



# FEDERAL REGISTER

---

Vol. 76

Wednesday,

No. 217

November 9, 2011

---

Part VII

Department of Health and Human Services

---

Administration for Children and Families

45 CFR Part 1307

Head Start Program; Final Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Administration for Children and Families****45 CFR Part 1307**

RIN 0970-AC44

**Head Start Program**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Head Start Program regulations to implement statutory provisions of the Improving Head Start for School Readiness Act of 2007 to establish a system of designation renewal to determine if Head Start and Early Head Start agencies are delivering high-quality and comprehensive Head Start and Early Head Start programs that meet the educational, health, nutritional, and social needs of the children and families they serve and meet program and financial management requirements and standards. This system of designation renewal will determine which grantees must compete for on-going funding. This final rule is consistent with Executive Order 13563 and in particular its requirement, in section 6, of “periodic review of existing significant regulations.”

**DATES:** This regulation is effective on December 9, 2011.

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

**SUPPLEMENTARY INFORMATION:****I. Statutory Authority**

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

**II. Background**

The Head Start program is a national program administered by the Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS), which promotes school

readiness of children from low-income families by enhancing their cognitive, physical, social, and emotional development through the provisions of health, educational, nutritional, social, and other services determined necessary based on family needs assessments.

The Head Start program provides grants to local public and private non-profit and for-profit agencies to provide comprehensive child development services to economically disadvantaged children and families, with a special focus on helping preschoolers develop the necessary skills for school success. The Early Head Start program established in FY 1995 serves families of economically disadvantaged children from birth to three years of age and pregnant women from such families based on the mounting evidence that indicate the great importance of the early years of a child’s growth and development.

On December 12, 2007, the Improving Head Start for School Readiness Act of 2007 (Public Law 110-134) amended the Head Start Act (the Act) to direct HHS to recompute certain Head Start grants. The Head Start Act, as amended, establishes that Head Start grantees will be awarded grants for a five-year period and only grantees delivering high-quality services will be given additional five-year grants non-competitively. Section 641 of the Act requires the Secretary of HHS to develop and implement a system for designation renewal (*e.g.*, Designation Renewal System (DRS)) to determine if a Head Start agency is delivering a high-quality and comprehensive Head Start program that meets the educational, health, nutritional, and social needs of the children and families it serves. This regulation defines, for purposes of the Designation Renewal System, what comprises delivering a high quality comprehensive Head Start program—if a program does not meet any of the seven conditions, they are de facto a high quality program for purposes of the Designation Renewal System.

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

- (A) Annual budget and fiscal management data;
- (B) Program review conducted under section 641A(c);
- (C) Annual audits required under section 647;
- (D) Classroom quality as measured under section 641A(c)(2)(F); and
- (E) Program Information Reports.

The Act also requires that the system is fair, consistent and transparent and that the Secretary periodically evaluate whether the criteria of the system are being applied in a manner that is transparent, reliable and valid.

This final rule responds to those requirements and was developed after consideration of public comments received in response to the Notice of Proposed Rulemaking (NPRM) issued September 22, 2010, in the **Federal Register** [75 FR 57704]. This final rule is also consistent with Executive Order 13563, section 6, which calls for “periodic review of existing significant regulations,” and which directs agencies to engage in “retrospective analysis of rules” in order to improve them “in accordance with what has been learned.” In brief, the NPRM proposed seven conditions that would signal that a Head Start or Early Head Start agency was not delivering high-quality and comprehensive services and “trigger” the grant for competition. The conditions in the NPRM were: one or more deficiencies under section 641A(c)(1)(A), (C), or (D) of the Act; failure to establish school readiness goals; failure to meet minimum thresholds on CLASS: Pre-K domains; revocation of a license to operate a center or program; suspension from the program; debarment from receiving Federal or State funds or disqualified from the Child and Adult Care Food Program; or, one or more material weaknesses or at risk for failing to function as a going concern. The NPRM also proposed adding an eighth criterion to ensure that a minimum threshold of 25 percent of grants would be subject to competition.

Head Start is the largest federal investment in early childhood education, serving nearly one million of our nation’s most vulnerable young children and their families. It is the federal government’s responsibility to make sure that these children and families get the highest quality services possible. This final rule makes structural changes in Head Start that will drive significant improvements in program quality. Specifically, for the first time in the history of Head Start, individual grantees whose programs fall short of certain standards will be required to compete with other organizations to continue receiving funding. Funds will be awarded to the organization that can best meet the needs of Head Start children and families.

### III. Summary Description of Regulatory Provisions

The following is a summary of the most significant regulatory changes included in this final rule resulting from public comment. The Section-by-Section Discussion of the Regulations (Section IV) provides a detailed listing of the comments and responses. We considered each comment and where appropriate made amendments in this final rule. Specifically, changes include:

In § 1307.3 of the NPRM, ACF proposed that a minimum of 25 percent of grantees reviewed in each cycle would be required to compete and proposed adding an eighth condition to achieve this. In response to comments, this threshold is replaced in the final rule. The final rule retains the seven criteria for recompetition in section 1307.3 with some modification, and adds a second sub-part to the CLASS: Pre-K condition, but does not add an eighth criterion. Most significantly, with respect to the third criterion at § 1307.3(c), the final rule provides that, in addition to grantees that will be required to compete based on CLASS: Pre-K scores below minimum quality thresholds, those grantees reviewed by ACF in the same year that score in the lowest decile in any of the three domains of the Classroom Assessment Scoring System: Pre-K (CLASS: Pre-K) will also be required to compete. Taken together, these changes ensure rigorous competition in the Head Start program and provide an approach that is transparent and based on the most valid and reliable indicators of performance currently available to ACF. Current data from Head Start monitoring and CLASS reviews suggest that roughly a third of grantees would have been designated for competition based on the revised criteria. While there are limitations on the precision of estimates with current data, it is clear that this approach will hold grantees to high standards and lead to rigorous competition.

As discussed in the Section-by-Section Discussion that follows, in response to comments this final rule also revises definitions included in the NPRM; modifies the timeframe for the school readiness criteria; and modifies reporting requirements.

### IV. Section-by-Section Discussion of Comments and Regulatory Provisions

This section provides a detailed discussion of the comments received on the proposed rule and describes changes made to the proposed rule. We received approximately 16,000 comments on the NPRM from Head Start grantees, parents, teachers and State associations;

national organizations; and some academic institutions and legal entities. Most comments focused on: the proposed 25 percent minimum requirement for recompetition; retrospective review criteria; proposed conditions related to licensing, deficiencies, and audits; and, the proposed timing and method for using CLASS: Pre-K. Many respondents submitted comments in support of competition, stating that requiring grantees to compete would ensure that Head Start and Early Head Start children across the country receive high-quality services and that dollars invested are spent well.

#### General Comments

Comments not attributable to specific sections of the regulation are discussed below.

#### Concerns Over Competition

1. *Comment:* Many respondents endorsed the principle that grantees not conducting high quality programs should be required to compete for further funding. However, others opposed competition among Head Start and Early Head Start grantees for a variety of reasons, including costs vs. benefits; hardship and stress for staff resulting from the loss of jobs and loss or disruption of employee benefits; disruption of services; and the possibility that grantees required to compete will be stigmatized. Some commenters stated that to avoid potential stigma it would be better to compete all programs. Additionally, commenters expressed concerns that recompetition could be a disincentive for organizations to collaborate with Head Start because of the potential instability of the funding.

