or personal incidentals, child care subsidies, child support for a youth's child or other financial help that does not benefit the youth directly in supporting himself or herself.
Highest educational certification received (46).	What is the highest educational degree or certification that you have received? __High school diploma/GED __Vocational certificate __Vocational license __Associate's degree (e.g., A.A.) __Bachelor's degree (e.g., B.A. or B.S.) __Higher degree __None of the above __Declined	''Vocational certificate'' means a document stating that a person has received education or training that qualifies him or her for a particular job, e.g., auto mechanics or cosmetology. ''Vocational license'' means a document that indicates that the State or local government recognizes an individual as a qualified professional in a particular trade or business. An Associate's degree is generally a two-year degree from a community college, and a Bachelor's degree is a four-year degree from a college or university. ''Higher degree'' indicates a graduate degree, such as a Masters or Doctorate degree. ''None of the above'' means that the youth has not received any of the above educational certifications.
Current enrollment and attendance (47)	Currently are you enrolled in and attending high school, GED classes, post-high school vocational training, or college? __Yes __No __Declined	This means both enrolled in *and attending* high school, GED classes, or post-secondary vocational training or college. A youth is still considered enrolled in and attending school if the youth would otherwise be enrolled in and attending a school that is currently out of session (e.g., Spring break, summer vacation, etc.).
Connection to adult (48)	Currently is there at least one adult in your life, other than your caseworker, to whom you can go for advice or emotional support? __Yes __No __Declined	This refers to an adult who the youth can go to for advice or guidance when there is a decision to make or a problem to solve, or for companionship to share personal achievements. This can include, but is not limited to, adult relatives, parents or foster parents. The definition excludes spouses, partners, boyfriends or girlfriends and current caseworkers. The adult must be easily accessible to the youth, either by telephone or in person.

Topic/element #	Question to youth and response options	Definition
Homelessness (49)	Have you ever been homeless? OR In the past two years, were you homeless at any time? __Yes __No __Declined.	''Homeless'' means that the youth had no regular or adequate place to live. This includes living in a car, or on the street, or staying in a homeless or other temporary shelter.
Substance abuse referral (50)	Have you ever referred yourself or has someone else referred you for an alcohol or drug abuse assessment or counseling? OR In the past two years, did you refer yourself, or had someone else referred you for an alcohol or drug abuse assessment or counseling? __Yes __No __Declined.	This includes either self-referring or being referred by a social worker, school staff, physician, mental health worker, foster parent, or other adult for an alcohol or drug abuse assessment or counseling. Alcohol or drug abuse assessment is a process designed to determine if someone has a problem with alcohol or drug use.
Incarceration (51)	Have you ever been confined in a jail, prison, correctional facility, or juvenile or community detention facility, in connection with allegedly committing a crime? OR In the past two years, were you confined in a jail, prison, correctional facility, or juvenile or community detention facility, in connection with allegedly committing a crime? __Yes __No __Declined.	This means that the youth was confined in a jail, prison, correctional facility, or juvenile or community detention facility in connection with a crime (misdemeanor or felony) allegedly committed by the youth.
Children (52)	Have you ever given birth or fathered any children that were born? OR In the past two years, did you give birth to or father any children that were born? __Yes __No __Declined.	This means giving birth to or fathering at least one child that was born. If males do not know, answer ''No.''
Marriage at Child's Birth (53)	If you responded yes to the previous question, were you married to the child's other parent at the time each child was born? __Yes __No __Declined	This means that when every child was born the youth was married to the other parent of the child.
Medicaid (54)	Currently are you on Medicaid [or use the name of the State's medical assistance program under title XIX]? __Yes __No __Don't know __Declined	Medicaid (or the State medical assistance program) is a health insurance program funded by the government.

Topic/element #	Question to youth and response options	Definition
Other Health insurance Coverage (55)	Currently do you have health insurance, other than Medicaid? __Yes __No __Don't know __Declined	''Health insurance'' means having a third party pay for all or part of health care. Youth might have health insurance such as group coverage offered by employers or schools, or individual policies that cover medical and/or mental health care and/or prescription drugs, or youth might be covered under parents' insurance. This also could include access to free health care through a college, Indian Tribe, or other source.
Health insurance type—medical (56)	Does your health insurance include coverage for medical services? __Yes __Don't know __Declined	This means that the youth's health insurance covers at least some medical services or procedures. This question is for only those youth who responded ''yes'' to having health insurance.
Health insurance type—mental health (57)	Does your health insurance include coverage for mental health services? __Yes __No __Don't know __Declined	This means that the youth's health insurance covers at least some mental health services. This question is for only those youth who responded ''yes'' to having health insurance with medical coverage.
Health insurance type—prescription drugs (58).	Does your health insurance include coverage for prescription drugs? __Yes __No __Don't know __Declined	This means that the youth's health insurance covers at least some prescription drugs. This question is for only those youth who responded ''yes'' to having health insurance with medical coverage.
ADDITIONAL OUTCOMES INFORMATION TO COLLECT FROM YOUTH OUT OF FOSTER CARE		
Public financial assistance (42)	Currently are you receiving ongoing welfare payments from the government to support your basic needs? [The State may add and/or substitute the name(s) of the State's welfare program]. __Yes __No __Declined	This refers to ongoing welfare payments from the government to support your basic needs. Do not consider payments or subsidies for specific purposes, such as unemployment insurance, child care subsidies, education assistance, food stamps or housing assistance in this category.
Public food assistance (43)	Currently are you receiving public food assistance? __Yes __No __Declined	Public food assistance includes food stamps, which are government-issued coupons or debit cards that recipients can use to buy eligible food at authorized stores. Public food assistance also includes assistance from the Women, Infants and Children (WIC) program.
Public housing assistance (44)	Currently are you receiving any sort of housing assistance from the government, such as living in public housing or receiving a housing voucher? __Yes __No __Declined	Public housing is rental housing provided by the government to keep rents affordable for eligible individuals and families, and a housing voucher allows participants to choose their own housing while the government pays part of the housing costs. This does not include payments from the child welfare agency for room and board payments.

[73 FR 10372, Feb. 26, 2008]

APPENDIX C TO PART 1356—CALCULATING SAMPLE SIZE FOR NYTD FOLLOW-UP POPULATIONS

1. Using Finite Population Correction

The Finite Population Correction (FPC) is applied when the sample is drawn from a population of one to 5,000 youth, because the sample is more than five percent of the population.

$$\bullet\ \text{Sample size with FPC} = \frac{(Py)\ (Pn) + \text{Std. error}^2}{\text{Std. error}^2 + \dfrac{(Py)\ (Pn)}{N}}$$

• (Py)(Pn), an estimate of the percent of responses to a dichotomous variable, is (.50)(.50) for the most conservative estimate.

$$\bullet\ \text{Standard error} = \frac{\text{Acceptable level of error}}{\text{Z coefficient}}$$

• Acceptable level of error = .05 (results are plus or minus five percentage points from the actual score)
• Z = 1.645 (90 percent confidence interval)

$$\bullet\ \text{Standard error, 90 percent confidence interval} = \frac{.05}{1.645} = .0303951$$

• N = number of youth from whom the sample is being drawn

2. Not Using Finite Population Correction

The FPC is not applied when the sample is drawn from a population of over 5,000 youth.

$$\bullet\ \text{Sample size without FPC, 90 percent confidence interval} = \frac{(Py)\ (Pn)}{\text{Std. Error}^2} = \frac{(.50)\ (.50)}{(.0303951)^2} = 271$$

[73 FR 10372, Feb. 26, 2008]

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV-B

Sec.
1357.10 Scope and definitions.
1357.15 Comprehensive child and family services plan requirements.
1357.16 Annual progress and services reports.
1357.20 Child abuse and neglect programs.
1357.25 Requirements for eligibility for additional payments under section 427.
1357.30 State fiscal requirements (title IV-B, subpart 1, child welfare services).
1357.32 State fiscal requirements (title IV-B, subpart 2, family preservation and family support services).
1357.40 Direct payments to Indian Tribal Organizations (title IV-B, subpart 1, child welfare services).
1357.50 Direct payments to Indian Tribal organizations (title IV-B, subpart 2, family preservation and support services).

AUTHORITY: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

§ 1357.10 Scope and definitions.

(a) *Scope.* This part applies to State and Indian Tribal programs for child welfare services under subpart 1, and family preservation and family support services under subpart 2 of title IV-B of the Act.

(b) *Eligibility.* Child and family services under title IV-B, subparts 1 and 2, must be available on the basis of need for services and must not be denied on the basis of income or length of residence in the State or within the Indian Tribe's jurisdiction.

(c) *Definitions.*

Child and Family Services Plan (CFSP) means the document, developed through joint planning, which describes the publicly-funded State child and family services continuum (family support and family preservation services; child welfare services, including child abuse and neglect prevention, intervention, and treatment services; services to support reunification, adoption, kinship care, foster care, independent living, or other permanent living arrangements). For Indian Tribes, the document describes the child welfare and/or family preservation and support services to be provided by the Indian Tribe; includes goals and objectives both for improved outcomes for the safety, permanency and well-being

of children and families and for service delivery system reform; specifies the services and other implementation activities that will be undertaken to carry out the goals and objectives; and includes plans for program improvement and allocation of resources.

Child welfare services means public social services directed to accomplish the following purposes:

(1) Protecting and promoting the welfare and safety of all children, including individuals with disabilities; homeless, dependent, or neglected children;

(2) Preventing or remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation, or delinquency of children;

(3) Preventing the unnecessary separation of children from their families by identifying family problems and assisting families in resolving their problems and preventing the breakup of the family where the prevention of child removal is desirable and possible;

(4) Restoring to their families children who have been removed and may be safely returned, by the provision of services to the child and the family;

(5) Assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption; and

(6) Placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate.

Children refers to individuals from birth to the age of 21 (or such age of majority as provided under State law) including infants, children, youth, adolescents, and young adults.

Community-based services refers to programs delivered in accessible settings in the community and responsive to the needs of the community and the individuals and families residing therein. These services may be provided under public or private nonprofit auspices.

Families includes, but is not limited to, biological, adoptive, foster, and extended families.

Family preservation services refers to services for children and families designed to protect children from harm and help families (including foster, adoptive, and extended families) at risk or in crisis, including—

(1) Preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families, where possible;

(2) Service programs designed to help children, where appropriate, return to families from which they have been removed; or be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement;

(3) Service programs designed to provide follow-up care to families to whom a child has been returned after a foster care placement;

(4) Respite care of children to provide temporary relief for parents and other caregivers (including foster parents);

(5) Services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition; and

(6) Case management services designed to stabilize families in crisis such as transportation, assistance with housing and utility payments, and access to adequate health care.

Family support services means community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, and otherwise to enhance child development. Family support services may include:

(1) Services, including in-home visits, parent support groups, and other programs designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development,

family budgeting, coping with stress, health, and nutrition;

(2) Respite care of children to provide temporary relief for parents and other caregivers;

(3) Structured activities involving parents and children to strengthen the parent-child relationship;

(4) Drop-in centers to afford families opportunities for informal interaction with other families and with program staff;

(5) Transportation, information and referral services to afford families access to other community services, including child care, health care, nutrition programs, adult education literacy programs, legal services, and counseling and mentoring services; and

(6) Early developmental screening of children to assess the needs of such children, and assistance to families in securing specific services to meet these needs.

Joint planning means an ongoing partnership process between ACF and the State and between ACF and an Indian Tribe in the development, review, analysis, and refinement and/or revision of the State's and the Indian Tribe's child and family services plan. Joint planning involves discussions, consultation, and negotiation between ACF and the State or Indian Tribe in all areas of CFSP creation such as, but not limited to, identifying the service needs of children, youth, and families; selecting the unmet service needs that will be addressed; developing goals and objectives that will result in improving outcomes for children and families; developing a plan to meet the matching requirements; and establishing a more comprehensive, coordinated and effective child and family services delivery system. The expectation of joint planning is that both ACF and the State or Indian Tribe will reach agreement on substantive and procedural matters related to the CFSP.

[61 FR 58655, Nov. 18, 1996]

§ 1357.15 Comprehensive child and family services plan requirements.

(a) *Scope*. (1) The CFSP provides an opportunity to lay the groundwork for a system of coordinated, integrated, culturally relevant family focused services. This section describes the requirements for the development, implementation and phase-in of the five-year comprehensive child and family services plan (CFSP). The State's CFSP must meet the requirements of both of the following programs. The Indian Tribe's CFSP must meet the requirements of one or both of the following programs depending on the Tribe's eligibility:

(i) Child welfare services under title IV-B, subpart 1; and

(ii) Family preservation and family support services under title IV-B, subpart 2.

(2) For States only, the CFSP also must contain information on the following programs:

(i) The independent living program under title IV-E, section 477 of the Act; and

(ii) The Child Abuse and Neglect State grant program (known as the Basic State Grant) under the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5101 et. seq.).

(3) States must meet all requirements of this section except those that apply only to Indian Tribes. Indian Tribes must meet the requirements of this section only as specified.

(4) States and eligible Indian Tribes have the option to phase-in the requirements for a consolidated CFSP. The consolidated CFSP requirements must be in place by June 30, 1997 and meet the requirements of 45 CFR 1357.16.

(b) *Eligibility for funds*. (1) In order to receive funding under title IV-B, subparts 1 and 2, each State and eligible Indian Tribe must submit and have approved a consolidated, five-year Child and Family Services Plan (CFSP) and a CFS–101, Budget Request and Estimated Expenditure Report that meets the requirements under 45 CFR 1357.16.

(2) States and Indian Tribes that are consolidating the requirements for a CFSP in FY 1995, in accordance with § 1357.15(a), must submit the CFSP and a CFS–101 for FY 1995 and 1996 by June 30, 1995.

(3) States and eligible Indian Tribes choosing to phase-in the requirements for a consolidated CFSP in FY 1996 and 1997 must submit the CFSP, the CFS–101 for FY 1995 for subpart 1 and 2, and

the CFS–101 for subpart 2 for FY 1996 by June 30, 1995.

(4) The CFSP will be approved only if the plan was developed jointly by ACF and the State (or the Indian Tribe), and only after broad consultation by the State (and the Indian Tribe) with a wide range of appropriate public and non-profit private agencies and community-based organizations with experience in administering programs of services for children and families (including family preservation and support services).

(5) By June 30, 1996, each grantee must submit and have approved the first Annual Progress and Services Report and a CFS 101 for FY 1997 that meets the statutory and regulatory requirements of title IV-B, subparts 1 and 2.

(6) The Annual Progress and Services Report will be approved if it was developed jointly by ACF and the State (or the Indian Tribe) and if it meets the requirements of 45 CFR 1357.16.

(7) The five-year CFSP for FYs 1995–1999 may be submitted in the format of the State's or the Indian Tribe's choice and must be submitted no later than June 30, 1995, to the appropriate ACF Regional Office.

(c) *Assurances.* The following assurances will remain in effect on an ongoing basis and will need to be re-submitted only if a significant change in the State or the Indian Tribe's program affects an assurance:

(1) The State or Indian Tribe must assure that it will participate in any evaluations the Secretary of HHS may require.

(2) The State or Indian Tribe must assure that it will administer the CFSP in accordance with methods determined by the Secretary to be proper and efficient.

(3) The State or Indian Tribe must assure that it has a plan for the training and use of paid paraprofessional staff, with particular emphasis on the full-time or part-time employment of low-income persons, as community service aides; and a plan for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State or Tribe.

(4) The State or Indian Tribe must assure that standards and requirements imposed with respect to child care under title XX shall apply with respect to day care services, if provided under the CFSP, except insofar as eligibility for such services is involved.

