

## **§ 124.708**

date of the Secretary's final letter described in paragraph (b)(3) of this section. Within 30 days following the receipt of the auditor's report, the Secretary will notify the owner of the allowable credit, if any. If the auditor's report is not timely submitted, the trust must be established and fully funded, in accordance with the time limits imposed by paragraph (c)(1) of this section, and the Secretary will notify the owner of the allowable credit, if any, within 30 days of the date of the establishment of the trust or within 30 days of the receipt of the report, whichever is later.

(2) The trust shall be administered by a Trustee who is neither an employee of the transferee nor an employee of a subsidiary or of the parent institution of the transferee.

(3) The trust shall provide that the trust corpus and income may be invested only in U.S. Government or U.S. Government insured securities.

(d) *Use of the trust.* The corpus and income of the irrevocable trust shall be used to pay for the costs of uncompensated services, which may include reasonable costs of establishing and administering the trust and the cost of the independent audit described in paragraph (b)(1)(i) of this section, until the trust is exhausted.

(Approved by the Office of Management and Budget under control number 0915-0099)

### **§ 124.708 Waiver of recovery—good cause for other use of facility.**

The Secretary may for good cause waive the recovery rights of the United States arising under § 124.703(b). In determining whether there is good cause under this section for releasing the applicant or other owner of the facility from its obligation, the Secretary will take into consideration the extent to which:

(a) The facility will be devoted by the applicant or other owner to use for another public or nonprofit purpose which will promote the purpose of the Act;

(b) There are reasonable assurances that for the remainder of the 20-year

## **42 CFR Ch. I (10-1-99 Edition)**

period other public or nonprofit facilities not previously utilized for the purpose for which the facility was constructed will be so utilized and are substantially equivalent in nature and purpose.

(c) The facility has been acquired from an agency of the United States (e.g., the Federal Housing Administration under its mortgage insurance commitment program) which has made a reasonable effort to dispose of it for operation as a public or nonprofit health care facility.

[51 FR 7939, Mar. 7, 1986, as amended at 57 FR 8272, Mar. 9, 1992]

### **§ 124.709 Withdrawal of waiver.**

(a) Any waiver granted under this subpart is conditioned upon the recipient of the waiver carrying out the obligations imposed by § 124.707 or § 124.708 as applicable.

(b) The Secretary will monitor compliance with the community service and uncompensated care obligations of any entity that receives a waiver.

(c) Should a recipient of a waiver fail to comply with the applicable conditions, the Secretary will withdraw the waiver and seek recovery based on the value of the facility on the date the right of recovery first arose under § 124.703.

(d) No waiver will be withdrawn until the recipient has been notified in writing by the Secretary of the noncompliance and has failed to take corrective action within 90 days after the date of such notice.

(e) Should the waiver be withdrawn, the amount of the Government's recovery will be the amount set out in the Secretary's determination letter as described in § 124.707 (b)(1) or (b)(3) as applicable plus interest from the date of the notification sent in accordance with paragraph (d) of this section.

## **PARTS 125—399 [RESERVED]**

## **CHAPTERS II—III [RESERVED]**