*Response:* We appreciate the concerns expressed by commenters and the suggestions provided (discussed more specifically later in this section) to utilize alternative means of holding grantees accountable. However, the 2007 reauthorization of the Head Start Act required the establishment of five-year grants and a Designation Renewal System by which grantees would compete for renewed funding if they were not determined to be providing high quality services. We can assure commenters that we intend to make every effort to ensure continuity of services to children and families, although we acknowledge that it is possible that some short-term disruption of services might occur if and when service providers change.

We think it is important to note that requiring a Head Start or Early Head Start grantee to compete for continued

funding is not the same as taking a grant away or defunding a grantee. Requiring a grantee to compete means that if a grantee wants to continue to provide Head Start or Early Head Start services to the community, it must apply, along with any other entities that choose to do so, for on-going funding and demonstrate that it is the most capable entity to do so.

#### Use of Retroactive Data

2. *Comment:* We received many comments regarding the provision that most of the DRS conditions would be based on data regarding grantee performance starting on June 12, 2009. Commenters claimed that by considering pre-regulation events, ACF was imposing the DRS retroactively and in a manner inconsistent with Congressional intent, that ACF's delay in proposing the regulation should disqualify ACF from imposing retroactive requirements, and that the statute did not require ACF to consider events between June 12, 2009, and the effective date of the regulation. Some commenters objected to the consideration of performance beginning on June 12, 2009 for only certain conditions, such as the establishment of school readiness goals.

*Response:* In the NPRM we proposed, with one exception, application of data collected starting on June 12, 2009, because that is the date specified in the Act before which the system for designation renewal cannot apply. We have maintained in the final rule that data collected beginning on June 12, 2009, may be considered for all of the conditions, with the exception of the condition related to school readiness goals, as discussed later in this preamble, and the CLASS: Pre-K condition that we already proposed in the NPRM to apply after the effective date of the rule. The five conditions for which data collected prior to the effective date of the regulation will be considered are based on Head Start requirements that pre-date this regulation, and were known to grantees as requirements for which they would be held accountable.

Failure to comply with these requirements, even before this regulation was effective, could lead to adverse consequences, such as termination or suspension. Specifically with respect to licensing, Section 641A(a)(D)(i) requires that "facilities used by Head Start agencies for regularly scheduled \* \* \* classroom activities shall meet or exceed State and local requirements concerning licensing for such facilities." These requirements to meet state and local licensing

standards are echoed in Head Start regulations 1306.30(c). Clearly the revocation of a license to operate—a licensing entity actually shutting down a center—is clear and direct evidence that a program is not meeting or exceeding state and local licensing requirements. With respect to disqualification from USDA to participate in the CACFP, Head Start regulations at 1304.23(b)(i) require that all programs “must use funds from the USDA Food and Consumer Services Child Nutrition Programs as the primary source of payment for meal services.” A program disqualified from CACFP would be unable to comply with this long standing requirement. With respect to audit findings potentially jeopardizing a Head Start grant pre-dating this regulation, the Act and existing Head Start regulations at § 1301.12 require an annual audit of all programs to ensure that statements are accurate, that they are complying with the terms and conditions of the grant and that financial and administrative procedures and controls have been installed and are operating effectively. On the “one deficiency” condition, the concept of a “deficiency” and the process for correcting a deficiency have been part of the Head Start Act (section 641A(e)) and the Head Start Performance Standards (45 CFR 1304.60) for many years. Deficiency was defined in Section 637 of the Act and a process for identifying and correcting deficiencies clarified and revised in Section 641A. Therefore, grantees reasonably had notice that a deficiency finding was important and could jeopardize their grant. Grantees also had notice before the adoption of the Designation Renewal System regulation that both debarment and suspension were evidence of programming that was not high quality because debarment is defined in section 637(2) of the Head Start Act as a deficiency and suspension was associated with violations of Head Start requirements under 45 CFR 1303.10(a). In addition, the Federal Uniform Administrative Requirements at 45 CFR 74.13 clearly states that “Federal agencies shall not award assistance to applicants that are debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549.”

We also believe that the Act gave grantees clear and sufficient notification of the potential consequences of failing to deliver a high quality and comprehensive Head Start program and that their performance beginning on

June 12, 2009, could be considered under the DRS to determine whether a grantee must re compete for a five-year grant. We believe that not considering important performance data as soon as allowable by the Act would delay this important mechanism for ensuring grantee accountability and could result in re-awarding grants non-competitively to entities that are not the best equipped to provide high-quality services in that community.

#### Designation Renewal System Final Decision

3. *Comment:* A number of commenters also expressed concern that the decision that a grantee must compete for renewal of funding would be final and suggested that grantees should have the ability to appeal the determination. Other commenters suggested that each condition should be appealable or correctable. Other comments stated that the requirement to compete could injure grantee’s reputation which could result in a loss of funding from other sources and therefore due process rights should be afforded. (Condition-specific comments are discussed more in the Section-by-Section Discussion below.)

*Response:* Congress did not require that grantees designated to compete for further funding be given an opportunity to appeal. Congress did require appeals for grantees that are terminated or suspended for more than 30 days and for delegate agencies that are terminated or who have their applications rejected. Because Congress did not require appeal rights for grantees required to compete for further funding, apparently Congress did not believe that the requirement that a grantee compete for further funding was on a par with termination or other actions for which Congress did require appeals.

Additionally, all eligible entities that have not been terminated from providing Head Start or Early Head Start services in the preceding five years—including the grantees designated for competition—are able and encouraged to apply through that competition. Unlike a grant termination, a requirement to compete provides a mechanism for a current grantee to demonstrate its capacity to provide a high quality program while providing ACF the ability to shift funding to more capable entities if such entities exist in the community. Further, a grantee that competed and lost a competition would remain eligible for future competitions. Because of this the grantee that is required to compete for further funding is one whose level of compliance is sufficient to justify continuance in the

Head Start program, provided that there is no other organization in the same community that establishes, via a competitive process that it is better able to provide a high quality and comprehensive program. Thus the decision to require competition cannot reasonably be expected to damage the grantee’s reputation in such a way as to deprive it of funding from another source.

In response to the suggestions for training and technical assistance for those grantees that meet one of the seven DRS conditions, we note that all grantees already receive training and technical assistance on a variety of related topics and grantees also may request special assistance as needed.

#### Large Grantees and Delegate Agencies

4. *Comment:* A number of commenters raised concerns about designation renewal as it relates to supergrantees (e.g., grantees that serve over 5,000 children or administer grants that cover a large geographic region) or large grantees that have a great number of programs or agencies that provide Head Start services on behalf of the grantee. Concerns were raised that large grantees are more likely to be required to compete because they have more classrooms and provide services to a greater number of families. Several commented that ACF should limit competition to only the service area found to have met one of the seven conditions, rather than requiring the grantee to re compete for its entire service area. Concerns that the problems of a single delegate agency would cause an entire grantee to compete were raised by a number of respondents.