(d) *The child and family services plan (CFSP): general.* The State and the Indian Tribe must base the development of the CFSP on a planning process that includes:

(1) broad involvement and consultation with a wide range of appropriate public and non-profit private agencies and community-based organizations, parents, including parents who are involved or have experience with the child welfare system, and others;

(2) coordination of the provision of services under the plan with other Federal and federally assisted programs serving children and families, including youth and adolescents; and

(3) collection of existing or available information to help determine vulnerable or at-risk populations or target areas; assess service needs and resources; identify gaps in services; select priorities for targeting funding and services; formulate goals and objectives; and develop opportunities for bringing about more effective and accessible services for children and families.

(e) *State agency administering the programs.* (1) The State's CFSP must identify the name of the State agency that will administer the title IV-B programs under the plan. Except as provided by statute, the same agency is required to administer or supervise the administration of all programs under titles IV-B and IV-E of the Act and the social services block grant program under title XX of the Act. (See the definition of ''State agency'' in 45 CFR 1355.20.)

(2) The CFSP must include a description of the organization and function of the State agency and organizational charts as appropriate. It also must identify the organizational unit(s) within the State agency responsible for the operation and administration of the CFSP, and include a description of the unit's organization and function and a copy of the organizational chart(s).

(f) *Indian Tribal organization administering the program(s).* (1) The Indian Tribe's CFSP must provide the name of the Indian Tribal organization (ITO) designated to administer funds under title IV-B, subpart 1, child welfare services and/or under subpart 2, family preservation and family support services. If the Indian Tribe receives funds under both subparts, the same agency or organization must administer both programs.

(2) The Indian Tribe's CFSP must include a description of the organization and function of the office responsible for the operation and administration of the CFSP, an organizational chart of that office, and a description of how that office relates to Tribal and other offices operating or administering services programs within the Indian Tribe's service area (e.g., Indian Health Service.)

(g) *Vision Statement.* The CFSP must include a vision statement which articulates the grantee's philosophy in providing child and family services and developing or improving a coordinated service delivery system. The vision should reflect the service principles at section 1355.25.

(h) *Goals.* The CFSP must specify the goals, based on the vision statement, that will be accomplished during and by the end of the five-year period of the plan. The goals must be expressed in terms of improved outcomes for and the safety, permanency and well-being of children and families, and in terms of a more comprehensive, coordinated, and effective child and family service delivery system.

(i) *Objectives.* (1) The CFSP must include the realistic, specific, quantifiable and measurable objectives that will be undertaken to achieve each goal. Each objective should focus on outcomes for children, youth, and/or their families or on elements of service delivery (such as quality) that are linked to outcomes in important ways. Each objective should include both interim benchmarks and a long-term timetable, as appropriate, for achieving the objective.

(2) For States and Indian Tribes administering the title IV-B, subpart 1 program, the CFSP must include objectives to make progress in covering additional political subdivisions, reaching additional children in need of services, expanding and strengthening the range of existing services, and developing new types of services.

(j) *Measures of progress.* The CFSP must describe the methods to be used in measuring the results, accomplishments, and annual progress toward meeting the goals and objectives, especially the outcomes for children, youth, and families. Processes and procedures assuring the production of valid and reliable data and information must be specified. The data and information must be capable of determining whether or not the interim benchmarks and multiyear timetable for accomplishing CFSP goals and objectives are being met.

(k) *Baseline information.* (1) For FY 1995, the State and the Indian Tribe must base the development of the CFSP vision, goals, objectives, and funding and service decisions on an analysis of available baseline information and any trends over time on indicators in the following areas: the well-being of children and families; the needs of children and families; the nature, scope, and adequacy of existing child and family and related social services. Additional and updated information on service needs and organizational capacities must be obtained throughout the five-year period to measure progress in accomplishing the goals and objectives cited in the CFSP. A description of how this process will continue to be carried out must be included in the CFSP, and any revisions should be provided in the Annual Progress and Services Report.

(2) The State must collect and analyze State-wide information on family preservation and family support services currently available to families and children, including the nature and scope of existing public and privately funded family support and family preservation services; the extent to which each service is available and being provided in different geographic areas and to different types of families; and important gaps in service, including mismatches between available services and family needs as identified through baseline data and the consultation process. Other services which impact

on the ability to preserve and support families may be included in the assessment. The Indian Tribe must collect and analyze information on family preservation and family support services currently available within their service delivery area including the information in this paragraph as appropriate. An Indian Tribe may submit documentation prepared to satisfy the requirements of other Federal child welfare grants, or contracts (such as the section 638 reporting form), along with a descriptive addendum addressing specifically the family preservation and family support services available.

(3) The CFSP must include a summary of the information used in developing the plan; an explanation of how this information and analysis were used in developing the goals, objectives, and funding and service decisions, including decisions about geographic targeting and service mix; a description of how information will be used to measure progress over the five-year period; and how this information will be used to facilitate the coordination of services.

(l) *Consultation.* (1) The State's CFSP must describe the internal and external consultation process used to obtain broad and active involvement of major actors across the entire spectrum of the child and family service delivery system in the development of the plan. The description should explain how this process was coordinated with or was a part of other planning processes in the State; how it led or will lead to improved coordination of services.

(2) The Indian Tribe's CFSP must describe the consultation process appropriate to its needs and circumstances used to obtain the active involvement of major actors providing child and family services within the Tribe's area of jurisdiction.

(3) For States and Indian Tribes, the consultation process must involve:

(i) All appropriate offices and agencies within the State agency or within the Indian Tribal service delivery system (e.g., child protective services (CPS), foster care and adoption, the social services block grant, reunification services, independent living, and other services to youth;)

(ii) In a State-supervised, county-administered State, county social services and/or child welfare directors or representatives of the county social services/child welfare administrators' association;

(iii) A wide array of State, local, Tribal, and community-based agencies and organizations, both public and private nonprofit with experience in administering programs of services for infants, children, youth, adolescents, and families, including family preservation and family support services;

(iv) Parents, including birth and adoptive parents, foster parents, families with a member with a disability, children both in and outside the child welfare system, and consumers of services from diverse groups;

(v) For States, representatives of Indian Tribes within the State;

(vi) For States, representatives of local government (e.g., counties, cities, and other communities, neighborhoods, or areas where needs for services are great;)

(vii) Representatives of professional and advocacy organizations (including, for example foundations and national resource centers with expertise to assist States and Indian Tribes to design, expand, and improve the delivery of services); individual practitioners working with children and families; the courts; representatives or other States or Indian Tribes with experience in administering family preservation and family support services; and academicians, especially those assisting the child and family service agency with management information systems, training curricula, and evaluations;

(viii) Representatives of State and local agencies administering Federal and federally assisted programs which may include: Head Start; the local education agency (school-linked social services, adult education and literacy programs, Part H programs); developmental disabilities; nutrition services (Food Stamps, Special Supplemental Food Program for Women, Infants and Children (WIC)); Title IV-A; runaway youth, youth gang, juvenile justice programs and youth residential and training institutions; child care and development block grant (CCDBG) and respite care programs; domestic and

community violence prevention and services programs; housing programs; the health agency (substance abuse, Healthy Start, maternal and child health, Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), mental health, and public health nursing); law enforcement; Children's Trust Funds; Community-Based Family Resource Programs, and new Federal initiatives such as the Empowerment Zones and Enterprise Communities Program; and

(ix) Administrators, supervisors and front line workers (direct service providers) of the State child and family services agency.

(4) The CFSP must describe the ongoing consultation process that each grantee will use to ensure the continued involvement of a wide range of major actors in meeting the goals and objectives over the five-year operational period of the plan and developing the Annual Progress and Services Report.

(m) *Services coordination.* (1) States must include in the ongoing coordination process representatives of the full range of child and family services provided by the State agency as well as other service delivery systems providing social, health, education, and economic services (including mental health, substance abuse, developmental disabilities, and housing) to improve access and deliver a range of services to children and their families.

(2) The State's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other Federal or federally assisted programs serving the same populations to achieve the goals and objectives in the plan. The description must include the participants in the process and examples of how the process led or will lead to additional coordination of services (e.g., integrated service models, improved accessibility, use of a consolidated application or intake form, inter-disciplinary training, coordinated case management for several programs, pooled resources through blended financing, shared information across services providers and compatible and linked automated information systems, co-location of several services or programs.)

(3) The Indian Tribe must include in the coordination process representatives of other Federal or federally assisted child and family services or related programs. The Indian Tribe's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other Federal or federally assisted programs serving the same populations to achieve the goals and objectives in the plan. The descriptions must include the participants in the process and any examples of how the process led or will lead to additional coordination of services.

(n) *Services.* (1) The State's CFSP must describe the publicly funded child and family services continuum: child welfare services (including child abuse and neglect prevention, intervention, and treatment services; and foster care); family preservation services; family support services; and services to support reunification, adoption, kinship care, independent living, or other permanent living arrangements.

(2) The Indian Tribe's CFSP must describe the child welfare services (including child abuse and neglect prevention, intervention, treatment services and foster care) and/or the family support and family preservation services to be provided.

(3) For each service described, the CFSP must include the following information, or it must be listed on the CFS–101, Part II:

(i) The population(s) to be served;

(ii) The geographic area(s) where the services will be available;

(iii) The estimated number of individuals and/or families to be served;

(iv) The estimated expenditures for these services from Federal, State, local, and donated sources, including title IV-B, subparts 1 and 2, the CAPTA program referenced in paragraph (a) of this section, and the independent living program.

(o) *Family preservation and family support services and linkages to other social and health services.* (1) The State's CFSP must explain how the funds under title IV-B, subpart 2 of the Act, will be used to develop or expand family support and family preservation

services; how the family support and family preservation services relate to existing family support and family preservation services; and how these family support and preservation services will be linked to other services in the child and family services continuum.

(2) The State's CFSP must explain whether and/or how funds under the CAPTA and independent living programs are coordinated with and integrated into the child and family services continuum described in the plan.

(3) The State's CFSP must describe the existing or current linkages and the coordination of services between the services in the child and family services continuum and the services in other public services systems (e.g., health, education, housing, substance abuse, the courts), and other Federal and non-federally funded public and nonprofit private programs (e.g., Children's Trust Funds, Community-Based Family Resource Programs, private foundations.)

(p) *Services in relation to service principles*. The CFSP must describe how the child and family services to be provided are designed to assure the safety and protection of children as well as the preservation and support of families, and how they are or will be designed to be consistent with the other service principles in 45 CFR 1355.25.

(q) *Services in relation to permanency planning*. For States administering both title IV-B programs (subparts 1 and 2), the CFSP must explain how these services will help meet the permanency provisions for children and families in sections 422(b)(9) and 471 of the Act (e.g., preplacement preventive services, reunification services, independent living services.) The CFSP must describe the arrangements, jointly developed with the Indian Tribes within its borders, made for the provision of the child welfare services and protections in section 422(b)(9) to Indian children under both State and Tribal jurisdiction.

(r) *Decision-making process: selection of family support programs for funding*. The State's CFSP must include an explanation of how agencies and organizations were selected for funding to provide family support services and how these agencies and organizations meet the requirement that family support services be community-based.

(s) *Significant portion of funds used for family support and family preservation services*. With each fiscal year's budget request, each State must indicate the specific percentage of family preservation and family support funds (title IV-B, subpart 2) that the State will expend for community-based family support and for family preservation services, and the rationale for the decision. The State must have an especially strong rationale if the request for either percentage is below 25 percent. It must also include an explanation of how this distribution was reached and why it meets the requirements that a ''significant portion'' of the service funds must be spent for each service. Examples of important considerations might include the nature of the planning efforts that led to the decision, the level of existing State effort in each area, and the resulting need for new or expanded services.

(t) *Staff training, technical assistance, and evaluation*. (1) The State's CFSP must include a staff development and training plan in support of the goals and objectives in the CFSP which addresses both of the title IV-B programs covered by the plan. This training plan also must be combined with the training plan under title IV-E as required by 45 CFR 1356.60(b)(2). Training must be an on-going activity and must include content from various disciplines and knowledge bases relevant to child and family services policies, programs and practices. Training content must also support the cross-system coordination consultation basic to the development of the CFSP.

(2) The State's CFSP must describe the technical assistance activities that will be undertaken in support of the goals and objectives in the plan.

(3) The State's CFSP must describe any evaluation and research activities underway or planned with which the State agency is involved or participating and which are related to the goals and objectives in the plan.

(u) *Quality assurance*. The State must include in the CFSP a description of the quality assurance system it will use to regularly assess the quality of

services under the CFSP and assure that there will be measures to address identified problems.

(v) *Distribution of the CFSP and the annual progress and services report.* The CFSP must include a description of how the State and the Indian Tribe will make available to interested parties the CFSP and the Annual Progress and Services Report. (See 45 CFR 1355.21(c) and 45 CFR 1357.16(d)). State agencies and Indian Tribal organizations within the State must exchange copies of their CFSPs and their annual services reports.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0047. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[61 FR 58656, Nov. 18, 1996, as amended at 66 FR 58677, Nov. 23, 2001]

§ 1357.16 Annual progress and services reports.

(a) *Annual progress and services reports.* Annually, each State and each Indian Tribe must conduct an interim review of the progress made in the previous year toward accomplishing the goals and objectives in the plan, based on updated information. In developing paragraphs (a)(2) through (a)(4) of this section, the State and the Indian Tribe must involve the agencies, organizations, and individuals who are a part of the on-going CFSP-related consultation and coordination process. On the basis of this review, each State and Indian Tribe must prepare and submit to ACF, and make available to the public, an Annual Progress and Services Report which must include the following—

(1) A report on the specific accomplishments and progress made in the past fiscal year toward meeting each goal and objective, including improved outcomes for children and families, and a more comprehensive, coordinated, effective child and family services continuum;

(2) Any revisions in the statement of goals and objectives, or to the training plan, if necessary, to reflect changed circumstances;

(3) For Indian Tribes, a description of the child welfare and/or family preservation and family support services to be provided in the upcoming fiscal year highlighting any changes in services or program design and including the information required in 45 CFR 1357.15(n);

(4) For States, a description of the child protective, child welfare, family preservation, family support, and independent living services to be provided in the upcoming fiscal year highlighting any additions or changes in services or program design and including the information required in 45 CFR 1357.15(n);

(5) Information on activities in the areas of training, technical assistance, research, evaluation, or management information systems that will be carried out in the upcoming fiscal year in support of the goals and objectives in the plan;

(6) For States only, the information required to meet the maintenance of effort (non-supplantation) requirement in section 432(a) (7) and (8) of the Act;

(7) For States and eligible Indian Tribes phasing in requirements for a consolidated CFSP, information on activities and progress directed toward a consolidated plan by June 30, 1996 or 1997. The report must include information that demonstrates States' and eligible Indian Tribes' progress toward the consolidation of a CFSP, including activities that have been accomplished and still need to be accomplished; and

(8) Any other information the State or the Indian Tribe wishes to include.

(b) *Submittal of the annual progress and services report and CFS–101.* (1) The State and the Indian Tribe must send the Annual Progress and Services Report and the CFS–101 to the appropriate ACF Regional Office no later than June 30 of the year prior to the fiscal year in which the services will be provided (e.g., the report submitted and made public by June 30, 1996 will describe the services to be provided in FY 1997. The report covering FY 1998 services must be submitted by June 30, 1997.)

(2) In order for States and eligible Indian Tribes to receive title IV-B, subparts 1 and 2 allocations a CFS–101 must be submitted for each fiscal year.

(3) States and Indian Tribes which have consolidated the requirements for title IV-B, subparts 1 and 2, must submit the CFS–101 to the appropriate ACF Regional Office no later than June 30 of the year prior to the fiscal year in which the services will be provided (e.g., for FY 1997 allocations, the CFS–101 must be submitted by June 30, 1996; for FY 1998 allocations, the CFS–101 must be submitted by June 30, 1997.)