*Response:* All grantees are responsible for ensuring that all children and families participating in the program receive high-quality services, regardless of how many children are served, where the children are served or by whom the children are directly served. Section 1304.51(i)(2), a longstanding regulation, requires grantees to establish and implement procedures for the on-going monitoring of their programs, regardless of the size or structure of that grantee. A grantee’s failure to ensure high quality services are being provided to children that are served in any of their locations indicates that the grantee has failed to maintain a high-quality Head Start program through their on-going monitoring. Thus, we have made no changes in response to these comments.

Specifically with respect to deficiencies identified through Head Start monitoring, a deficiency reflects a very serious program violation. In a large grantee a deficiency would not be

cited for an isolated incident unless it is very severe or was not corrected when identified as a non-compliance. Since the statutory definition includes that a deficiency is a “systemic or substantial material failure,” it accounts for differences in the size of grantees in that an issue that might be material or systemic in a very small grantee may not meet the thresholds of material or systemic in a very large grantee. For example, ten child health records being incomplete in a program serving 20 children could indicate substantial material and systemic problems; however, ten child health records being incomplete in a program serving 10,000 children would not indicate substantial material and systemic problems.

#### Migrant and Seasonal Head Start Programs

5. *Comment:* A number of comments mentioned that the NPRM was silent on Migrant and Seasonal Head Start (MSHS) programs and questioned whether the rule applied to MSHS. Some thought that MSHS programs should be subject to competition under the same rules in place for non-MSHS programs while others requested special considerations for MSHS programs because of the unique challenges MSHS programs face delivering services to children of migrant and seasonal farm workers.

Some respondents expressed concern with the reliability and clarity of the seven conditions proposed in the NPRM for MSHS programs such as whether the CLASS: Pre-K conditions are culturally and linguistically appropriate for MSHS programs or other dual language learner children.

*Response:* The statute is clear that the length of all grants awarded under the Act is five years and that all Head Start grants should be subject to the DRS to determine if they are required to compete for their grants. Congress did not include an exception for MSHS programs. As a result, this entire rule applies to MSHS programs and we have not established separate conditions or a different standard for any program type. However, under § 1307.3(b)(2)(i), we allow programs operating less than 90 days, as many MSHS programs do, to aggregate and analyze their child-level assessment data at least two times within their operating program period, rather than at least three times per year as is required for other Head Start programs. ACF encourages programs facing difficulties with requirements where waivers are authorized under statute or current regulations to submit a request for a waiver.

#### Alternatives to the Proposed DRS

6. *Comment:* Some commenters offered alternative methods to determine which grantees should be required to compete. For example, several recommended an external review process similar to that used to review hospitals and healthcare organizations by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Others recommended alternative systems such as (1) Alternate criteria and an alternate timeline over the five-year grant period, (2) using a tiered system to rate grantees, (3) considering additional information such as national accreditation and (4) randomly assigning some grantees to competition.

*Response:* We appreciate the alternatives suggested by commenters. However, ACF does not believe that any of the systems proposed could be implemented in a fair, consistent and reliable manner within the parameters of the Act. We continue to believe the system for designation renewal proposed in the NPRM, with the adaptations made in this final rule, provides a fair, transparent and evidence-based approach for determining whether Head Start and Early Head Start agencies are delivering high-quality and comprehensive programs that meet the educational, health, nutritional, and social needs of the children and families they serve and meet program and financial management requirements and standards.

#### V. Section-by-Section Discussion of Comments and the Final Rule

##### *Proposed § 1307.1—Purpose and Scope*

1. *Comment:* Some commenters questioned the authority to apply the Designation Renewal System to Early Head Start grantees.

*Response:* HHS has the authority to establish requirements for the scope and design of Early Head Start programs under section 645A(b)(12) of the Act and to establish requirements for the time, manner, and content of applications under section 645A(d) of the Act. ACF believes that requiring Early Head Start grantees that are not providing high-quality, comprehensive services to compete for further funding is necessary to assure that all children receive high-quality services under the program.

##### *Proposed § 1307.2—Definitions*

1. *Comment:* A number of comments were received on definitions proposed in the NPRM. Commenters requested modification of the proposed definitions

of “agency” and “material weakness.” Others requested that we add new definitions including: “aggregate child assessment data,” “child-level assessment data,” “Migrant and Seasonal Head Start,” “redesignation assessment,” and “school readiness goals.”

*Response:* Based on the comments received, we have added definitions of the following terms to the rule: “aggregate child-level assessment data,” “child-level assessment data,” and “school readiness goals.” For the reasons explained below, we also have removed the proposed terms: “designated ACF official” and “material weakness.” We also made a minor technical change to the definition of “transition period” to conform to other changes in the final rule.

2. *Comment:* Commenters stated that the proposed definition of “agency” is inconsistent with the definitions of “Head Start agency” in 45 CFR part 1301 and the definition of “Head Start agency” in the proposed regulation. Commenters stated that ACF should add the word “local” to the definition of “agency” to make it correct.

*Response:* We have not modified this definition because the term “agency” is being adopted in part 1307 to refer to both Head Start and Early Head Start grantees. Inserting the term “local” in the definition would make the term inapplicable to Early Head Start grantees. Under section 645A(d) of the Act, an organization does not have to qualify as a “local” organization in order to be funded under the Early Head Start program. The definition of “agency” in 45 CFR part 1301 was adopted in 1979, before establishment of the Early Head Start program in 1995. In future regulations, ACF will be proposing changes to that definition and several other provisions of Part 1301 that are now obsolete.

3. *Comment:* Commenters suggested that, for the sake of consistency, ACF use the term “responsible HHS official,” which is used in other Head Start regulations, instead of “designated ACF official.”

*Response:* As suggested, ACF has changed the term used throughout this final rule to “responsible HHS official” to be consistent with other regulations. As such, we also have deleted the definition of “designated ACF official” proposed in the NPRM.

4. *Comment:* Commenters suggested adopting the definition of “material weakness” in the Government Accountability Office “Government Auditing Standards,” in place of the definition proposed in the NPRM.

*Response:* In the final rule, we are deleting the proposed definition of material weakness since, as discussed below, we are modifying § 1307.3(g) to remove a finding of material weakness as a condition for recompetition, as had been proposed in the NPRM.

5. *Comment:* Commenters also suggested that “redesignation assessment” be a defined term in the final regulation. Commenters expressed confusion about the process of the designation review or assessment.

*Response:* We have modified § 1307.7 to clarify what the designation review entails, *i.e.*, that it is a review by ACF of grantee data to determine if one or more of the conditions specified under § 1307.3 were met by the agency’s program during the relevant time periods also described in that section.

6. *Comment:* Commenters asked for a definition of “school readiness goals” as used under proposed § 1307.3(b)(2).

*Response:* We have added a definition to the rule to specify that “school readiness goals” mean the expectations of children’s status and progress across domains of learning and literacy development, cognition and general knowledge, approaches to learning, physical well-being and motor development, and social and emotional development that will improve their readiness for kindergarten. This definition is consistent with guidance from the Office of Head Start, section 641A(g) of the Act, and draws from comments.

7. *Comment:* Some commenters asked about what constituted “child-level assessment data” as the term was used in proposed § 1307.3(b)(2). Specifically, commenters asked if the term includes only data gathered through direct standardized assessment of children.

*Response:* The definition added in the final rule clarifies that “child-level assessment data” means “the data collected by an agency on an individual child from one or more valid and reliable assessments of a child’s status and progress, including but not limited to direct assessment, structured observations, checklists, staff- or parent-report measures, and portfolio records or work samples.” This definition is intended to make it clear that we are not imposing a new requirement to use only direct standardized assessment data; rather, agencies may use any one of a number of different methods to gather child-level assessment data (including but not limited to the methods identified in the definition). This is consistent with long standing Head Start regulations at § 1304.20(b), (d) and (e) on on-going assessment of children.

8. *Comment:* Some commenters requested that “aggregate child-level assessment data” be defined to understand the term as it was used in proposed § 1307.3(b)(2).

*Response:* In response to comments, we have added a definition of “aggregate child-level assessment data” to mean “the data collected by an agency on the status and progress of the children it serves that have been combined to provide summary information about groups of children enrolled in specific classrooms, centers, home-based or other options, groups, or setting, or other groups of children such as dual language learners or to provide summary information by specific domains of development.” This definition will help programs understand how to utilize this data to understand the status and progress of children in their program and implement appropriate program improvements. It is consistent with best practices in the early childhood education field.

9. *Comment:* Some respondents requested that ACF include a definition of Migrant and Seasonal Head Start (MSHS) and proposed the following definition: “A MSHS agency is an entity of a local public or private not-for-profit organization, which is designed by ACF to operate programs that serve children from birth to compulsory school age.”

*Response:* The term “Migrant or Seasonal Head Start Program” is defined in section 637(17) of the Act and therefore we do not have the authority to change the definition of this term through regulation.

Proposed § 1307.3—Basis for determining whether a Head Start agency will be subject to an open competition. (Note that proposed § 1307.3(a) and (c) have been removed in the final rule. As a result, proposed § 1307.3(b)(1) to (7) have been redesignated as final § 1307.3(a) to (g).)

*Proposed § 1307.3(a)—Minimum of 25 Percent*

1. *Comment:* The vast majority of comments received on the NPRM pertained to the proposed criterion to ensure that a minimum of 25 percent of grantees are required to compete each year. Respondents stated that the 25 percent requirement is arbitrary, capricious, and unfair. Many of these respondents claimed the minimum percent results in an unfair quota system. Some expressed concern that the quota itself rather than the quality of programs would drive decisions. Others stated that quotas in almost any setting generally are perceived as leading to unfair and inappropriate

determinations and are inconsistent with the intent to identify individual low-performing grantees for competition. Respondents also stated that the approach is not transparent because it fails to articulate a specific standard of quality that programs can aim to meet. Some respondents stated that they may be inclined to support the 25 percent or some minimum percent if it was demonstrated using relevant data how this percent was derived.

Other respondents expressed concern that the standards for running a successful program could change during the school year to meet the 25 percent minimum. Commenters noted that Congress specifically required the development of a merit-based system, and that competing 25 percent of all grantees reviewed in a given year regardless of the quality of those programs does not meet the statutory requirement for a program-by-program determination of whether “a Head Start grantee is successfully delivering a high-quality and comprehensive Head Start program.”

The most frequently expressed consequence of the 25 percent minimum is that it could cause high-quality programs to be required to compete for continued funding.

Other respondents requested more clarification on this provision. Specifically, a number said it is not clear from the NPRM whether the proposed 25 percent minimum is a national figure or whether it would be applied equally across all twelve Federal regions. Others offered alternatives to the minimum 25 percent provision. Some recommended ACF use standard, objective, absolute measures only. Others suggested that ACF establish a new review system that would recognize high quality and innovation and “weed out” the lowest performing programs.

Respondents also offered suggestions if the 25 percent minimum remains in the final rule. Some asked that high performers be exempt from competition and that the remaining 25 percent of grantees be chosen by lottery. Others suggested creating a tiered system of quality, which would identify programs along a quality spectrum rather than drawing a single line between high- and low-quality programs. There were also a number of comments in favor of the 25 percent minimum noting it would ensure robust levels of competition and drive all programs to strive for excellence. A few commenters suggested a higher percentage requirement.

*Response:* ACF carefully considered all the comments received and we have

replaced the 25 percent minimum provision in the final rule with a revised CLASS: Pre-K condition. The revised two-part condition will ensure robust competition and guard against potential score inflation, using this valid, evidence based classroom evaluation tool. As discussed further below, under the final rule, in addition to those programs that score below a minimum threshold, programs that score in the bottom ten percent in any of the three domains of classroom quality measured by CLASS: Pre-K will be required to compete for further funding. This will ensure that standards remain high, but that grantees are held to objective, meaningful standards. Furthermore, to respond to comments received that the 25 percent provision could result in high-performing programs being required to compete, the CLASS-based criteria further stipulates that in the unlikely event that a program that scores in the bottom decile in a domain but whose score in the domain meets the “standards of excellence” will not be required to compete.

Taken together, the revised CLASS-based criteria and the other six conditions meet the same goal of ensuring high standards and driving continuous quality improvement, which was specified in the NPRM. Namely, these criteria ensure robust competition and, based on currently available data, will result in roughly a third of all programs being designated for competition. Additionally these criteria are transparent and guard against potential score inflation while addressing legitimate concerns raised by commenters.

*Proposed § 1307.3(b)(1)—Deficiency (Note that proposed § 1307.3(b)(1) has been changed to § 1307.3(a) in the final rule.)*

1. *Comment:* A significant number of comments received related to the proposed condition that an agency that has been determined by ACF to have one or more deficiencies on a single review conducted under section 641A(c)(1)(A), (C), or (D) of the Act would be required to compete. Some commenters shared support for the proposal, while other respondents stated that there is insufficient data on monitoring findings available to evaluate the merits of this condition.

Many respondents stated that the definition of deficiency is unclear. A number of these respondents said ACF should publish a list of deficiencies on its Web site annually.

*Response:* In response to concerns that there is insufficient data on monitoring findings available and

suggestions that ACF should publish a list of deficiencies on an annual basis, we note that we publish an annual report that provides a description of the monitoring review process, a summary of findings of the monitoring reviews conducted in each fiscal year (including a list showing the number of noncompliances and deficiencies by Head Start requirement), the outcomes of follow-up actions on grantees with required corrective actions, and any recent steps taken regarding monitoring and program integrity. The annual report on Head Start monitoring can be found at the following link: <http://eclkc.ohs.acf.hhs.gov/hslc/>.

2. *Comment:* Other respondents noted that there are inconsistencies in the OHS monitoring review system and process for determining deficiencies. As a result, they believe the criteria for determining a deficiency finding is subjective and varies among on-site monitoring teams or the ACF official. ACF received nearly 5,000 comments related to monitoring reviews. A number of Tribes noted that many reviewers do not understand the concept of Tribal sovereignty.