(4) States and eligible Indian Tribes choosing to phase-in the requirements for a consolidated CFSP must:

(i) Submit by June 30, 1996 a CFS–101 for title IV-B, subpart 1 for FY 1996 allocations; a CFS–101 for title IV-B, subpart 2 for FY 1997 allocations; and, if a State or eligible Indian Tribe chooses, a CFS–101 for subpart 1 FY 1997 allocations.

(ii) Submit by June 30, 1997 a CFS–101 for title IV-B, subpart 1 for FY 1997 allocations, if not previously submitted by June 30, 1996; and a CFS–101 for FY 1998 for subparts 1 and 2 allocations.

(c) *Annual progress and services reports on FY 1994 family support and family preservation services.* Each State and Indian Tribe that used FY 1994 funds under title IV-B, subpart 2, for services must describe in the CFSP what services were provided, the population(s) served, and the geographic areas where services were available. The CFSP also must include the amount of FY 1994 funds used for planning, for family preservation services, for family support services, and a brief statement on how these services met the service priorities of the State or the Indian Tribe.

(d) *Availability of the annual progress and services report.* The State and the Indian Tribe must make the Annual Progress and Services Report available to the public including the agencies, organizations, and individuals with which the State or the Indian Tribe is coordinating services or consulting and to other interested members of the public. Each State and eligible Indian Tribe within the State must exchange copies of their Annual Progress and Services Reports.

(e) *FY 1999 Final Review.* In FY 1999, each State and eligible Indian Tribe must conduct a final review of progress toward accomplishing the goals and objectives in the plan. On the basis of the final review, it must—

(1) Prepare a final report on the progress made toward accomplishing the goals and objectives; and

(2) Send the final report to the ACF Regional Office and make it available to the public.

(f) *FY 2000 Five-Year State Plan.* Based on the FY 1999 final review and final Annual Progress and Services Report, and in consultation with a broad range of agencies, organizations, and individuals, the States and eligible Indian Tribes must develop a new five-year CFSP following the requirements of 45 CFR 1357.15.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0047. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[61 FR 58659, Nov. 18, 1996, as amended at 66 FR 58677, Nov. 23, 2001]

§ 1357.20 Child abuse and neglect programs.

The State agency must assure that, with regard to any child abuse and neglect programs or projects funded under title IV-B of the Act, the requirements of section 106(b) (1) and (2) of the Child Abuse Prevention and Treatment Act, as amended, are met. These requirements relate to the State plan and assurances required for the Child Abuse and Neglect State Grant Program.

[61 FR 58660, Nov. 18, 1996]

§ 1357.25 Requirements for eligibility for additional payments under section 427.

(a) For any fiscal year after FY 1979 in which a sum in excess of $141,000,000 is appropriated under Section 420 of the Act, a State is not eligible for payment of an amount greater than the amount for which it would be eligible if the appropriation were equal to $141,000,000 unless the State complies with the requirements of Section 427(a) of the Act.

(b) In meeting the requirements for the inventory and statewide information system in sections 427 (a)(1) and (2)(A) of the Act, the inventory and

statewide information system must include those children under the placement and care responsibility of the State title IV-B or IV-E agencies. At the State's discretion, other children may be included. The six month requirement in section 427(a)(1) and the twelve month requirement in section 427(a)(2)(A) of the Act must also be met.

(The requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0138)

(c) If, for each of any two consecutive fiscal years after FY 1979, there is appropriated under Section 420 of the Act a sum equal to or greater than $266,000,000, a State's allotment amount for any fiscal year after two such consecutive fiscal years shall be reduced to an amount equal to what the allotment amount would have been for FY 1979 unless the State has implemented the requirements of section 427(b) of the Act.

(d) In meeting the requirements of section 427(a)(2)(B) of the Act for dispositional hearings the State agency must meet the requirements of section 475(5)(C) of the Act and 45 CFR 1356.21(e).

(e) A State may appeal a final decision by ACYF that the State has not met the requirements of this section and section 427 of the Act to the Department Grant Appeals Board under the provisions of 45 CFR part 16.

[48 FR 23118, May 23, 1983]

§ 1357.30 State fiscal requirements (title IV-B, subpart 1, child welfare services).

(a) *Scope*. The requirements of this section shall apply to all funds allotted or reallotted to States under title IV-B, subpart 1.

(b) *Allotments*. Allotments for each State shall be determined in accordance with section 421 of the Act.

(c) *Payments*. Payments to States shall be made in accordance with section 423 of the Act.

(d) *Enforcement and termination*. In the event of a State's failure to comply with the terms of the grant under title IV-B, subpart 1, the provisions of 45 CFR 92.43 and 92.44 will apply.

(e) *Matching or cost-sharing*. Federal financial participation is available only if costs are incurred in implementing sections 422, 423, and 425 of the Act in accordance with the grants administration requirements of 45 CFR part 92 with the following conditions—

(1) The State's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(2) The total of Federal funds used for the following purposes under title IV-B, subpart 1 may not exceed an amount equal to the FY 1979 Federal payment under title IV-B:

(i) Child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, plus;

(ii) Foster care maintenance payments, plus;

(iii) Adoption assistance payments.

(3) Notwithstanding paragraph (e)(2) of this section, State expenditures required to match the title IV-B, subpart 1 allotment may include foster care maintenance expenditures in any amount.

(f) *Prohibition against purchase or construction of facilities*. Funds awarded under title IV-B may not be used for the purchase or construction of facilities.

(g) *Maintenance of effort*. (1) A State may not receive an amount of Federal funds under title IV-B in excess of the Federal payment made in FY 1979 under title IV-B unless the State's total expenditure of State and local appropriated funds for child welfare services under title IV-B of the Act is equal to or greater than the total of the State's expenditure from State and local appropriated funds used for similar covered services and programs under title IV-B in FY 1979.

(2) In computing a State's level of expenditures under this section in FY 1979 and any subsequent fiscal year, the following costs shall not be included—

(i) Expenditures and costs for child day care necessary to support the employment of a parent or other relative;

(ii) Foster care maintenance payments; and

(iii) Adoption assistance payments.

(3) A State applying for an amount of Federal funds under title IV-B greater

than the amount of title IV-B, subpart 1 funds received by that State in FY 1979 shall certify:

(i) The amount of their expenditure in FY 1979 for child welfare services as described in paragraphs (g) (1) and (2) of this section, and

(ii) The amount of State and local funds that have been appropriated and are available for child welfare services as described in paragraphs (g) (1) and (2) of this section for the fiscal year for which application for funds is being made. Records verifying the required certification shall be maintained by the State and made available to the Secretary as necessary to confirm compliance with this section.

(h) *Reallotment*. (1) When a State certifies to the Commissioner that funds available to that State under its title IV-B, subpart 1 allotment will not be required, those funds shall be available for reallotment to other States.

(2) When a State, after receiving notice from the Commissioner of the availability of funds, does not certify by a date fixed by the Commissioner that it will be able to expend during the period stated in paragraph (i) of this section all of the funds available to it under its title IV-B, subpart 1 allotment, those funds shall be available for reallotment to other States.

(3) The Commissioner may reallot available funds to another State when it is determined that—

(i) The requesting State's plan requires funds in excess of the State's original allotment; and

(ii) the State will be able to expend the additional funds during the period stated in paragraph (i) of this section.

(i) *Time limit on expenditures*. Funds under title IV-B, subpart 1, must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

[61 FR 58660, Nov. 18, 1996]

§ 1357.32 State fiscal requirements (title IV-B, subpart 2, family preservation and family support services).

(a) *Scope*. The requirements of this section apply to all funds allocated to States under title IV-B, subpart 2, of the Act.

(b) *Allotments*. The annual allotment to each State shall be made in accordance with section 433 of the Act.

(c) *Payments*. Payments to each State will be made in accordance with section 434 of the Act.

(d) *Matching or cost sharing*. Funds used to provide services in FY 1994 and in subsequent years will be federally reimbursed at 75 percent of allowable expenditures. (This is the same Federal financial participation rate as title IV-B, subpart 1.) Federal funds, however, will not exceed the amount of the State's allotment.

(1) The State's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(2) Except as provided by Federal statute, other Federal funds may not be used to meet the matching requirement.

(e) *Prohibition against purchase or construction of facilities*. Funds awarded under title IV-B may not be used for the purchase or construction of facilities.

(f) *Maintenance of effort*. States may not use the Federal funds under title IV-B, subpart 2, to supplant Federal or non-Federal funds for existing family preservation and family support services. For the purpose of implementing this requirement, ''non-Federal funds'' means State funds. ACF will collect information annually from each State on expenditures for family support and family preservation using the State fiscal year 1992 as the base year.

(g) *Time limits on expenditures*. Funds must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

(h) *Administrative costs*. (1) States claiming Federal financial participation for services provided in FY 1994 and subsequent years may not claim more than 10 percent of expenditures under subpart 2 for administrative costs. There is no limit on the percentage of administrative costs which may be reported as State match.

(2) For the purposes of title IV-B, subpart 2, ''administrative costs'' are costs of auxiliary functions as identified through as agency's accounting system which are:

(i) Allocable (in accordance with the agency's approved cost allocation plan)

to the title IV-B, subpart 2 program cost centers;

(ii) necessary to sustain the direct effort involved in administering the State plan for title IV-B, subpart 2, or an activity providing service to the program: and

(iii) centralized in the grantee department or in some other agency, and may include but are not limited to the following: Procurement; payroll; personnel functions; management, maintenance and operation of space and property; data processing and computer services; accounting; budgeting; auditing.

(3) Program costs are costs, other than administrative costs, incurred in connection with developing and implementing the CFSP (e.g., delivery of services, planning, consultation, coordination, training, quality assurance measures, data collection, evaluations, supervision).

[61 FR 58661, Nov. 18, 1996]

§ 1357.40 Direct payments to Indian Tribal Organizations (title IV-B, subpart 1, child welfare services).

(a) *Who may apply for direct funding?* Any Indian Tribal Organization (ITO) that meets the definitions in section 428(c) of the Act, or any consortium or other group of eligible Tribal organizations authorized by the membership of the Tribes to act for them is eligible to apply for direct funding if the ITO, consortium or group has a plan for child welfare services that is jointly developed by the ITO and the Department.

(b) *Title IV-B Child and Family Services Plan (CFSP).* (1) In order to receive funds under title IV-B, subpart 1, beginning in FY 1995, the Indian Tribe or Tribal organization must have in effect an approved five-year child and family services plan that meets the applicable requirements of § 1357.15 of this part.

(2) The Indian Tribe or Tribal organization must also comply with section 422(b)(1–8) of the Act; 45 CFR part 1355 (except that the requirements in § 1355.30 for a single Tribal agency and Governor's review of the CFSP do not apply); and other applicable requirements of §§ 1357.10 and 1357.16.

(c) *Information related to the requirements of Section 422(b)(9) of the Act.* The following information must be submitted with the assurances required to be eligible for title IV-B, subpart 1 funds:

(1) A description of the arrangements, jointly developed with the State, made for the provision of the child welfare services and protections in section 422(b)(9) to Indian children under both State and Tribal jurisdiction;

(2) A statement of the legal responsibility, if any, for children who are in foster care on the reservation and those awaiting adoption;

(3) A description of Tribal jurisdiction in civil and criminal matters, existence or nonexistence of a Tribal court and the type of court and codes, if any;

(4) An identification of the standards for foster family homes and institutional care and day care;

(5) The Indian Tribal organization's political subdivisions, if any;

(6) Whether the Tribal organization is controlled, sanctioned or chartered by the governing body of Indians to be served and if so, documentation of that fact;

(7) Any limitations on authorities granted to the Indian Tribal organizations; and

(8) The Tribal resolution(s) authorizing an application for a direct title IV-B, subpart 1 grant under this Part.

(d) *Grants: General.* (1) Grants may be made to eligible Indian Tribal organizations in a State which has a jointly developed child and family services plan approved and in effect.

(2) Federal funds made available for a direct grant to an eligible ITO shall be paid by the Department, from the title IV-B allotment for the State in which the ITO is located. Should a direct grant be approved, the Department shall promptly notify the State(s) affected.

(3) If an eligible ITO includes population from more than one State, a proportionate amount of the grant will be paid from each State's allotment.

(4) The receipt of title IV-B funds must be in addition to and not a substitute for funds otherwise previously expended by the ITO for child welfare services.

(5) The following fiscal and administrative requirements apply to Indian Tribal grants under this section:

(i) *Enforcement and termination*. In the event of an Indian Tribe's failure to comply with the terms of the grant under title IV-B, subpart 1, the provisions of 45 CFR 92.43 and 92.44 will apply.

(ii) *Matching or cost-sharing*. Federal financial participation is available only if costs are incurred in implementing sections 422, 423, and 425 of the Act in accordance with the grants administration requirements of 45 CFR part 92 with the following conditions—

(A) The ITO's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(B) The total of Federal funds used for the following purposes under title IV-B, subpart 1 may not exceed an amount equal to the FY 1979 Federal payment under title IV-B:

(*1*) Child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, plus;

(*2*) Foster care maintenance payments, plus;

(*3*) Adoption assistance payments.

(C) Notwithstanding paragraph (d)(5)(ii)(B) of this section, Tribal expenditures required to match the title IV-B, subpart 1 allotment may include foster care maintenance expenditures in any amount.

(iii) *Prohibition against purchase or construction of facilities*. Funds awarded under title IV-B may not be used for the purchase or construction of facilities.

(iv) *Time limit on expenditures*. Funds under title IV-B, subpart 1, must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

(6) In order to determine the amount of Federal funds available for a direct grant to an eligible ITO, the Department shall first divide the State's title IV-B allotment by the number of children in the State, then multiply the resulting amount by a multiplication factor determined by the Secretary, and then multiply that amount by the number of Indian children in the ITO population. The multiplication factor will be set at a level designed to achieve the purposes of the act and revised as appropriate.

[61 FR 58661, Nov. 18, 1996, as amended at 65 FR 4093, Jan. 25, 2000]

§ 1357.50 Direct payments to Indian Tribal organizations (title IV-B, subpart 2, family preservation and support services).

(a) *Definitions*.

Alaska Native Organization means any organized group of Alaska Natives eligible to operate a Federal program under the Indian Self-Determination Act (Pub. L. 93–638) or such group's designee as defined in section 482(i)(7)(A) of the Act.

Indian Tribe means any Tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and for which a reservation (including Indian reservations, public domain Indian allotments, and former Indian reservations in Oklahoma) exists.

Tribal organization means the recognized governing body of the Indian Tribe.

(b) *Eligibility for funds: FY 1994*. (1) Section 432(b)(2) of the Act provides that the Secretary may not approve a plan of an Indian Tribe whose FY 1995 allotment under subpart 2 would be less than $10,000. Therefore, only those Indian Tribes whose FY 1995 allotment is $10,000 or more are eligible to receive funds beginning in FY 1994.

(2) ACF will pay any amount to which an Indian Tribe is entitled to the Tribal organization of the Indian Tribe.

(c) *Eligibility for funds: FY 1995*. In order to receive funds under title IV-B, subpart 2, in FY 1995, an Indian Tribe that is eligible for planning funds in FY 1994 must submit a Child and Family Services Plan that meets the applicable requirements in section 1357.15 of this Part.

(d) *Eligibility for funds: FY 1996 through FY 1998*. (1) ACF will make grants to additional Indian Tribes in Fys 1996 through 1998 in the event that there are increased appropriations.

(2) Allotments will be calculated in Fys 1996, 1997, and 1998 as required in

section 433 of the Act. Those Indian Tribes in each year whose allotment is at least $10,000 will be notified of their eligibility to apply.

(3) In order to receive funds, additional Indian Tribes which become eligible for grants in FY 1996, 1997, and 1998 must submit either a five year Child and Family Services Plan (CFSP) that meets the applicable requirements of 45 CFR 1357.15 or an application for planning funds by June 30 of the year in which they first become eligible for grants. Those Indian Tribes which submitted an application for planning funds in their first year of funding must submit a five year CFSP that meets the applicable requirements of 45 CFR 1357.15 by June 30 of the second year they receive funding. For example, in order to receive funds, an Indian Tribe which becomes eligible to receive funding beginning in FY 1996 must submit either an application for planning funds or a CFSP by June 30, 1996. If the Indian Tribe submitted an application for planning funds in FY 1996, they must submit a CFSP by June 30, 1997.

(4) All Indian Tribes will be Federally reimbursed at 75 percent of allowable expenditures. Federal funds without match are available in the first year of receipt of funds for additional Indian Tribes meeting the following criteria:

(i) Submittal of an application for planning funds, and not a five year CFSP;

(ii) Receipt of an initial award in FY 1996 or 1997 or 1998; and

(iii) A proposal to spend the entire grant in the first year on planning.

(e) *Allotments.* Allotments to Indian Tribes are computed based on section 433 of the Act and are based on a ratio of the number of children in each Indian Tribe with an approved plan compared to the number of children in all Indian Tribes with approved plans, based on the most current and reliable data available.

(f) *Exemptions of requirements.* (1) ACF has exempted Indian Tribes from three statutory requirements:

(i) The limitation on administrative costs to 10 percent of total Federal and Tribal funds—Indian Tribes may use the indirect cost rate agreement in effect for the Tribe;

(ii) The requirement for maintenance of effort that funds under this program may not be used to supplant other Federal and non-Federal funds; and

(iii) The requirement that a significant portion of funds must be used for both family support and family preservation services.

(2) Specific exemptions from other statutory requirements may be requested by the Tribe in the course of its joint planning. Such a request must contain a compelling reason.

(g) *Matching requirement.* (1) Funds used to provide services in FY 1994 and in subsequent years will be federally reimbursed at 75 percent of allowable expenditures. (This is the same Federal financial participation rate as title IV-B, subpart 1.) The Indian Tribe's match must be at least 25 percent of the total project costs or one-third of the Federal share. Federal funds, however, will not exceed the amount of the Indian Tribe's allotment.

(2) The Indian Tribe's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(3) Indian Tribes, by statute, may use the following three Federal sources of funds as matching funds: Indian Child Welfare Act funds, Indian Self-Determination and Education Assistance Act funds, and Community Development Block Grant funds.

(h) *Time limits on expenditures.* An Indian Tribe must expend all funds by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

[61 FR 58662, Nov. 18, 1996]

SUBCHAPTER H—FAMILY VIOLENCE PREVENTION AND SERVICES PROGRAMS

PART 1370—FAMILY VIOLENCE PREVENTION AND SERVICES PROGRAMS

Sec.
1370.1 Purpose.
1370.2 State and Indian tribal grants.
1370.3 Information and technical assistance center grants.
1370.4 State domestic violence coalition grants.
1370.5 Public information campaign grants.

AUTHORITY: 42 U.S.C. 10401 *et seq.*

SOURCE: 61 FR 6793, Feb. 22, 1996, unless otherwise noted.

§ 1370.1 Purpose.

This part addresses sections 303, 308, 311, and 314 of the Family Violence Prevention and Services Act (the Act), as amended (42 U.S.C. 10401 et seq.). The Act authorizes the Secretary to implement programs for the purposes of increasing public awareness about and preventing family violence; providing immediate shelter and related assistance for victims of family violence and their dependents; and providing for technical assistance and training relating to family violence programs to States, tribes, local public agencies (including law enforcement agencies, courts, legal, social service, and health care professionals), non-profit private organizations and other persons seeking such assistance. All programs authorized under the Act are funded subject to the availability of funds.

§ 1370.2 State and Indian tribal grants.

Each grantee awarded funds under section 303 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on statutory requirements, other applicable regulations, and any required financial and program reports, is published in the FEDERAL REGISTER.

§ 1370.3 Information and technical assistance center grants.

Each grantee awarded funds under section 308 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on statutory requirements, other applicable regulations, and any required financial and program reports, is published in the FEDERAL REGISTER.

§ 1370.4 State domestic violence coalition grants.

Each grantee awarded funds under section 311 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on statutory requirements, other applicable regulations, and any required financial and program reports, is published in the FEDERAL REGISTER.

§ 1370.5 Public information campaign grants.

Each grantee awarded funds under section 314 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on statutory requirements, other applicable regulations, and any required financial and program reports, is published in the FEDERAL REGISTER.

SUBCHAPTER I—THE ADMINISTRATION ON DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DISABILITIES PROGRAM

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

Sec.
1385.1 General.
1385.2 Purpose of the regulations.
1385.3 Definitions.
1385.4 Rights of individuals with developmental disabilities.
1385.5 [Reserved]
1385.6 Employment of individuals with disabilities.
1385.7 [Reserved]
1385.8 Formula for determining allotments.
1385.9 Grants administration requirements.

AUTHORITY: 42 U.S.C. 6000 et. seq.

SOURCE: 49 FR 11777, Mar. 27, 1984, unless otherwise noted.

§ 1385.1 General.

Except as specified in § 1385.4, the requirements in this part are applicable to the following programs and projects:

(a) Federal Assistance to State Developmental Disabilities Councils;

(b) Protection and Advocacy of the Rights of Individuals with Developmental Disabilities;

(c)Projects of National Significance;and

(d) University Affiliated Programs (UAPs).

[52 FR 44845, Nov. 20, 1987, as amended at 54 FR 47984, Nov. 20, 1989; 61 FR 51153, Sept. 30, 1996]

§ 1385.2 Purpose of the regulations.

These regulations implement the Developmental Disabilities Assistance and Bill of Rights Act as amended (42 U.S.C. 6000, et seq.).

§ 1385.3 Definitions.

In addition to the definitions in section 102 of the Act (42 U.S.C. 6001), the following definitions apply:

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

Act means the Developmental Disabilities Assistance and Bill of Rights Act, as amended (42 U.S.C. 6000 et. seq).

ADD means the Administration on Developmental Disabilities, within the Administration for Children and Families.

Commissioner means the Commissioner of the Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services or his or her designee.

Department means the U.S. Department of Health and Human Services (HHS).

Developmental disability shall have the same meaning in 45 CFR parts 1385, 1386, 1387, and 1388 as it does in the Developmental Disabilities Act, section 102(8), which reads ''the term 'developmental disability' means a severe, chronic disability of an individual 5 years of age or older that—

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the individual attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity—

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; and

(vii) Economic self-sufficiency.

(5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated, except that such term, when applied to infants and young children means individual from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.'' Such determination shall be made on a case-by-case basis and any State eligibility

definition of developmental disability or policy statement which is more restrictive than that of the Act does not apply as the Act takes precedence.

Fiscal year means the Federal fiscal year unless otherwise specified.

Governor means the chief executive officer of the State or Territory, or his or her designee who has been formally designated to act for the Governor in carrying out the requirements of the Act and these regulations.

OHDS means the Office of Human Developmental Services within the Department of Health and Human Services.

Protection and Advocacy Agency means the organization or agency designated in a State to administer and operate a protection and advocacy (P&A) system for individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act, as amended (A P&A System under part C is authorized to investigate incidents of abuse and neglect regarding persons with developmental disabilities; pursue administrative, legal and appropriate remedies or approaches to ensure protection of, and advocacy for, the rights of such individuals; and provide information on and referral to programs and services addressing the needs of such individuals (section 142(a)(2)(A).); and advocacy programs under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (PAIMI Act), as amended, (42 U.S.C. 10801 *et seq.*) the Protection and Advocacy of Individual Rights Program (PAIR), (29 U.S.C. 794(e); and the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended (29 U.S.C. 2212(e)). The Protection and Advocacy agency also may be designated by the Governor of a State to conduct the Client Assistance Program (CAP) authorized by section 112 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 732). Finally, the Protection and Advocacy agency may provide advocacy services under other Federal programs.

Secretary means the Secretary of the Department of Health and Human Services.

[49 FR 11777, Mar. 27, 1984, as amended at 52 FR 44845, Nov. 20, 1987; 54 FR 47984, Nov. 20, 1989; 61 FR 51153, Sept. 30, 1996]

§ 1385.4 Rights of individuals with developmental disabilities.

(a) Section 110 of the Act, Rights of Individuals with Developmental Disabilities (42 U.S.C. 6009) is applicable to the programs authorized under the Act, except for the Protection and Advocacy System.

(b) In order to comply with section 122(c)(5)(G) of the Act (42 U.S.C. 6022(c)(5)(G)), regarding the rights of individuals with developmental disabilities, the State must meet the requirements of 45 CFR 1386.30(f)(2).

(c) Applications from university affiliated programs or for projects of national significance grants must also contain an assurance that the human rights of individuals assisted by these programs will be protected consistent with section 110 (see section 153(c)(3) and section 162(c)(3) of the Act).

[61 FR 51154, Sept. 30, 1996]

§ 1385.5 [Reserved]

§ 1385.6 Employment of individuals with disabilities.

Each grantee which receives Federal funding under the Act must meet the requirements of section 109 of the Act (42 U.S.C. 6008) regarding affirmative action. The grantee must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as the following: Advertising, recruitment, employment, rates of pay or other forms of compensation, selection for training, including apprenticeship, upgrading, demotion or transfer, and layoff or termination. This obligation is in addition to the requirements of 45 CFR part 84, subpart B, prohibiting discrimination in employment practices on the basis of disability in programs receiving assistance from the Department. Recipients of funds under the Act also may be bound by the provisions of the Americans with Disabilities Act (Pub. L. 101–336, 42 U.S.C. 12101 *et seq.*) with respect to employment of individuals with disabilities. Failure to comply with section 109 of the Act may result in loss of Federal funds under the Act. If a compliance action is taken, the State will

be given reasonable notice and an opportunity for a hearing as provided in Subpart D of 45 CFR part 1386.

[61 FR 51154, Sept. 30, 1996]

§ 1385.7 [Reserved]

§ 1385.8 Formula for determining allotments.

The Commissioner will allocate funds appropriated under the Act for the State Developmental Disabilities Councils and the Protection and Advocacy Systems on the following basis:

(a) Two-thirds of the amount appropriated are allotted to each State according to the ratio the population of each State bears to the population of the United States. This ratio is weighted by the relative per capita income for each State. The data used to compute allotments are supplied by the U.S. Department of Commerce, for the three most recent consecutive years for which satisfactory data are available.

(b) One-third of the amount appropriated is allotted to each State on the basis of the relative need for services of persons with developmental disabilities. The relative need is determined by the number of persons receiving benefits under the Childhood Disabilities Beneficiary Program (section 202(d)(1)(B)(ii) of the Social Security Act), (42 U.S.C. 402(d)(1)(B)(ii)).

[49 FR 11777, Mar. 27, 1984, as amended at 61 FR 51154, Sept. 30, 1996]

§ 1385.9 Grants administration requirements.

(a) The following parts of title 45 CFR apply to grants funded under parts 1386 and 1388 of this chapter and to grants for Projects of National Significance under section 162 of the Act (42 U.S.C. 6082).

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.
45 CFR Part 46—Protection of Human Subjects.
45 CFR Part 74—Administration of Grants.
45 CFR Part 75—Informal Grant Appeals Procedures.
45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance Through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.
45 CFR Part 81—Practice and Procedure for Hearings Act under part 80 of this title.
45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.
45 CFR Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance.
45 CFR Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.
45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(b) The Departmental Appeals Board also has jurisdiction over appeals by grantees which have received grants under the University Affiliated program or for Projects of National Significance. The scope of the Board's jurisdiction concerning these appeals is described in 45 CFR part 16.

(c) The Departmental Appeals Board also has jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Commissioner with respect to specific expenditures incurred by the States or by contractors or subgrantees of States. This jurisdiction relates to funds provided under the two formula programs—Part B of the Act—Federal Assistance to State Developmental Disabilities Councils and Part C of the Act—Protection and Advocacy of the Rights of Individuals with Developmental Disabilities. Appeals filed by States shall be decided in accordance with 45 CFR part 16.

(d) In making audits and examinations to any books, documents, papers, and transcripts of records of State Developmental Disabilities Councils, the University Affiliated Programs, and the Projects of National Significance grantees and subgrantees, as provided for in 45 CFR part 74 and part 92, the Department will keep information about individual clients confidential to the maximum extent permitted by law and regulations.

(e) (1) The Department or other authorized Federal officials may access client and case eligibility records or other records of the Protection and Advocacy system for audit purposes and for purposes of monitoring system compliance pursuant to section 104(b) of the Act. However, such information

will be limited pursuant to section 142(j) of the Act. No personal identifying information such as name, address, and social security number will be obtained. Only eligibility information will be obtained regarding type and level of disability of individuals being served by the P&A and the nature of the issue concerning which the System represented an individual.

(2) Notwithstanding paragraph (e)(1)of this section, if an audit, monitoring review, evaluation, or other investigation by the Department produces evidence that the system has violated the Act or the regulations, the system will bear the burden of proving its compliance. The system's inability to establish compliance because of the confidentiality of records will not relieve it of this responsibility. The system may elect to obtain a release from all individuals requesting or receiving services at the time of intake or application. The release shall state only information directly related to client and case eligibility will be subject to disclosure to officials of the Department.

[49 FR 11777, Mar. 27, 1984, as amended at 52 FR 44846, Nov. 20, 1987; 54 FR 47984, Nov. 20, 1989; 61 FR 51154, Sept. 30, 1996]

PART 1386—FORMULA GRANT PROGRAMS

Subpart A—Basic Requirements

Sec.
1386.1 General.
1386.2 Obligation of funds.
1386.3 Liquidation of obligations.
1386.4 [Reserved]

Subpart B—State System for Protection and Advocacy of the Rights of Individuals with Developmental Disabilities.

1386.19 Definitions.
1386.20 Designated State Protection and Advocacy agency.
1386.21 Requirements and authority of the Protection and Advocacy System.
1386.22 Access to records, facilities and individuals with developmental disabilities.
1386.23 Periodic reports: Protection and Advocacy System.
1386.24 Non-allowable costs for the Protection and Advocacy System.
1386.25 Allowable litigation costs.

Subpart C—Federal Assistance to State Developmental Disabilities Councils.

1386.30 State plan requirements.
1386.31 State Plan submittal and approval.
1386.32 Periodic reports: Federal assistance to State Developmental Disabilities Councils.
1386.33 Protection of employees' interest.
1386.34 Designated State Agency.
1386.35 Allowable and non-allowable costs for Federal Assistance to State Developmental Disabilities Councils.
1386.36 Final disapproval of the State plan or plan amendments.

Subpart D—Practice and Procedure for Hearing Pertaining to States' Conformity and Compliance with Developmental Disabilities State Plans, Reports and Federal Requirements

GENERAL

1386.80 Definitions.
1386.81 Scope of rules.
1386.82 Records to be public.
1386.83 Use of gender and number.
1386.84 Suspension of rules.
1386.85 Filing and service of papers.

PRELIMINARY MATTERS—NOTICE AND PARTIES

1386.90 Notice of hearing or opportunity for hearing.
1386.91 Time of hearing.
1386.92 Place.
1386.93 Issues at hearing.
1386.94 Request to participate in hearing.