*Response:* ACF stands behind the integrity of the monitoring review process used for all Head Start and Early Head Start grantees. As required by the Act, OHS consistently reviews and revises its monitoring process and protocol. Each year, OHS makes some changes to its monitoring protocol and trains all reviewers on the changes. In order to ensure interrater reliability, OHS annually trains reviewers before the monitoring year begins. The determination that a finding constitutes a deficiency is not made on-site by monitoring review teams, but rather is made after OHS and ACF experts and senior staff conduct a deliberative and rigorous review of the evidence. The results of the monitoring process are tested when grantees that have been terminated based on a failure to correct deficiencies appeal their terminations. In the overwhelming majority of these appeals, ACF’s judgment that a deficiency existed, and that the grantee had failed to correct the deficiency, have been upheld by the Departmental Appeals Board. These rulings have often been made without the necessity of conducting a hearing because the grantee has not challenged ACF’s factual findings. When a program is cited for a deficiency, it is an indication of a significant failure to meet program requirements. We believe that when a program fails to meet these standards, it is entirely appropriate to require them to compete for funding to determine if

children would be better served by a different entity.

3. *Comment:* Other comments objected to the standard of one deficiency triggering competition. Some respondents stated that ACF has not articulated clearly its rationale for using a single deficiency condition.

*Response:* As stated in the preamble to the NPRM, ACF firmly believes that a grantee determined to have one or more deficiencies in a single review has demonstrated that it does not meet the requirement of being a high-quality program. ACF believes it is a reasonable standard that programs identified as having a deficiency, which, in summary, is defined as a systemic or material failure to meet program performance standards, a systemic or material failure of the governing body of an agency to fully exercise its legal and fiduciary responsibilities, or an unresolved area of noncompliance, should be required to compete for funding to determine if they are the most capable entity to provide Head Start or Early Head Start services to that community. This condition also is grounded in the Secretary’s Advisory Committee’s recommendations related to “Key Quality Indicators.” It is important to note that as stated in the NPRM, ACF will consider data from triennial reviews, follow-up reviews, and other reviews—and not first-year reviews.

It is ACF’s position that grantees should have systems in place to avoid the types of failures that constitute deficiencies as defined in the Act, including the ability to resolve a noncompliance in the specified corrective action timeframe before it is considered a deficiency.

4. *Comment:* Some respondents stated that different deficiencies do not represent problems of equal severity; some are more serious or systemic issues than others. These respondents argued that establishing a specific number of deficiencies to trigger competition is inappropriate because of differences in the severity of problems identified as deficiencies. Some respondents stated that only matters that present a systemic threat to health and safety or acts of financial irresponsibility should be considered deficiencies for purposes of competition.

*Response:* While it is true that deficiencies can reflect problems of varying levels of severity, all deficiencies represent a significant failure to provide services consistent with Head Start Program Performance Standards and therefore it is appropriate to require a competition to determine if

the current grantee or another entity is the most qualified provider in that community.

5. *Comment:* A large number of respondents stated that grantees should have the opportunity to appeal deficiencies before a grantee is required to compete.

*Response:* The Act does not provide for an appeal of deficiency findings, unlike terminations and suspensions lasting more than 30 days. Although there is no statutory right to an appeal, grantees currently have the opportunity to discuss the progress of the monitoring review while the review team is on site. Although the final determination is not made during the on-site review, grantees consistently are informed of the opportunity to provide additional input when concerns are identified while the team is on-site.

6. *Comment:* Some respondents recommended that a weighting system be applied for findings from unannounced visits versus those found during announced monitoring reviews. Some respondents recommended that ACF revise the condition to focus on a pattern of deficiencies, deficiencies based on their severity, deficiencies that directly impact services to children and families, or multiple deficiencies in a single review.

*Response:* In 2007, Congress specifically added authority in section 641A(c)(1)(D) of the Act for ACF to conduct unannounced site inspections and consistent with this the number of unannounced reviews has increased as an added quality assurance measure. Programs should always be following Program Performance Standards and be ready for a review at any time. Grantees are always required to follow requirements of the Act and regulations and can be cited for not complying with regulations at any time during the year.

While we appreciate the comments received on this provision, the final rule maintains the provision as proposed. As stated above, a deficiency is by definition a “substantial or systemic material failure.” ACF firmly stands behind the integrity of the monitoring and review process through which deficiencies are established and this has been consistently validated by rulings supporting ACF findings in the appeals process. ACF strongly believes that a grantee found to have a deficiency should compete to determine if it or another entity is the strongest provider in the community.

*Proposed § 1307.3(b)(2)—School Readiness Goals (Note that proposed § 1307.3(b)(2) has been changed to § 1307.3(b) in the final rule.)*

1. *Comment:* Many comments were received related to the establishment of goals and utilization of data on children’s school readiness. While the majority of commenters expressed support for this requirement, numerous commenters raised concerns about how the condition will be implemented. For example, nearly all of the comments received on this condition requested that ACF issue guidance to clarify the requirements and explain how grantees’ adherence to those requirements will be measured (discussed in further detail below). Many of the commenters also recommended that ACF not implement the condition until after such guidance has been issued and training and technical assistance has been provided to grantees.

*Response:* We agree with these concerns and have revised the date of implementation of the condition to be after the effective date of the final rule. Therefore, in evaluating whether a grantee has met this condition, we will not rely on data beginning on June 12, 2009, as had been proposed in the NPRM, but rather beginning on the effective date of this final rule. In the NPRM, ACF proposed that grantees would be evaluated on establishing school readiness goals (§ 1307.3(b)(1)) at the June 2009 date, and on the steps to achieve school readiness (§ 1307.3(b)(2)) after the effective date of the regulation. We have changed the final rule to reflect that all of § 1307.3(b) related to school readiness will be considered after the effective date of this regulation. Since the publication of the NPRM in September 2010, there has been steady communication with Head Start grantees about school readiness goals through webcasts, two national institutes in February and October of 2011, training and technical assistance materials (including The Guide to Resources for Developing School Readiness Goals) and other material created by the National Center for Quality Teaching and Learning (<http://eckkc.ohs.acf.hhs.gov/hslc/tta-system/teaching>). We also will continue to provide technical assistance and other supports for implementation of this condition.

Establishing and using school readiness goals are central to providing high-quality services to children and families, and the high quality implementation of activities to meet this requirement will be the focus of training, technical assistance and on-

going oversight by federal staff. However, compliance with the requirements and determinations about whether grantees meet the school readiness goals condition of the DRS will only be measured by evidence collected in reviews conducted under section 641A(c) of the Head Start Act. Evidence in these reviews is collected by monitoring teams, including regional staff, but determinations regarding evidence collected in any reviews are made only by the responsible HHS official.

2. *Comment:* Numerous commenters requested that ACF issue guidance on the implementation of the requirement to establish and take steps to achieve school readiness goals. For example, many of these comments requested clarification on the definition of “school readiness goals,” what they should look like, how to determine what they should look like, and how to measure children’s progress against them. Some commenters suggested that ACF establish national goals and benchmarks for children’s school readiness that would be applied to all grantees. Other commenters stated that there should not be a uniform definition because what it means to be ready for school may vary by State, community, or population.

*Response:* In response to these comments on the need for a definition, we have added a definition of “school readiness goals” to the final rule. The definition clarifies that school readiness goals are expectations of children’s status and progress across domains of language and literacy development, cognition and general knowledge, approaches to learning, physical well-being and motor development, and social and emotional development that will improve their readiness for kindergarten. This definition is consistent with section 641A(g) of the Act and guidance provided by the Office of Head Start and draws on comments received. With respect to comments on national goals, in section 641A(g)(2)(A) the Act requires that school readiness goals be “agency determined.”

3. *Comment:* Some commenters were unclear about whether the goals for improving the school readiness of children were meant to be individual plans for each child or global goals for all children in a program. Some commenters misinterpreted this section in the NPRM as requiring grantees to meet benchmarks for children’s outcomes and progress, rather than requiring grantees to demonstrate how child-level assessment data is used to individualize children’s experiences and inform continuous quality improvement. Others asked for guidance



around how to analyze school readiness data and requested that training and technical assistance be provided to increase grantees' capacity for analyzing child-level assessment data. Some also asked for ACF to provide a schedule that includes when grantees should analyze child-level assessment data within the year (e.g., within the first 45 days of the program year).

*Response:* In response to these comments on program or individual child goals, we have clarified in the final rule that the School Readiness Goals are for improving the school readiness of children in their program and are global or program goals for all of their children. We also reorganized the provision in the final rule to make it clearer that individual child-level data is critical in how programs take steps to help each individual child to make progress and to achieve overall program school readiness goals. Specifically for individual children, programs must analyze individual child-level data in order to determine each child's status and progress on those goals in order to individualize instruction for those children and to inform parents and families. Furthermore, we clarify in the final rule that aggregated child-level assessment data must be used to inform curriculum, instruction, professional development, program design, and other program decisions.

4. *Comment:* Some commenters requested guidance on the process for aligning school readiness goals with the Head Start Child Outcomes Framework (Framework). In particular, commenters were concerned about the requirement to align with the Framework because, at the time the NPRM was open for public comment, the Framework was undergoing revision by ACF.

*Response:* ACF since has published the revised framework (now called the Head Start Child Development and Early Learning Framework (available at [http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/teaching/eecd/Assessment/Child%20Outcomes/HS\\_Revised\\_Child\\_Outcomes\\_Framework.pdf](http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/teaching/eecd/Assessment/Child%20Outcomes/HS_Revised_Child_Outcomes_Framework.pdf))). We also have addressed these concerns in the OHS training and technical assistance, which discusses grantees' responsibilities and processes for ensuring alignment between agency-established school readiness goals and the revised framework.

5. *Comment:* Other commenters had concerns about using the Early Head Start Performance Measures Framework in determining children's status on the child competencies. In particular, there were questions about whether grantees need to set goals and measure progress on "parents as the primary nurturer"

and "parent-child relationships" as described in the Framework.

*Response:* In response to these comments, the final rule clarifies that children's progress on the five essential domains is what should be measured by both Head Start and Early Head Start grantees. While the Framework is comprehensive and includes many elements, it is organized so that all the elements fit under the five essential domains of child development. Programs will continue to be instructed on using the essential domains as a framework for their goals and assessment of meeting the goals.

6. *Comment:* Some commenters misinterpreted the language in the NPRM as requiring grantees to conduct a formal assessment of children three times per year (or two times per year for programs operating less than 90 days), rather than requiring them to aggregate and examine child-level assessment data regardless of the method of assessment three times each year.

*Response:* In response to these concerns, ACF has added a definition of "child-level assessment data" to the final regulation. We also have addressed these comments in the training and technical assistance ACF provides by including information about the methods and types of assessment, assessment instruments, and other strategies for understanding children's development and learning that grantees should utilize in meeting the requirements to establish and take steps to achieve school readiness goals. Training and technical assistance also included a clear distinction between the process of child assessment and the process for collecting, aggregating, and analyzing child-level assessment data.

7. *Comment:* Numerous comments were received related to how programs are to show compliance with the requirement to establish and take steps to achieve school readiness goals and utilize data for individualization and program improvement. Specifically, commenters requested guidance on what information needs to be documented and maintained to demonstrate compliance; how programs can self-assess; and what criteria ACF will use to evaluate compliance.

*Response:* We appreciate these suggestions and drew on them in preparing technical assistance for grantees, which includes information regarding how grantees can self-assess, how they can examine school readiness goals as part of ongoing monitoring and use that information to guide program improvements to curricula and professional development, and how grantees can document and demonstrate

compliance with these requirements for the triennial monitoring review. Additional information is available to grantees in the monitoring protocol.

*Proposed § 1307.3(b)(3)—Classroom Assessment Scoring System (CLASS): Pre-K (Note that proposed § 1307.3(b)(3) has been changed to § 1307.3(c) in the final rule.)*

Section 641A(c)(2)(F) of the Act requires the Secretary to include as part of the Head Start monitoring review process "a valid and reliable research based observational instrument, implemented by qualified individuals with demonstrated reliability, that assesses classroom quality, including assessing multiple dimensions of teacher-child interactions that are linked to positive child development and later achievement." Section 641(c)(1)(D) requires that such an instrument be used as part of the system for designation renewal. CLASS: Pre-K, a system that uses observation to rate the interactions between adults and children in the classroom as high-, middle- or low-quality, meets the statutory requirements for "a valid and reliable research-based observational instrument." Before selecting an instrument to fulfill this requirement, ACF consulted with leading early childhood assessment experts who all advised that the CLASS: Pre-K was the instrument that best met the statutory requirement. The Conference Report accompanying the Act also suggested that ACF consider using the CLASS: Pre-K (H.R. Conference Report No. 220-439 at 111 (2007), as reprinted in 2007 U.S.C.A.N. 442, 462). Ultimately, ACF selected the CLASS: Pre-K instrument because, as discussed in the "CLASS Implementation Guide: Measuring and Improving Classroom Interactions in Early Childhood Settings" CLASS: Pre-K has been validated by over ten years of research in educational settings.

1. *Comment:* ACF received a large number of comments related to CLASS: Pre-K. While there was general support for the tool, some commenters raised a range of concerns related to using CLASS: Pre-K for program accountability purposes.

*Response:* As discussed in the CLASS: Pre-K manual, the purpose of CLASS: Pre-K is to measure "the quality of the classroom environment" and uses of CLASS: Pre-K include research, accountability efforts, program planning and evaluation, and professional development and supervision. ACF recognizes that while CLASS: Pre-K was developed for a range of purposes, it has been used primarily for research and professional development purposes. It is

also being used in some state accountability and quality improvement efforts in Quality Rating and Improvement Systems, in which CLASS scores are used as a measure in rating the quality of an early childhood program. ACF is working closely with the developers to ensure CLASS: Pre-K is used in ways that inform programs and accurately reflect classroom quality.

2. *Comment:* A number of respondents requested that ACF delay the inclusion of CLASS: Pre-K in the Designation Renewal System. Respondents stated that CLASS: Pre-K has not been in use long enough with Head Start grantees to elevate scores to such high importance and that the science has not provided a basis yet for selecting the threshold for competition. Others said it should not be implemented until after the transition period in order to hold all grantees to the same standard.