HEARING PROCEDURES

1386.100 Who presides.
1386.101 Authority of presiding officer.
1386.102 Rights of parties.
1386.103 Discovery.
1386.104 Evidentiary purpose.
1386.105 Evidence.
1386.106 Exclusion from hearing for misconduct.
1386.107 Unsponsored written material.
1386.108 Official transcript.
1386.109 Record for decision.

POSTHEARING PROCEDURES, DECISIONS

1386.110 Posthearing briefs.
1386.111 Decisions following hearing.
1386.112 Effective date of decision by the Assistant Secretary.

AUTHORITY: 42 U.S.C. 6000 et. seq.

SOURCE: 49 FR 11779, Mar. 27, 1984, unless otherwise noted.

Subpart A—Basic Requirements

§ 1386.1 General.

All rules under this subpart are applicable to both the State Developmental Disabilities Councils and the Protection and Advocacy Agencies.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51155, Sept. 30, 1996]

§ 1386.2 Obligation of funds.

(a) Funds which the Federal Government allots under this Part during a Federal fiscal year are available for obligation by States for a two year period beginning with the first day of the Federal fiscal year in which the grant is awarded.

(b) (1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment, or when the State Developmental Disabilities Council enters into an Interagency Agreement with an agency of State government for acquisition of personal property or for the performance of work.

(2) A State incurs an obligation for personal services, for services performed by public utilities, for travel or for rental of real or personal property on the date it receives the services, its personnel takes the travel, or it uses the rented property.

(c) (1) The Protection and Advocacy System may elect to treat entry of an appearance in judicial and administrative proceedings on behalf of an individual with a developmental disability as a basis for obligating funds for the litigation costs. The amount of the funds obligated must not exceed a reasonable estimate of the costs, and the way the estimate was calculated must be documented.

(2) For the purpose of this paragraph, *litigation costs* mean expenses for court costs, depositions, expert witness fees, travel in connection with a case and similar costs and costs resulting from litigation in which the agency has represented an individual with developmental disabilities (e.g. monitoring court orders, consent decrees), but not for salaries of employees of the Protection and Advocacy agency. All funds made available for Federal Assistance to State Developmental Disabilities Councils and to the Protection and Advocacy System obligated under this paragraph are subject to the requirement of paragraph (a) of this section. These funds, if reobligated, may be reobligated only within a two year period beginning with the first day of the Federal fiscal year in which the funds were originally awarded.

[49 FR 11779, Mar. 27, 1984, as amended at 54 FR 47985, Nov. 20, 1989; 61 FR 51155, Sept. 30, 1996]

§ 1386.3 Liquidation of obligations.

(a) All obligations incurred pursuant to a grant made under the Act for a specific Federal fiscal year, must be liquidated within two years of the close of the Federal fiscal year in which the grant was awarded.

(b) The Commissioner may waive the requirements in paragraph (a) of this section when State law impedes implementation or the amount of obligated funds to be liquidated is in dispute.

(c) Funds attributable to obligations which are not liquidated in accordance with the provisions of this section revert to the Federal Government.

§ 1386.4 [Reserved]

Subpart B—State System for Protection and Advocacy of the Rights of Individuals with Developmental Disabilities

§ 1386.19 Definitions.

As used in §§ 1386.20, 1386.21, 1386.22 and 1386.25 of this part the following definitions apply:

Abuse means any act or failure to act which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with developmental disabilities, and includes such acts as: Verbal, nonverbal, mental and emotional harassment; rape or sexual assault; striking; the use of excessive force when placing such an individual in bodily restraints; the use of bodily or chemical restraints which is not in compliance with Federal and State

laws and regulations or any other practice which is likely to cause immediate physical or psychological harm or result in long term harm if such practices continue.

Complaint includes, but is not limited to any report or communication, whether formal or informal, written or oral, received by the system including media accounts, newspaper articles, telephone calls (including anonymous calls), from any source alleging abuse or neglect of an individual with a developmental disability.

Designating Official means the Governor or other State official, who is empowered by the Governor or State legislature to designate the State official or public or private agency to be accountable for the proper use of funds by and conduct of the State Protection and Advocacy agency.

Facility includes any setting that provides care, treatment, services and habilitation, even if only ''as needed'' or under a contractual arrangement. Facilities include, but are not limited to the following:

Community living arrangements (e.g., group homes, board and care homes, individual residences and apartments), day programs, juvenile detention centers, hospitals, nursing homes, homeless shelters, jails and prisons.

Full Investigation means access to facilities, clients and records authorized under these regulations, that is necessary for a protection and advocacy (P&A) system to make a determination about whether alleged or suspected instances of abuse and neglect are taking place or have taken place. Full investigations may be conducted independently or in cooperation with other agencies authorized to conduct similar investigations.

Legal Guardian, conservator and legal representative all mean an individual appointed and regularly reviewed by a State court or agency empowered under State law to appoint and review such officers and having authority to make all decisions on behalf of individuals with developmental disabilities. It does not include persons acting only as a representative payee, person acting only to handle financial payments, attorneys or other persons acting on behalf of an individual with developmental disabilities only in individual legal matters, or officials responsible for the provision of treatment or habilitation services to an individual with developmental disabilities or their designees.

Neglect means a negligent act or omission by an individual responsible for providing treatment or habilitation services which caused or may have caused injury or death to an individual with developmental disabilities or which placed an individual with developmental disabilities at risk of injury or death, and includes acts or omissions such as failure to: establish or carry out an appropriate individual program plan or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or health care to an individual with developmental disabilities; provide a safe environment which also includes failure to maintain adequate numbers of trained staff.

Probable cause means a reasonable ground for belief that an individual with developmental disabilities has been, or may be, subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect.

[61 FR 51155, Sept. 30, 1996]

§ 1386.20 Designated State Protection and Advocacy agency.

(a) The designating official must designate the State official or public or private agency to be accountable for proper use of funds and conduct of the Protection and Advocacy agency.

(b) An agency of the State or private agency providing direct services, including guardianship services may not be designated as a Protection and Advocacy agency.

(c) In the event that an entity outside of the State government is designated to carry out the program, the designating official or entity must assign a responsible State official to receive, on behalf of the State, notices of disallowances and compliance actions as the State is accountable for the

proper and appropriate expenditure of Federal funds.

(d) (1) Prior to any redesignation of the agency which administers and operates the State Protection and Advocacy (P&A) System, the designating official must give written notice of the intention to make the redesignation to the agency currently administering and operating the State Protection and Advocacy System by registered or certified mail. The notice must indicate that the proposed redesignation is being made for good cause. The designating official must also publish a public notice of the proposed action. The agency and the public shall have a reasonable period of time, but not less than 45 days to respond to the notice.

(2) The public notice must include:

(i) The Federal requirements for the Protection and Advocacy system for individuals with developmental disabilities (section 142 of the Act); and, where applicable, the requirements of other Federal advocacy programs administered by the State Protection and Advocacy System.

(ii) The goals and function of the State's Protection and Advocacy System including the current Statement of Objectives and Priorities;

(iii) The name and address of the agency currently designated to administer and operate the Protection and Advocacy system; and an indication of whether the agency also operates other Federal advocacy programs;

(iv) A description of the current Protection and Advocacy agency and the system it administers and operates including, as applicable, descriptions of other Federal advocacy programs it operates;

(v) A clear and detailed explanation of the good cause for the proposed redesignation;

(vi) A statement suggesting that interested persons may wish to write the current State Protection and Advocacy agency at the address provided in paragraph (d)(2)(iii) of this section to obtain a copy of its response to the notice required by paragraph (d)(1)of this section. Copies shall be provided in accessible formats to individuals with disabilities upon request;

(vii) The name of the new agency proposed to administer and operate the Protection and Advocacy System under the Developmental Disabilities program. This agency will be eligible to administer other Federal advocacy programs;

(viii) A description of the system which the new agency would administer and operate, including a description of all other Federal advocacy programs the agency would operate;

(ix) The timetable for assumption of operations by the new agency and the estimated costs of any transfer and start-up operations; and

(x) A statement of assurance that the proposed new designated State P&A System will continue to serve existing clients and cases of the current P&A system or refer them to other sources of legal advocacy as appropriate, without disruption.

(3) The public notice as required by paragraph (d)(1) of this section, must be in a format accessible to individuals with developmental disabilities or their representatives, e.g., tape, diskette. The designating official must provide for publication of the notice of the proposed redesignation using the State register, State-wide newspapers, public service announcements on radio and television, or any other legally equivalent process. Copies of the notice must be made generally available to individuals with developmental disabilities and mental illness who live in residential facilities through posting or some other means.

(4) After the expiration of the public comment period required in paragraph (d)(1) of this section, the designating official must conduct a public hearing on the redesignation proposal. After consideration of all public and agency comments, the designating official must give notice of the final decision to the currently designated agency and the public through the same means used under paragraph (d)(3) of this section. This notice must include a clear and detailed explanation of the good cause finding. If the notice to the currently designated agency states that the redesignation will take place, it also must inform the agency of its right to appeal this decision to the Assistant Secretary, Administration for Children and Families and provide a

summary of the public comments received in regard to the notice of intent to redesignate and the results of the public hearing and its responses to those comments. The redesignation shall not be effective until 10 working days after notifying the current Protection and Advocacy agency or, if the agency appeals, until the Assistant Secretary has considered the appeal.

(e) (1) Following notification pursuant to paragraph (d)(4) of this section, the Protection and Advocacy agency which is the subject of such action, may appeal the redesignation to the Assistant Secretary. To do so, the Protection and Advocacy agency must submit an appeal in writing to the Assistant Secretary within 20 days of receiving official notification under paragraph (d)(4) of this section, with a separate copy sent by registered or certified mail to the designating official who made the decision concerning redesignation.

(2) In the event that the agency subject to redesignation does exercise its right to appeal under paragraph (e)(1) of this section, the designating official must give public notice of the Assistant Secretary's final decision regarding the appeal through the same means utilized under paragraph (d)(3) of this section within 10 working days of receipt of the Assistant Secretary's final decision under paragraph (e)(6) of this section.

(3) The designating official within 10 working days from the receipt of a copy of the appeal must provide written comments to the Assistant Secretary (with a copy sent by registered or certified mail to the Protection and Advocacy agency appealing under paragraph (e)(1) of this section), or withdraw the redesignation. The comments must include a summary of the public comments received in regard to the notice of intent to redesignate and the results of the public hearing and its responses to those comments.

(4) In the event that the designating official withdraws the redesignation while under appeal pursuant to paragraph (e)(1) of this section, the designating official must notify the Assistant Secretary, and the current agency, and must give public notice of his or her decision through the same means utilized under paragraph (d)(3) of this section.

(5) As part of their submission under paragraph (e)(1) or (e)(3) of this section, either party may request, and the Assistant Secretary may grant, an opportunity for an informal meeting with the Assistant Secretary at which representatives of both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the designating official under paragraph (e)(2) of this section. The Assistant Secretary will promptly notify the parties of the date and place of the meeting.

(6) Within 30 days of the informal meeting under paragraph (e)(5) of this section, or, if there is no informal meeting under paragraph (e)(5) of this section, within 30 days of the submission under paragraph (e)(3) of this section, the Assistant Secretary will issue to the parties a final written decision on whether the redesignation was for good cause as defined in paragraph (d)(1) of this section. The Assistant Secretary will consult with Federal advocacy programs that will be directly affected by the proposed redesignation in making a final decision on the appeal.

(f) (1) Within 30 days after the redesignation becomes effective under paragraph (d)(4) of this section, the designating official must submit an assurance to the Assistant Secretary that the newly designated Protection and Advocacy agency meets the requirements of the statute and the regulations.

(2) In the event that the Protection and Advocacy agency subject to redesignation does not exercise its rights to appeal within the period provided under paragraph (e)(1) of this section, the designating official must provide to the Assistant Secretary documentation that the agency was redesignated for good cause. Such documentation must clearly demonstrate that the Protection and Advocacy agency subject to redesignation was not redesignated for any actions or activities which were carried out under section 142 of the Act, these regulations or any other

Federal advocacy program's legislation or regulations.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44846, Nov. 20, 1987; 61 FR 51156, Sept. 30, 1996]

§ 1386.21 Requirements and authority of the Protection and Advocacy System.

(a) In order for a State to receive Federal financial participation for Protection and Advocacy activities under this subpart, as well as the State Developmental Disabilities Council activities (subpart C of this part), the Protection and Advocacy System must meet the requirements of section 142 of the Act (42 U.S.C. 6042) and that system must be operational.

(b) Allotments must be used to supplement and not to supplant the level of non-federal funds available in the State for activities under the Act, which shall include activities on behalf of individuals with developmental disabilities to remedy abuse, neglect and violations of rights as well and information and referral activities.

(c) A Protection and Advocacy System shall not implement a policy or practice restricting the remedies which may be sought on the behalf of individuals with developmental disabilities or compromising the authority of the Protection and Advocacy System (P&A) to pursue such remedies through litigation, legal action or other forms of advocacy. However, the above requirement does not prevent the P&A from developing case or client acceptance criteria as part of the annual priorities identified by the P&A system as described in § 1386.23(c) of this part. Clients must be informed at the time they apply for services of such criteria.

(d) A P&A system shall be free from hiring freezes, reductions in force, prohibitions on staff travel, or other policies, imposed by the State, to the extent that such policies would impact system program staff or functions funded with Federal funds and would prevent the system from carrying out its mandates under the Act.

(e) A Protection and Advocacy System shall have sufficient staff, qualified by training and experience, to carry out the responsibilities of the system in accordance with the priorities of the system and requirements of the Act, including the investigation of allegations of abuse, neglect and representations of individuals with developmental disabilities regarding rights violations.

(f) A Protection and Advocacy System may exercise its authority under State law where the authority exceeds the authority required by the Developmental Disabilities Assistance and Bill of Rights Act, as amended. However, State law must not diminish the required authority of the Protection and Advocacy System.

(g) Each P&A system that is a public system without a multimember governing or advisory board must establish an advisory council in order to provide a voice for individuals with developmental disabilities. The Advisory Council shall advise the P&A on program policies and priorities and shall be comprised of a majority of individuals with developmental disabilities who are eligible for services, or have received or are receiving services or parents or family members, (including those representing individuals with developmental disabilities who live in institutions and home and community based settings), guardians, advocates, or authorized representatives of such individuals.

(h) Prior to any Federal review of the State program, a 30 day notice and an opportunity for public comment must be provided. Reasonable effort shall be made by the appropriate Regional Office to seek comments through notification to major disability advocacy groups, the State Bar, other disability law resources, the State Developmental Disabilities Council and the University Affiliated Program, for example, through newsletters and publications of those organizations. The findings of public comments may be consolidated if sufficiently similar issues are raised and they shall be included in the report of the onsite visit.

(i) Before the P&A system releases information to individuals not otherwise authorized to receive it, the P&A must obtain written consent from the client requesting assistance, if competent, or his or her guardian.

[61 FR 51157, Sept. 30, 1996]

§ 1386.22 Access to records, facilities and individuals with developmental disabilities.

(a) Access to records—A protection and advocacy (P&A) system shall have access to the records of any of the following individuals with developmental disabilities:

(1) An individual who is a client of the system, including any person who has requested assistance from the system, if authorized by that individual or their legal guardian, conservator or other legal representative.

(2) An individual, including an individual who has died or whose whereabouts is unknown, to whom all of the following conditions apply:

(i) The individual, due to his or her mental or physical condition is unable to authorize the system to have access;

(ii) The individual does not have a legal guardian, conservator or other legal representative, or the individual's guardian is the State (or one of its political subdivisions); and

(iii) With respect to whom a complaint has been received by the system or the system has probable cause (which can be the result of monitoring or other activities including media reports and newspaper articles) to believe that such individual has been subject to abuse or neglect.