*Response:* While we appreciate the public comments received on the timing for considering CLASS: Pre-K, ACF has decided not to delay the inclusion of CLASS: Pre-K as a condition for designation renewal due to the critical importance of classroom quality. As was included in the NPRM, the CLASS: Pre-K condition will be implemented in the second year of the transition period using data from observations conducted after the effective date of the final rule. However, no grantees will be awarded non-competitive extensions without being evaluated against the two-part CLASS criterion. We based the decision to utilize CLASS in the Designation Renewal System on the following: (1) Research has shown that teacher-child interaction is critical for children's social and academic development, (2) a measure of classroom quality is critical to ensuring that children are in high quality programs, and (3) there is an extensive research base for CLASS: Pre-K. ACF notified grantees in August 2008 that CLASS: Pre-K would begin to be used in Head Start monitoring reviews (see ACF-IM-HS-08-11). In addition, ACF has provided all grantees the opportunity to be trained on the protocol and grantees have been monitored on CLASS: Pre-K instrument for two years. Moreover, ACF-IM-HS-08-21 provided further information regarding the importance of child-teacher interaction. ACF also provides training resources to each Head Start grantee as part of its annual funding, consistent with requirements in the Act. Finally, ACF's inclusion of a relative threshold, as well as a minimum threshold of quality and a standard of excellence, are responsive to comments about the current state of the science.

While research has not yet identified a specific CLASS score necessary to impact positive outcomes, research has shown, (1) That low levels of quality are not related to children's outcomes, and (2) that there is no "good enough" level of quality above which additional quality improvements do not matter for children's outcomes (*i.e.*, higher levels of quality are related to better outcomes for children) (Burchinal, M., Xue, Y., Tien, H., Auger, A., & Mashburn, A. (March, 2011)).

3. *Comment:* A number of respondents raised concerns with the use and reliability of CLASS: Pre-K with culturally and linguistically diverse classrooms. Some respondents commented that CLASS: Pre-K is inappropriate with specific populations or programs, such as American Indian/Alaska Native, Migrant and Seasonal Head Start, or dual language learners.

*Response:* Research consistently shows that children in classrooms with higher CLASS: Pre-K scores demonstrate more positive social and early academic development. (Burchinal, M., Vandergrift, N., Pianta, R., & Mashburn, A. (2010), and Burchinal, M., Xue, Y., Tien, H., Auger, A., & Mashburn, A. (March, 2011)). While the CLASS: Pre-K was not designed to measure specific practices in multi-lingual classrooms, the tool has been used in classrooms with diverse populations. For example, findings from the National Center for Early Development and Learning (NCEDL)'s research conducted in nearly 700 pre-kindergarten classrooms and 700 kindergarten classrooms, including linguistically diverse classrooms, suggest that CLASS: Pre-K functions well as an assessment of the quality of teacher-child interactions in classrooms with language diversity, and that CLASS: Pre-K predicts gains in dual language learners children's school readiness skills (Downer, 2011). ACF will continue to examine concerns regarding the use of CLASS: Pre-K in culturally and linguistically diverse classes. ACF is providing additional cross-cultural training to CLASS: Pre-K reviewers to ensure reviewers are familiar with the culture of the families served and that they are fluent in the predominant teaching language used in the class where they conduct observations.

4. *Comment:* Some respondents raised other concerns with the CLASS: Pre-K instrument itself, aside from culture or language. Respondents stated, for example, that CLASS: Pre-K scores are reliable within one number above or below the actual score and that CLASS: Pre-K was developed with a national norming sample and data primarily

from State-funded pre-kindergarten programs.

*Response:* ACF is confident of the reliability and appropriateness of the CLASS: Pre-K tool for use in Head Start classrooms based on the extensive and growing use of the instrument to assess a wide range of early childhood programs (*e.g.*, in numerous research studies as well as State Quality Rating and Improvement Systems) and ACF's experience using the instrument over the last 2 years. With respect to concerns about the norming sample used for the development of CLASS: Pre-K, we note that the developers included Head Start programs among the sample of programs they tested.

5. *Comment:* ACF specifically requested comments on alternative methods to the CLASS: Pre-K condition, including the use of an absolute threshold versus a relative threshold that compares each grantee's score to the scores of other grantees reviewed in the same year, or the use of different absolute thresholds for each domain. A smaller subset of respondents commented on these issues. Those in support of absolute thresholds emphasized that identifying low-performing grantees is achieved best by defining a minimum level of quality all grantees must meet. Those recommending a relative threshold indicated that comparing grantees to their peers is the most appropriate approach, particularly absent clear research indicating what an absolute threshold should be. Several respondents proposed using national averages to determine scores to trigger competition or focusing on significant variances from the national averages.

Some respondents asked for further clarification on what was meant by "low" scores or requested a justification for why the proposed scores were chosen. Other respondents commented that the proposed scores for competition establish either unrealistic standards in some domains or inadequate standards of quality in other domains.

*Response:* In response to comments, ACF has revised the proposed CLASS: Pre-K condition from being solely an absolute threshold of scores below a 3 on any of the three CLASS: Pre-K domains (Emotional Support, Instructional Support, and Classroom Organization) during the two most recent CLASS: Pre-K observations to a two-part criterion, that consists of both a relative and an absolute threshold based on the most recent CLASS: Pre-K observation for all three domains of CLASS: Pre-K.

Specifically, ACF will require grantees whose average scores across

classrooms fall in the lowest 10 percent on any of the three CLASS: Pre-K domains in that year to compete. ACF will determine the lowest deciles by comparing the scores in each of the three CLASS: Pre-K domains of all grantees reviewed in the same year under section 641A(c)(1)(A), (C), and (D). If a program scores in the bottom 10 percent of all Head Start programs, this indicates that the vast majority of organizations operating Head Start are providing a higher quality program for children. For a program with an average score in the lowest ten percent in the domain of Emotional Support, it means that ninety percent of Head Start programs assessed were shown to be doing a better job helping children develop positive relationships, enjoyment of learning, and appropriate levels of independence. For a program with an average score in the lowest ten percent in Classroom Organization it means that ninety percent of Head Start programs assessed were rated higher on how well teachers manage classrooms to maximize learning and keep children engaged. And for a program with an average score in the lowest ten percent in the domain of Instructional Support, it means that ninety percent of Head Start programs were assessed to be doing a better job promoting children's thinking and problem solving, using feedback to deepen understanding and helping children develop more complex language skills. If ninety percent of Head Start programs are doing better in these areas, it is certainly reasonable to require that these programs compete to determine if there is another provider in that community that can provide children a higher quality experience.

In addition, the final rule establishes a minimum quality threshold, or "floor," for each of the three domains under § 1307.3(c)(1). Grantees will be required to compete if, in the most recent CLASS: Pre-K observation, the average score across all classrooms observed by ACF in any CLASS: Pre-K domain falls below the minimum quality threshold for that domain established in the regulations, even if it does not fall into the lowest 10 percent of grantees assessed on that domain. For reasons described below, for the Emotional Support domain, the minimum quality threshold is an average score across all classrooms of a 4. For the Instructional Support domain, the minimum quality threshold is an average score across all classrooms of a 2. For the Classroom Organization domain, the minimum quality threshold is an average score across all classrooms of a 3.