(3) An individual who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint has been received by the system or with respect to whom the system has determined that there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, whenever all the following conditions exist:

(i) The system has made a good faith effort to contact the representative upon receipt of the representative's name and address;

(ii) The system has offered assistance to the representative to resolve the situation; and

(iii) The representative has failed or refused to act on behalf of the individual.

(b) Individual records to which P&A systems must have access under section 142(A)(2)(I) (whether written or in another medium, draft or final, including handwritten notes, electronic files, photographs or video or audio tape records) shall include, but shall not be limited to:

(1) Records prepared or received in the course of providing intake, assessment, evaluation, education, training and other supportive services, including medical records, financial records, and monitoring and other reports prepared or received by a member of the staff of a facility that is providing care or treatment;

(2) Reports prepared by an agency charged with investigating incidents of abuse or neglect, injury or death occurring at a facility or while the individual with a developmental disability is under the care of a member of the staff of a facility, or by or for such facility, that describe any or all of the following:

(i) Abuse, neglect, injury, death;

(ii) The steps taken to investigate the incidents;

(iii) Reports and records, including personnel records, prepared or maintained by the facility in connection with such reports of incidents; or,

(iv) Supporting information that was relied upon in creating a report, including all information and records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings; and

(3) Discharge planning records.

(c) Information in the possession of a facility which must be available to P&A systems in investigating instances of abuse and neglect under section 142(a)(2)(B) (whether written or in another medium, draft or final, including hand written notes, electronic files, photographs or video or audio tape records) shall include, but not be limited to:

(1) Information in reports prepared by individuals and entities performing certification or licensure reviews, or by professional accreditation organizations, as well as related assessments prepared for a facility by its staff, contractors or related entities, except that nothing in this section is intended to preempt State law protection records produced by medical care evaluation or peer review committees.

(2) Information in professional, performance, building or other safety

standards, demographic and statistical information relating to a facility.

(d) A system shall be permitted to inspect and copy information and records, subject to a reasonable charge to offset duplicating costs.

(e) The client's record is the property of the Protection and Advocacy System which must protect it from loss, damage, tampering, or use by unauthorized individuals. The Protection and Advocacy System must:

(1) Keep confidential all information contained in a client's records, which includes, but is not limited to, information contained in an automated data bank. This regulation does not limit access by parents or legal guardians of minors unless prohibited by State or Federal law, court order or the rules of attorney-client privilege;

(2) Have written policies governing access to, storage of, duplication of, and release of information from the client's record; and

(3) Be authorized to keep confidential the names and identity of individuals who report incidents of abuse and neglect and individuls who furnish information that forms the basis for a determination that probable cause exists.

(f) Access to Facilities and Individuals with Developmental Disabilities—A system shall have reasonable unaccompanied access to public and private facilities which provide services, supports, and other assistance for individuals with developmental disabilities in the State when necessary to conduct a full investigation of an incident of abuse or neglect under section 142(a)(2)(B) of the Act. This authority shall include the opportunity: to interview any facility service recipient, employee, or other person, including the person thought to be the victim of such abuse, who might be reasonably believed by the system to have knowledge of the incident under investigation; and to inspect, view and photograph all areas of the facility's premises that might be reasonably believed by the system to have been connected with the incident under investigation.

(g) Under section 142(a)(2)(H) of the Act, the system and all of its authorized agents shall have unaccompanied access to all residents of a facility at reasonable times, which at a minimum shall include normal working hours and visiting hours, for the purpose of:

(1) Providing information and training on, and referral to, programs addressing the needs of individuals with developmental disabilities, and the protection and advocacy services available from the system, including the name, address, and telephone number of the system and other information and training about individual rights; and

(2) Monitoring compliance with respect to the rights and safety of service recipients.

(h) Unaccompanied access to residents of a facility shall include the opportunity to meet and communicate privately with such individuals regularly, both formally and informally, by telephone, mail and in person.

(i) If a system is denied access to facilities and its programs, individuals with developmental disabilities, or records covered by the Act it shall be provided promptly with a written statement of reasons, including, in the case of a denial for alleged lack of authorization, the name and address of the legal guardian, conservator, or other legal representative of an individual with developmental disabilities.

[61 FR 51158, Sept. 30, 1996]

§ 1386.23 Periodic reports: Protection and Advocacy System.

(a) By January 1 of each year the Protection and Advocacy System shall submit an Annual Program Performance Report as required in section 107(b) of the Act, in a format designated by the Secretary.

(b) Financial status reports must be submitted by the Protection and Advocacy Agency according to a frequency interval specified by the Administration for Children and Families. In no case will such reports be required more frequently than quarterly.

(c) By January 1 of each year, the Protection and Advocacy System shall submit an Annual Statement of Objectives and Priorities, (SOP) for the coming fiscal year as required under section 142(a)(2)(C) of the Act.

(1) The SOP is a description and explanation of the priorities and selection criteria for the system's individual advocacy caseload; systemic advocacy work and training activities, and the outcomes which it strives to accomplish.

(2) Where applicable, the SOP must include a description of how the Protection and Advocacy System operates and how it coordinates the Protection and Advocacy program for individuals with developmental disabilities with other Protection and Advocacy (P&A) programs administered by the State Protection and Advocacy System. This description must address the System's intake process, internal and external referrals of eligible clients, duplication and overlap of services and eligibility, streamlining of advocacy services, collaboration and sharing of information on service needs and development of Statements of Objectives and Priorities for the various advocacy programs.

(3) Priorities as established through the SOP serve as the basis for P&As to determine which cases are selected in a given fiscal year. P&As have the authority to turn down a request for assistance when it is outside the scope of the SOP but they must inform individuals that this is the basis for turning them down.

(d) Each fiscal year, the Protection and Advocacy Agency shall:

(1) Obtain formal public input on its Statement of Objectives and Priorities;

(2) At a minimum, provide for a broad distribution of the proposed Statement of Objectives and Priorities for the next fiscal year in a manner accessible to individuals with developmental disabilities and their representatives, allowing at least 45 days from the date of distribution for comment;

(3) Provide to the State Developmental Disabilities Council and the University Affiliated Program a copy of the proposed Statement of Objectives and Priorities for comments concurrently with the public notice;

(4) Incorporate or address any comments received through the public input and any input received from the State Developmental Disabilities Council and the University Affiliated Program in the final Statement submitted to the Department; and

(5) Address how the Protection and Advocacy System; State Developmental Disabilities Council; and the University Affiliated Program will collaborate with each other and with other public and private entities.

(The requirements under paragraph (b) are approved under control number 0348–0039 by the Office of Management and Budget (OMB). Information collection requirements contained in paragraph (c) are approved under OMB control number 0970–0132 pursuant to sections 142(a)(2) (C) and (D) and section 107(b) of the Act.)

[61 FR 51159, Sept. 30, 1996]

§ 1386.24 Non-allowable costs for the Protection and Advocacy System.

(a) Federal financial participation is not allowable for:

(1) Costs incurred for activities on behalf of individuals with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace. Such activities include but are not limited to: Preparation of wills, divorce decrees, and real estate proceedings. Allowable costs in such cases would include the Protection and Advocacy System providing disability related technical assistance information and referral to appropriate programs and services; and

(2) Costs not allowed under other applicable statutes. Departmental regulations and issuances of the Office of Management and Budget.

(b) Attorneys fees are considered program income pursuant to Part 74–Administration of Grants and Part 92–Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and must be added to the funds committed to the program and used to further the objectives of the program. This requirement shall apply to all attorneys fees, including those earned by contractors and those received after the project period in which they were earned.

[52 FR 44847, Nov. 20, 1987; 61 FR 51159, Sept. 30, 1996]

§ 1386.25 Allowable litigation costs.

Allotments may be used to pay the otherwise allowable costs incurred by a Protection and Advocacy System in bringing lawsuits in its own right to redress incidents of abuse or neglect, discrimination and other rights violations impacting on individuals with developmental disabilities to obtain access to records and when it appears on behalf of named plaintiffs or a class of plaintiff for such purposes.

[61 FR 51159, Sept. 30, 1996]

Subpart C—Federal Assistance to State Developmental Disabilities Councils

§ 1386.30 State plan requirements.

(a) In order to receive Federal financial assistance under this subpart, each State Developmental Disabilities Council must prepare and submit to the Secretary, and have in effect, a State Plan which meets the requirements of sections 122 and 124 of the Act (42 U.S.C. 6022 and 6024) and these regulations. Development of the State Plan and applicable annual amendments are responsibilities of the State Developmental Disabilities Council. The Council will provide opportunities for public input during the planning and development of the State Plan and will consult with the Designated State Agency to determine that the plan is not in conflict with applicable State laws and to obtain appropriate State Plan assurances.

(b) Failure to comply with State plan requirements may result in loss of Federal funds as described in section 127 of the Act (42 U.S.C. 6027).

(c) The State plan may be submitted in any format the State selects as long as the items contained in the Act are addressed. The plan must:

(1) Identify the program unit(s) within the Designated State Agency responsible for helping the Council to obtain assurances and fiscal and other support services.

(2) Identify the priority areas selected by the Council and by the State in which 65% of Federal allotment will be expended.

(3) Where applicable, describe activities in which the State's Developmental Disabilities Council, Protection and Advocacy System agency, and University Affiliated Program(s) collaborate to remove barriers or address critical issues within the State and bring about broad systems changes to benefit individuals with developmental disabilities and, as appropriate, individuals with other disabilities.

(d) The State plan must be reviewed at least once every three years.

(e) (1) The State Plan may provide for funding projects to demonstrate new approaches to direct services which enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities. Direct service demonstrations must be short-term and include a strategy to locate on-going funding from other sources. For each demonstration funded, the State Plan must include an estimated period of the project's duration and a brief description of how the services will be continued without Federal developmental disabilities program funds. Council funds may not be used to fund on-going services which should be paid for by the State or other sources.

(2) The State plan may provide for funding of other projects or activities, including but not limited to, studies, evaluation, outreach, advocacy, self-advocacy, training, community supports, public education, and prevention. Where extended periods of time are needed to achieve desired results, these projects and activities need not be time-limited.

(f) The State Plan must contain assurances that:

(1) The State will comply with all applicable Federal statutes and regulations in effect during the time that the State is receiving formula grant funding;

(2) The human rights of individuals with developmental disabilities will be protected consistent with section 110 of the Act (42 U.S.C. 6009).

(3) Buildings used in connection with activities assisted under the Plan must meet all applicable provisions of Federal and State laws pertaining to accessibility, fire, health and safety standards.

(4) The State Developmental Disabilities Council shall follow the requirements of section 124(c) (8), (9) and (10) of the Act regarding budgeting, staff hiring and supervision and staff assignment. Budget expenditures must be consistent with applicable State laws and policies regarding grants and contracts and proper accounting and bookkeeping practices and procedures. In relation to staff hiring, the clause ''consistent with State law'' in section 124(c)(9) means that the hiring of State Developmental Disabilities Council staff must be done in accordance with State personnel policies and procedures except that a State shall not apply hiring freezes, reductions in force, prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the Council from carrying out its functions under the Act.

(Information collection requirements contained in paragraph (c) under control number 0980–0162 and paragraph (e) under control number 0980–0139 are approved by the Office of Management and Budget)

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987; 54 FR 47985, Nov. 20, 1989; 61 FR 51159, Sept. 30, 1996]

§ 1386.31 State Plan submittal and approval.

(a) The Council shall issue a public notice about the availability of the proposed State Plan or State Plan amendment(s) for comment. The Notice shall be published in formats accessible to individuals with developmental disabilities and the general public (e.g., tape, diskette, public forums, newspapers) and shall provide a 45 day period for public review and comment. The Council shall take into account comments submitted within that period and respond in the State Plan to significant comments and suggestions. A summary of the Council's response to State Plan comments shall be submitted with the State Plan and made available for public review. This document shall be made available in accessible formats upon request.

(b) The State plan must be submitted to the appropriate Regional Office of the Department 45 days prior to the fiscal year for which it is applicable. Unless State law provides differently, the State plan and amendments or related documents must be approved by the Governor or the Governor's designee as may be required by any applicable Federal issuances.

(c) Failure to submit an approvable State plan or amendment prior to the Federal fiscal years for which it is applicable may result in the loss of Federal financial participation. Costs resulting from obligations incurred during the period of the fiscal year for which an approved plan is not in effect are not eligible for Federal financial participation.

(d) The Commissioner must approve any State plan or plan amendment provided it meets the requirements of the Act and these regulations.

(e) Amendments to the State plan are required when substantive changes are contemplated in plan content.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51160, Sept. 30, 1996]

§ 1386.32 Periodic reports: Federal assistance to State Developmental Disabilities Councils.

(a) The Governor or appropriate State financial officer must submit financial status reports on the programs funded under this subpart according to a frequency interval which will be specified by the Administration for Children and Families. In no case will such reports be required more frequently than quarterly.

(b) Pursuant to section 107(a) of the Act (U.S.C. 6006a), the State Developmental Disabilities Council shall submit an Annual Program Performance Report in a form that facilitates Council reporting of results of activities required under sections 122 and 124 of the Act. The report shall be submitted to the appropriate Regional ACF office, by January 1 of each year.

[61 FR 51160, Sept. 30, 1996]

§ 1386.33 Protection of employee's interests.

(a) Based on section 122(c)(5)(K) of the Act (42 U.S.C. 6022(c)(5)(K), the

State plan must assure fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide community living activities. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide for community living activities.

(b) To the maximum extent practicable, fair and equitable arrangements must include provisions for:

(1) The preservation of rights and benefits;

(2) Guaranteeing employment to employees affected by action under the plan to provide alternative community living arrangements; and

(3) Employee training and retraining programs.

(Approved by the Office of Management and Budget under control number 0980–0162)

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987; 54 FR 47985, Nov. 20, 1989; 61 FR 51160, Sept. 30, 1996]

§ 1386.34 Designated State Agency.

(a) The Designated State Agency shall provide the required assurances and other support services as requested by and negotiated with the Council. These include:

(1) Provision of financial reporting and other services as provided under section 124(d)(3)(C) of the Act; and

(2) Information and direction, as appropriate, on procedures on the hiring, supervision and assignment of staff in accordance with State law.

(b) If the State Developmental Disabilities Council requests a review by the Governor (or legislature) of the Designated State Agency, the Council must provide documentation of the reason for change and recommend a preferred Designated State Agency.

(c) After the review is completed, a majority of the non-State agency members of the Council may appeal to the Assistant Secretary for a review of the designation of the designated State agency if the Council's independence as an advocate is not assured because of the actions or inactions of the designated State agency.

(d) The following steps apply to the appeal of the Governor's (or legislature's) designation of the Designated State Agency.

(1) Prior to an appeal to the Assistant Secretary, Administration for Children and Families, the State Developmental Disabilities Council, must give a 30 day written notice, by certified mail, to the Governor (or legislature) of the majority of non-State members' intention to appeal the designation of the Designated State Agency.

(2) The appeal must clearly identify the grounds for the claim that the Council's independence as an advocate is not assured because of the actions or inactions of the designated State agency.

(3) Upon receipt of the appeal from the State Developmental Disabilities Council, the Assistant Secretary will notify the State Developmental Disabilities Council and the Governor (or legislature), by certified mail, that the appeal has been received and will be acted upon within 60 days. The Governor (or legislature) shall within 10 working days from the receipt of the Assistant Secretary's notification provide written comments to the Assistant Secretary (with a copy sent by registered or certified mail to the Council) on the claims in the Council's appeal. Either party may request, and the Assistant Secretary may grant, an opportunity for an informal meeting with the Assistant Secretary at which representatives of both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the Governor (or legislature). The Assistant Secretary will promptly notify the parties of the date and place of the meeting.

(4) The Assistant Secretary will review the issue(s) and provide a final written decision within 60 days following receipt of the State Developmental Disabilities Council's appeal. If the determination is made that the

Designated State Agency should be redesignated, the Governor (or legislature) must provide written assurance of compliance within 45 days from receipt of the decision.

(5) During any time of this appeals process the State Developmental Disabilities Council may withdraw such request if resolution has been reached with the Governor (or legislature) on the designation of the Designated State Agency. The Governor (or legislature) must notify the Assistant Secretary in writing of such an occurrence.

(e) The designated State agency may authorize the Council use or contract with State agencies other than the designated State agency to perform functions of the designated State agency.

[61 FR 51160, Sept. 30, 1996]

§ 1386.35 Allowable and non-allowable costs for Federal Assistance to State Developmental Disabilities Councils.

(a) Under this subpart, Federal financial participation is available in costs resulting from obligations incurred under the approved State plan for the necessary expenses of the approved State plan for the necessary expenses of the State Council, the administration and operation of the State plan, and training of personnel.

(b) Expenditures which are not allowable for Federal financial participation are:

(1) Costs incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to the rights of individuals with developmental disabilities in section 110 of the Act (42 U.S.C. 6009).

(2) Costs incurred for activities not provided for in the approved State plan; and

(3) Costs not allowed under other applicable statutes. Departmental regulations or issuances of the Office of Management and Budget.

(c) Expenditure of funds which supplant State and local funds will be disallowed. Supplanting occurs when State or local funds previously used to fund activities in the developmental disabilities State Plan are replaced by Federal funds which are then used for the same purpose. However, supplanting does not occur if State or local funds are replaced with Federal funds for a particular activity or purpose in the approved State Plan if the State or local funds are then used for other activities or purposes in the approved State Plan.

(d) For purposes of determining aggregate minimum State share of expenditures, there are three categories of expenditures:

(1) Expenditures for projects or activities carried out directly by the Council and Council staff, as described in section 125A(a)(2) of the Act, require no non-Federal aggregate participation.

(2) Expenditures for projects with activities or products targeted to urban or rural poverty areas but not carried out directly by the Council and Council staff, as described in section 125A(a)(2) of the Act, shall have non-Federal participation of at least 10% in the aggregate.

(3) All other activities not directly carried out by the Council and Council staff, shall have non-Federal participation of at least 25% in the aggregate.

(e) The Council may vary the non-Federal participation required on a project by project, activity by activity basis (both poverty and non-poverty activities), including requiring no non-Federal participation from particular projects or activities as the Council deems appropriate so long as the requirement for aggregate non-Federal participation is met.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987; 54 FR 47985, Nov. 20, 1989; 61 FR 51161, Sept. 30, 1996]

§ 1386.36 Final disapproval of the State plan or plan amendments.

The Department will disapprove any State plan or plan amendment only after the following procedures have been complied with:

(a) The State plan has been submitted to the appropriate HHS Regional Office, and the Regional Office and State have been unable to resolve their differences.

(b) The Regional Office has prepared a detailed written analysis of its reasons for recommending disapproval and has transmitted its analyses and all

other relevant material to the Commissioner, and has provided the State Council and State agency with copies of the material.

(c) The Commissioner, after review of the records and the recommendation of the Regional Office, has determined whether the State plan, in whole or in part, is not approvable. Notice of this determination has been sent to the State and contains appropriate references to the records, provisions of the statute and regulations, and all relevant interpretations of applicable laws and regulations. The notification of the decision must inform the State of its right to appeal in accordance with 45 CFR part 1386, subpart D.

(d) The Commissioner's decision has been forwarded to the State Council and agency by certified mail with a return receipt requested.

(e) A State has filed its request for a hearing with the Assistant Secretary within 21 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the Assistant Secretary. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing, otherwise the date of receipt shall be considered the date of filing.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51161, Sept. 30, 1996]

Subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance With Developmental Disabilities State Plans, Reports and Federal Requirements

GENERAL

§ 1386.80 Definitions.

For purposes of this subpart:

Assistant Secretary means the Assistant Secretary for Children and Families (ACF).

ADD means Administration on Developmental Disabilities, Administration for Children and Families.

Presiding officer means anyone designated by the Assistant Secretary to conduct any hearing held under this subpart. The term includes the Assistant Secretary if the Assistant Secretary presides over the hearing.

Payment or Allotment means an amount provided under Part B or C of the Developmental Disabilities Assistance and Bill of Rights Act. This term includes Federal funds provided under the Act irrespective of whether the State must match the Federal portion of the expenditure. This term shall include funds previously covered by the terms ''Federal financial participation,'' ''the State's total allotment,'' ''further payments,'' ''payments,'' ''allotment'' and ''Federal funds.''

[61 FR 51161, Sept. 30, 1996]

§ 1386.81 Scope of rules.

(a) The rules of procedures in this subpart govern the practice for hearings afforded by the Department to States pursuant to sections 122, 127 and 142 of the Act. (42 U.S.C. 6022, 6027 and 6042).

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Negotiations, and resolution of issues are not part of the hearing, and are not governed by the rules in this subpart, except as otherwise provided in this subpart.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987]

§ 1386.82 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding are subject to public inspection.

§ 1386.83 Use of gender and number.

As used in this subpart, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing either gender may be applied to the other gender or to organizations.

§ 1386.84 Suspension of rules.

Upon notice to all parties, the Assistant Secretary may modify or waive

any rule in this subpart, unless otherwise expressly provided, upon determination that no party will be unduly prejudiced and justice will be served.

§ 1386.85 Filing and service of papers.

(a) All papers in the proceedings must be filed with the designated individual in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

(b) Copies of papers in the proceedings must be served on all parties by personal delivery or by mail. Service on the party's designated representative is deemed service upon the party.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51161, Sept. 30, 1996]

PRELIMINARY MATTERS—NOTICE AND PARTIES

§ 1386.90 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Assistant Secretary to the State Developmental Disabilities Council and the Designated State Agency, or to the State Protection and Advocacy System or designating official. The notice must state the time and place for the hearing, and the issues which will be considered. The notice must be published in the FEDERAL REGISTER.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51161, Sept. 30, 1996]

§ 1386.91 Time of hearing.

The hearing must be scheduled not less than 30 days nor more than 60 days after the date notice of the hearing is mailed to the State.

§ 1386.92 Place.

The hearing must be held on a date and at a time and place determined by the Assistant Secretary with due regard for convenience, and necessity of the parties or their representatives. The site of the hearing shall be accessible to individuals with disabilities.

[61 FR 51162, Sept. 30, 1996]

§ 1386.93 Issues at hearing.

(a) Prior to a hearing, the Assistant Secretary may notify the State in writing of additional issues which will be considered at the hearing. That notice must be published in the FEDERAL REGISTER. If that notice is mailed to the State less than 20 days before the date of the hearing, the State or any other party, at its request, must be granted a postponement of the hearing to a date 20 days after the notice was mailed, or such later date as may be agreed to by the Assistant Secretary.

(b) If any issue is resolved in whole or in part, but new or modified issues are presented, the hearing must proceed on the new or modified issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Assistant Secretary finds that the State has come into compliance with Federal requirements on any issue in whole or in part, he or she must remove the issue from the proceedings in whole or in part as may be appropriate. If all issues are removed the Assistant Secretary must terminate the hearing.

(2) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements under Part B of the Act, of the State plan or the activities of the State's Protection and Advocacy System, the Assistant Secretary must provide all parties other than the Department and the State (see § 1386.94(b)) with the statement of his or her intention to remove an issue from the hearings and the reasons for that decision. A copy of the proposed State plan provision or document explaining changes in the activities of the State's protection and advocacy system on which the State and the Assistant Secretary have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program under Part B of the Act with the State plan or with Federal requirements or compliance of the State's Protection and Advocacy System with Federal requirements, the same procedure set forth in paragraph (c)(2) of this section must be followed

with respect to any report or evidence resulting in a conclusion by the Assistant Secretary that a State has achieved compliance.

(e) The issues considered at the hearing must be limited to those issues of which the State is notified as provided in § 1386.90 and paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section, and may not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51162, Sept. 30, 1996]

§ 1386.94 Request to participate in hearing.

(a) The Department, the State, the State Developmental Disabilities Council, the Designated State Agency, and the State Protection and Advocacy System, as appropriate, are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties if the issues to be considered at the hearing have caused them injury and their interests are relevant to the issues in the hearing.

(2) Any individual or group wishing to participate as a party must file a petition with the designated individual within 15 days after notice of the hearing has been published in the FEDERAL REGISTER, and must serve a copy on each party of record at that time in accordance with § 1386.85(b). The petition must concisely state:

(i) Petitioner's interest in the proceeding;

(ii) Who will appear for petitioner;

(iii) The issues the petitioner wishes to address; and

(iv) Whether the petitioner intends to present witnesses.

(c) (1) Any interested person or organization wishing to participate as amicus curiae must file a petition with the designated individual before the commencement of the hearing. The petition must concisely state:

(i) The petitioner's interest in the hearing;

(ii) Who will represent the petitioner, and

(iii) The issues on which the petitioner intends to present argument.

(2) The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(3) An amicus curiae may present a brief oral statement at the hearing at the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing and must serve a copy on each party. It also may submit a brief or written statement at such time as the parties submit briefs and must serve a copy on each party.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51162, Sept. 30, 1996]

HEARING PROCEDURES

§ 1386.100 Who presides.

(a) The presiding officer at a hearing must be the Assistant Secretary or someone designated by the Assistant Secretary.

(b) The designation of a presiding officer must be in writing. A copy of the designation must be served on all parties and amici curiae.

§ 1386.101 Authority of presiding officer.

(a) The presiding officer has the duty to conduct a fair hearing, avoid delay, maintain order, and make a record of the proceedings. The presiding officer has all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon notice to the parties. This includes the power to continue the hearing in whole or in part;

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceedings;

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their positions with respect to the issues in the proceeding;

(4) Administer oaths and affirmations,

(5) Rule on motions and other procedural items on matters pending before him or her, including issuance of protective orders or other relief to a party against whom discovery is sought;

(6) Regulate the course of the hearing and conduct of counsel therein;

(7) Examine witnesses;

(8) Receive, rule on, exclude, or limit evidence or discovery;

(9) Fix for the time for filing motions, petitions, briefs, or other items in matters pending before him or her,

(10) If the presiding officer is the Assistant Secretary, make a final decision;

(11) If the presiding officer is a person other than the Assistant Secretary, he or she shall certify the entire record, including recommended findings and proposed decision, to the Assistant Secretary;

(12) Take any action authorized by the rules in the subpart or 5 U.S.C. 551–559; and

(b) The presiding officer does not have authority to compel the production of witnesses, papers, or other evidence by subpoena.

(c) If the presiding officer is a person other than the Assistant Secretary, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In case of any noncompliance, he or she shall recommend whether payments or allotments should be withheld with respect to the entire State plan or the activities of the State's Protection and Advocacy System, or whether the payments or allotments should be withheld only with respect to those parts of the program affected by such noncompliance.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51162, Sept. 30, 1996]

§ 1386.102 Rights of parties.

All parties may:

(a) Appear by counsel, or other authorized representative, in all hearing proceedings;

(b) Participate in any prehearing conference held by the presiding officer,

(c) Agree to stipulations of facts which will be made a part of the record;

(d) Make opening statements at the hearing;

(e) Present relevant evidence on the issues at the hearing;

(f) Present witnesses who then must be available for cross-examination by all other parties;

(g) Present oral arguments at the hearing;

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 1386.103 Discovery.

The Department and any party named in the Notice issued pursuant to § 1386.90 has the right to conduct discovery (including depositions) against opposing parties as provided by the Federal Rules of Civil Procedure. There is no fixed rule on priority of discovery. Upon written motion, the presiding officer must promptly rule upon any objection to discovery action. The presiding officer also has the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may issue any order and impose any sanction other than contempt orders authorized by Rule 37 of the Federal Rules of Civil Procedure.

§ 1386.104 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather, it must be presented in statements, memoranda, or briefs, as directed by the presiding officer. Brief opening statements, which shall be limited to a statement of the party's position and what it intends to prove, may be made at hearings.

§ 1386.105 Evidence.

(a) *Testimony*. Testimony by witnesses at the hearing is given orally under oath or affirmation. Witnesses

must be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, must be exchanged at the prehearing conference or at a different time prior to the hearing if the presiding officer requires it.

(c) *Rules of evidence.* Technical rules of evidence do not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination are applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his or her direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record is open to examination by the parties and opportunity must be given to refute facts and arguments advanced on either side of the issues.

§ 1386.106 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 1386.107 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing is placed in the correspondence section of the docket of the proceeding. This material is not deemed part of the evidence or record in the hearing.

§ 1386.108 Official transcript.

The Department will designate the official reporter for all hearings. The official transcript of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed with them is filed with the Department Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance. Transcripts must be taken by stenotype machine and not be voice recording devices, unless otherwise agreed by all of the parties and the presiding officer.

§ 1386.109 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, constitute the exclusive record for decision.

POSTHEARING PROCEDURES, DECISIONS

§ 1386.110 Posthearing briefs.

The presiding officer must fix the time for filing posthearing briefs. This time may not exceed 30 days after termination of the hearing and receipt of the transcript. Briefs may contain proposed fundings of fact and conclusions of law. If permitted, reply briefs may be filed no later than 15 days after filing of the posthearing briefs.

§ 1386.111 Decisions following hearing.

(a) If the Assistant Secretary is the presiding officer, he or she must issue a decision within 60 days after the time for submission of posthearing briefs has expired.

(b)(1) If the presiding officer is a person designated by the Assistant Secretary, he or she must, within 30 days after the time for submission of posthearing briefs has expired, certify the entire record to the Assistant Secretary including recommended findings and proposed decision. The Assistant Secretary must serve a copy of the recommended findings and proposed decision upon all parties and amici.

(2) Any party may, within 20 days, file exceptions to the recommended

findings and proposed decision and supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary must review the recommended decision and, within 60 days of its issuance, issue his or her own decision.

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing pursuant to sections 122, 127, or 142 of the Act, that a State plan or the activities of the State's Protection and Advocacy System does not comply with Federal requirements, he or she shall also specify whether the State's payment or allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan or the activities of the State's Protection and Advocacy System not affected by the noncompliance.

(2) In the case of a hearing pursuant to section 127 of the Act that the State is not complying with the requirements of the State plan, he or she must also specify whether the State's payment or allotment will not be made available to the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan not affected by such noncompliance. The Assistant Secretary may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Assistant Secretary under this section is the final decision of the Secretary and constitutes ''final agency action'' within the meaning of 5 U.S.C. 704 and the ''Secretary's action'' within the meaning of Section 129 of the Act (42 U.S.C. 6029). The Assistant Secretary's decision must be promptly served on all parties and amici.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987; 61 FR 51162, Sept. 30, 1996]

§ 1386.112 Effective date of decision by the Assistant Secretary.

(a) If, in the case of a hearing pursuant to section 122 of the Act, the Assistant Secretary concludes that a State plan does not comply with Federal requirements, and the decision provides that the payment or allotment will be authorized but limited to parts of the State plan not affected by such noncompliance, the decision must specify the effective date for the authorization of the payment or allotment.

(b) In the case of a hearing pursuant to sections 127 or 142 of the Act, if the Assistant Secretary concludes that the State is not complying with the requirements of the State plan or the activities of the State's Protection and Advocacy System do not comply with Federal requirements, the decision that further payments or allotments will not be made to the State, or will be limited to the parts of the State plan or activities of the State's Protection and Advocacy System not affected, must specify the effective date for withholding payments of allotments.

(c) The effective date may not be earlier than the date of the decision of the Assistant Secretary and may not be later than the first day of the next calendar quarter.

(d) The provision of this section may not be waived pursuant to § 1386.84.

[49 FR 11779, Mar. 27, 1984, as amended 61 FR 51162, Sept. 30, 1996]

PART 1387—PROJECTS OF NATIONAL SIGNIFICANCE

AUTHORITY: 42 U.S.C. 6000 et. seq.

§ 1387.1 General requirements.

(a) All projects funded under this part must be of national significance and serve or relate to individuals with developmental disabilities to comply with section 162 of the Act.

(b) Based on section 162(d), proposed priorities for grants and contracts will be published in the FEDERAL REGISTER and a 60 day period for public comments will be allowed.

(c) The requirements concerning format and content of the application, submittal procedures, eligible applicants and final priority areas will be published in program announcements in the FEDERAL REGISTER.

(d) Projects of National Significance, including technical assistance and data

collection grants, must be exemplary and innovative models and have potential for dissemination or knowledge utilization at the local level as well as nationally or otherwise meet the goals of part E of the Act.

[54 FR 47985, Nov. 20, 1989, as amended at 61 FR 51163, Sept. 30, 1996]

PART 1388—THE UNIVERSITY AFFILIATED PROGRAMS

Sec.
1388.1 Definitions.
1388.2 Program criteria—purpose.
1388.3 Program criteria—mission.
1388.4 Program criteria—governance and administration.
1388.5 Program criteria—preparation of personnel.
1388.6 Program criteria—services and supports.
1388.7 Program criteria—dissemination.
1388.8 [Reserved]
1388.9 Peer review.

AUTHORITY: 42 U.S.C. 6063 et. seq.

SOURCE: 61 FR 51163, Sept. 30, 1996, unless otherwise noted.

§ 1388.1 Definitions.

For purposes of this part:

Accessible means UAPs are characterized by their program and physical accommodation and their demonstrated commitment to the goals of the Americans with Disabilities Act.

Capacity Building means that UAPs utilize a variety of approaches to strengthen their university and their local, State, regional and National communities. These approaches include, but are not limited to such activities as:

(1) Enriching program depth and breadth, for example, recruiting individuals with developmental disabilities and their families, local community leaders, additional faculty and students to participate in the UAP;

(2) Acquiring additional resources, for example, grants, space, and volunteer manpower; and

(3) Carrying out systems changes, for example, promoting inclusive programming for persons with developmental disabilities across all ages.

Collaboration means that the UAP cooperates with a wide range of persons, systems, and agencies, whether they utilize services of the UAP or are involved in UAP planning and programs. These entities include individuals with developmental disabilities and family members, as well as the State Developmental Disabilities Councils, the Protection and Advocacy agencies, other advocacy and disability groups, university components, generic and specialized human service agencies, State agencies and citizen and community groups. An example of this cooperation is the Consumer Advisory Committee, a required element in each UAP.

Cultural Diversity means that UAPs are characterized by their commitment to involve individuals with disabilities, family members and trainees from diverse cultural backgrounds in all levels of their activities. This commitment to cultural diversity means that each UAP must assure that individuals from racial and ethnic minority background are fully included; that efforts are made to recruit individuals from minority backgrounds into the field of developmental disabilities; that specific efforts must be made to ensure that individuals from minority backgrounds have effective and meaningful opportunities for full participation in the developmental disabilities service system; and that recruitment efforts at the levels of preservice training, community training, practice, administration and policymaking must focus on bringing large numbers of racial ethnic minorities into the field in order to provide appropriate skills, knowledge, role models, and sufficient personnel to address the growing needs of an increasingly diverse population.

Culturally competent means provision of services, supports, or other assistance in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language and behaviors of individuals who are receiving services, and that has the greatest likelihood of ensuring their maximum participation in the program.

Diverse Network means that although each UAP has the same mandates under the Act, the expression of these common mandates differs across programs. Each UAP must implement these mandates within the context of their host university, their location within the university, the needs of the

local and State community, the cultural composition of their State, their resources and funding sources, and their institutional history. These factors converge to create a network of unique and distinct programs, bound together by common mandates but enriched by diverse composition.

Interdisciplinary Training means the use of individuals from different professional specialties for UAP training and service delivery.

Lifespan Approach means that UAP activities address the needs of individuals with disabilities who are of all ages.

Mandated Core Functions means the UAP must perform:

(1) Interdisciplinary preservice preparation;

(2) Community service activities (community training and technical assistance); and

(3) Activities related to dissemination of information and research findings.

Program Criteria means a statement of the Department's expectation regarding the direction and desired outcome of the University Affiliated Program's operation.

Research and evaluation means that the UAP refines its activities on the basis of evaluation results. As members of the university community, involvement in program-relevant research and development of new knowledge are important components of UAPs.

State-of-the-art means that UAP activities are of high quality (using the latest technology), worthy of replication (consistent with available resources), and systemically evaluated.

§ 1388.2 Program criteria—purpose.

The program criteria will be used to assess the quality of the University Affiliated Programs (UAP). The overall purpose of the program criteria is to assure the promotion of independence, productivity, integration and inclusion of individuals with developmental disabilities. Compliance with the program criteria is a prerequisite for a UAP to receive the minimum funding level of a UAP. However, compliance with the program criteria does not, by itself, assure funding. The Program Criteria are one part of the Quality Enhancement System (QES), and provide a structure for self-assessment and peer review of each UAP. (The QES is a holistic approach to enable persons with developmental disabilities and their families to achieve maximum potential. All UAPs use the QES.)

§ 1388.3 Program criteria—mission.

(a) Introduction to mission: The UAP is guided by values of independence, productivity, integration and inclusion of individuals with developmental disabilities and their families. The purpose and scope of the activities must be consistent with the Act as amended and include the provision of training, service, research and evaluation, technical assistance and dissemination of information in a culturally competent manner, including the meaningful participation of individuals from diverse racial and ethnic backgrounds. (The concept of ''diverse network'' as defined in § 1388.1 of this part applies to paragraphs (b), (f), (g), and (h) of this section.)

(b) The UAP must develop a written mission statement that reflects its values and promotes the goals of the university in which it is located, including training, the development of new knowledge and service. The UAP's goals, objectives and activities must be consistent with the mission statement.

(c) The UAP's mission and programs must reflect a life span approach, incorporate an interdisciplinary approach and include the active participation of individuals with developmental disabilities and their families.

(d) The UAP programs must address the needs of individuals with developmental disabilities, including individuals with developmental disabilities who are unserved or underserved, in institutions, and on waiting lists.

(e) The UAP's mission must reflect a commitment to culturally competent attitudes and practices, which are in response to local culture and needs.

(f) The UAP's mission must reflect its unique role as a bridge between university programs, individuals with developmental disabilities and their families, service agencies and the larger community.

(g) The UAP's goals, objectives, and activities must be consistent with the

mission statement and use capacity building strategies to address State's needs.

(h) The UAP's goals, objectives, and activities must reflect interagency collaborations and strategies to effect systemic change within the university and in State and local communities and service systems.

§ 1388.4 Program criteria—governance and administration.

(a) Introduction to governance and administration: The UAP must be associated with, or an integral part of, a university and promote the independence, productivity, integration, and inclusion of individuals with developmental disabilities and their families. (The concept of ''diverse network'' as defined in § 1388.1 of this part applies to paragraphs (b), (c), (d), (i), and (l) of this section.)

(b) The UAP must have a written agreement or charter with the university that specifies the UAP designation as an official university component, the relationships between the UAP and other university components, the university commitment to the UAP, and the UAP commitment to the university.

(c) Within the university, the UAP must maintain the autonomy and organizational structure required to carry out the UAP mission and provide for the mandated activities.

(d) The UAP must report directly to a University administrator who will represent the interests of the UAP within the University.

(e) The University must demonstrate its support for the UAP through the commitment of financial and other resources.

(f) UAP senior professional staff must hold faculty appointments in appropriate academic departments of the host or an affiliated university, consistent with university policy. UAP senior professional staff contribute to the university by participation on university committees, collaboration with other university departments, and other university community activities.

(g) UAP faculty and staff must represent the broad range of disciplines and backgrounds necessary to implement the full inclusion of individuals with developmental disabilities in all aspects of society, consonant with the spirit of the Americans with Disabilities Act (ADA).

(h) The UAP must meet the requirements of section 109 of the Act [42 U.S.C. 6008] regarding affirmative action. The UAP must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices.

(i) The management practices of the UAP, as well as the organizational structure, must promote the role of the UAP as a bridge between the University and the community. The UAP must actively participate in community networks and include a range of collaborating partners.

(j) The UAP's Consumer Advisory Committee must meet regularly. The membership of the Consumer Advisory Committee must reflect the racial and ethnic diversity of the State or community in which the UAP is located. The deliberations of the Consumer Advisory Committee must be reflected in UAP policies and programs.

(k) The UAP must maintain collaborative relationships with the State Developmental Disabilities Council and the Protection and Advocacy agency. In addition, the UAP must be a member of the State Developmental Disabilities Council and participate in Council meetings and activities, as prescribed by the Act.

(l) The UAP must maintain collaborative relationships and be an active participant with the UAP network and individuals, organizations, State agencies and Universities.

(m) The UAP must demonstrate the ability to leverage resources.

(n) The UAP must have adequate space to carry out the mandated activities.

(o) The UAP physical facility and all program initiatives conducted by the UAP must be accessible to individuals with disabilities as provided for by section 504 of the Rehabilitation Act and Titles II and III of the Americans with Disabilities Act.

(p) The UAP must integrate the mandated core functions into its activities

and programs and must have a written plan for each core function area.

(q) The UAP must have in place a long range planning capability to enable the UAP to respond to emergent and future developments in the field.

(r) The UAP must utilize state-of-the-art methods, including the active participation of individuals, families and other consumers of UAP programs and services to evaluate programs. The UAP must refine and strengthen its programs based on evaluation findings.

(s) The UAP Director must demonstrate commitment to the field of developmental disabilities and leadership and vision in carrying out the mission of the UAP.

§ 1388.5 Program criteria—preparation of personnel.

(a) Introduction to preparation of personnel: UAP interdisciplinary training programs reflect state-of-the-art practices and prepare personnel concerned with developmental disabilities to promote the independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.

(b) UAP interdisciplinary training programs must be based on identified personnel preparation needs and have identified outcomes that are consistent with the mission and goals of the UAP.

(c) The interdisciplinary training process, as defined by the UAP, must reflect a mix of students from diverse academic disciplines/academic programs and cultures that reflect the diversity of the community. Faculty represent a variety of backgrounds and specialties, including individuals with disabilities and family members, and a variety of learning experiences, as well as reflecting the cultural diversity of the community. Trainees must receive academic credit as appropriate for participation in UAP training programs.

(d) Preservice training must be integrated into all aspects of the UAP, including community training and technical assistance, direct services (if provided), and dissemination.

(e) Trainees must be prepared to serve in a variety of roles, including advocacy and systems change. The UAP must encourage graduates to work in situations where they will promote the independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.

(f) The UAP must influence University curricula to prepare personnel who, in their future career in a broad range of social and community roles, will contribute to the accommodation and inclusion of individuals with developmental disabilities, as mandated in the Americans with Disabilities Act.

(g) The UAP core curriculum must incorporate cultural diversity and demonstrate cultural competence. Trainees must be prepared to address the needs of individuals with developmental disabilities and their families in a culturally competent manner.

(h) The UAP core curriculum must prepare trainees to be active participants in research and dissemination efforts. In addition, the curriculum must prepare trainees to be consumers of research as it informs practice and policy.

§ 1388.6 Program criteria—services and supports.

(a) Introduction to services and supports: The UAP engages in a variety of system interventions and may also engage in a variety of individual interventions to promote independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.

(b) UAP community training and technical assistance activities must:

(1) Use capacity building strategies to strengthen the capability of communities, systems and service providers;

(2) Plan collaboratively, including the participation of individuals with developmental disabilities and their families;

(3) Target to a wide range of audiences, including individuals with disabilities, family members, service and support personnel, and community members;

(4) Plan and be structured in a manner that facilitates the participation of targeted audiences; and

(5) Address the unique needs of individuals with developmental disabilities and their families from diverse cultural and ethnic groups who reside within the geographic locale.

(c) Direct Services. These requirements apply only where direct services are offered.

(1) A UAP must integrate direct services and projects into community settings. These services may be provided in a service delivery site or training setting within the community including the university. Direct service projects may involve interdisciplinary student trainees, professionals from various disciplines, service providers, families and/or administrators. Direct services must be extended, as appropriate, to include adult and elderly individuals with developmental disabilities. The UAP must maintain cooperative relationships with other community service providers, including specialized state and local provider agencies.

(2) Services and projects provided in community-integrated settings are to:

(i) Be scheduled at times and in places that are consistent with routine activities within the local community; and

(ii) Interact with and involve community members, agencies, and organizations.

(3) The bases for the services or project development must be:

(i) A local or universal need that reflects critical problems in the field of developmental disabilities; or

(ii) An emerging, critical problem that reflects current trends or anticipated developments in the field of developmental disabilities.

(4) State-of-the-art and innovative practices include:

(i) Services and project concepts and practices that facilitate and demonstrate independence for the individual, community integration, productivity, and human rights;

(ii) Practices that are economical, accepted by various disciplines, and highly beneficial to individuals with developmental disabilities, and that are integrated within services and projects;

(iii) Innovative cost-effective concepts and practices that are evaluated according to accepted practices of scientific evaluation;

(iv) Research methods that are used to test hypotheses, validate procedures, and field test projects; and

(v) Direct service and project practices and models that are evaluated, packaged for replication and disseminated through the information dissemination component.

§ 1388.7 Program criteria—dissemination.

(a) Introduction to dissemination: The UAP disseminates information and research findings, including the empirical validation of activities related to training, best practices, services and supports, and contributes to the development of new knowledge. Dissemination activities promote the independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.

(b) The UAP must be a resource for information for individuals with developmental disabilities and their families, community members, State agencies and other provider and advocacy organizations, produce a variety of products to promote public awareness and visibility of the UAP, and facilitate replication of best practices.

(c) Specific target audiences must be identified for dissemination activities and include individuals with developmental disabilities, family members, service providers, administrators, policy makers, university faculty, researchers, and the general public.

(d) UAP dissemination activities must be responsive to community requests for information and must utilize a variety of networks, including State Developmental Disabilities Councils, Protection and Advocacy agencies, other University Affiliated Programs, and State service systems to disseminate information to target audiences.

(e) The process of developing and evaluating materials must utilize the input of individuals with developmental disabilities and their families.

(f) The values of the UAP must be reflected in the language and images used in UAP products.

(g) Dissemination products must reflect the cultural diversity of the community.

(h) Materials disseminated by the UAP must be available in formats accessible to individuals with a wide range of disabilities, and appropriate target audiences.

(i) The UAP must contribute to the development of the knowledge base through publications and presentations, including those based on research and evaluation conducted at the UAP.

§ 1388.8 [Reserved]

§ 1388.9 Peer review.

(a) The purpose of the peer review process is to provide the Commissioner, ADD, with technical and qualitative evaluation of UAP applications, including on-site visits or inspections as necessary.

(b) Applications for funding opportunities under part D, Section 152 of the Act, must be evaluated through the peer review process.

(c) Panels must be composed of non-Federal individuals who, by experience and training, are highly qualified to assess the comparative quality of applications for assistance.

SUBCHAPTERS J–K [RESERVED]