ACF sets a clear minimum quality threshold grantees must achieve, consistent with research that demonstrates the lack of improvement in child outcomes when the quality of child-teacher interactions measured by the CLASS fell below certain levels in the different CLASS domains. There is a growing body of research showing that at least moderate quality is necessary in Instructional Support for improving children's outcomes (*i.e.*, there is no evidence demonstrating a link between CLASS Instructional Support scores and children's outcomes when CLASS Instructional Support scores fall below a 2). Conversely, research suggests moderate to high-quality is necessary in Emotional Support for improving children's outcomes. (See, for example, Burchinal, M., Vandergrift, N., Pianta, R., & Mashburn, A. (2010). Threshold analysis of association between child care quality and child outcomes for low-income children in pre-kindergarten programs. *Early Childhood Research Quarterly*, 25(2), 166–176.) Based on this research, as well as comments received on the NPRM, we consulted the CLASS manual to identify the CLASS scores that most closely correspond to "at least moderate quality" for the Instructional Support domain and "moderate to high quality" for Emotional Support domain. As a result, we revised the minimum thresholds for Instructional Support and Emotional Support proposed in the NPRM (*i.e.*, 2 for Instructional Support and 4 for Emotional Support). The minimum threshold for Classroom Organization stays at 3, the same as the NPRM.

Finally, ACF is establishing an exceptional level of quality to ensure that the relative threshold does not result in exceptionally high quality programs being required to compete. In the unlikely event that a grantee's score in a domain falls in the lowest 10 percent but the score equals or exceeds the exceptional level of quality, then the grantee will not be required to compete on the basis of its score on that domain. The exceptional level of -quality threshold or standard of excellence for each three CLASS: Pre-K domains is an average score across all classrooms of 6 or above. ACF selected this particular threshold because the developers of the CLASS: Pre-K established these scores on the instrument's seven point scale expressly to identify those grantees functioning at the highest levels of quality (with scores of 1 to two being in the low range; three to five in the mid-range; and six to seven in the high range of quality). The following is an example

of how the absolute thresholds would work in conjunction with the relative threshold in Emotional Support. The lowest 10 percent of grantees as well as all grantees that have an average score below a 4 will be required to re compete based on their Emotional Support average score. If more than 10 percent of grantees had an average score in that domain below a 4, all of those grantees would have to compete. If a grantee in the lowest 10 percent in that domain had an average score of 6 or above, they would not be required to compete on the basis of the Emotional Support score because they have achieved the exceptional quality threshold in that domain. Grantees with an average score between a 4 and a 6 on Emotional Support but that are not in the lowest 10 percent would not be required to compete on the basis of their Emotional Support score.

In summary, this revised CLASS condition combines the merits of both the relative and absolute threshold concepts. It includes a relative threshold, which is responsive to comments that research has not yet identified the specific threshold of quality that is needed to impact positive outcomes, while recognizing research showing that there is no "good enough" level of quality (*i.e.*, higher levels of quality are related to better outcomes for children) (Burchinal, M., Xue, Y., Tien, H., Auger, A., & Mashburn, A. (March, 2011)). It also guards against score inflation, which, if it occurred, would result in less rigorous standards over time. The rule also sets a minimum quality threshold based on research findings that show a minimum level of quality must be achieved before positive changes can be made in children's outcomes and it establishes a high-quality standard above which grantees would be exempt from competition. In setting the minimum quality thresholds and exceptionally high-quality standards ACF compared CLASS: Pre-K scores for Head Start programs to national data and to data on other early childhood programs, examined the CLASS: Pre-K user manual, considered the Office of Head Start's expectations for what should be taking place in early childhood classrooms, and embraced the latest research findings.

As will be discussed in more detail in Section § 1307.8, ACF is implementing a significantly improved approach to each grantees' CLASS assessment including even more rigorous training and reliability assurance, a more rigorous random sampling of each grantee's classes to determine which to observe, and more consistent protocols for implementation. For these reason,

determinations for designation renewal will be made based on the most recent CLASS: Pre-K observations, rather than the two most recent CLASS: Pre-K observations as was proposed in the NPRM.

6. *Comment:* A number of respondents had questions about whether or how the CLASS Pre-K would be implemented in Early Head Start programs and/or in the Home-based program option.

*Response:* CLASS: Pre-K will not be used in Early Head Start programs or in programs that operate the Home-based option only. ACF will consider incorporating a valid and reliable measure of teacher-child interaction in Early Head Start and in the Home-based program option when such a tool becomes available. ACF would incorporate such a tool only after soliciting public input through an NPRM.

7. *Comment:* Some commenters expressed concerns about how the “negative climate” dimension of the Emotional Support domain of the CLASS Pre-K would be included in grantees’ average scores in that domain.

*Response:* The “negative climate” dimension high and low scores have the opposite meaning than for all of the other CLASS dimensions. Specifically, for negative climate a low score means that there is a low level of negative climate in the classroom—which is good. For that reason, the negative climate score is reversed when averaging dimension scores to obtain a domain score, as is explained in the CLASS: Pre-K manual—so that a grantee receiving a good negative climate score will likewise receive a higher score on the overall domain of Emotional Support of which negative climate is one part. ACF will use that methodology for obtaining averaging as prescribed in the CLASS: Pre-K manual to ensure that average domain scores are accurate.

*Proposed § 1307.3(b)(4)—License Revocation (Note that proposed § 1307.3(b)(4) has been changed to § 1307.3(d) in the final rule.)*

1. *Comment:* ACF received a significant number of comments in response to the proposed licensing condition described at § 1307.3(b)(4). A number of commenters expressed support for licensing revocation as a trigger for competition. Others raised concerns about the trigger and what constitutes a license revocation as discussed in § 1307.3(b)(4).

A common theme among comments on this condition was that variations among State licensing requirements would make it impossible to implement

it in an equitable manner across Head Start and Early Head Start grantees. Many remarked that ACF should set a standard for all Head Start programs rather than relying on separate State standards.

There were a number of comments that mentioned that the fate of an entire grantee and all of its delegates would be in jeopardy when one delegate agency loses its license. Many respondents noted that the condition is duplicative since OHS already would learn about a licensing revocation during an on-site monitoring review. Finally, a common theme among commenters was a concern that the licensing condition in particular could create challenges to collaborations because of concerns over potential loss of funding due to loss of individual center licenses.

*Response:* We would like to clarify that it is the revocation of a license, not the suspension of a license, that will require a grantee to compete. Revocation is a process that varies by State and local standards. However, despite these variations, removing a licensing or forbidding a center to continue operating is the final step in a series of corrective actions for an agency in all jurisdictions. Revocation is the removal of a license, meaning that a center no longer is allowed to operate in caring for children in that jurisdiction. The revocation of a license to operate is a serious indication of an agency’s inability to operate a high-quality program.

Section 641A(a)(1)(D)(i) of the Act and Head Start regulations implemented at 45 CFR 1306.30(c) require that “the facilities used by Early Head Start and Head Start grantees 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).” ACF would be remiss if it did not require a grantee whose license had been revoked to demonstrate its fitness to continue to receive Head Start funding following such a determination by State or local authorities. Given the serious nature of revocation and given that the consequence for the grantee is not termination from the program or

even suspension, but only a requirement to compete for further funding, it should not be necessary to require exhaustion of appeal opportunities before ACF requires the grantee to compete to prove through a competition they are the most qualified entity in the community.

ACF will maintain this condition as laid out in the NPRM, regardless of appeal status since it is such a serious condition with one exception. It merits repeating here that requiring a grantee to compete for continued funding is not equivalent to terminating the grant. In the final rule ACF is allowing for a longer period to resolve appeals than was proposed. The final rule would allow a grantee that has had its license revoked to continue to receive further funding without competing if the revocation was overturned or withdrawn any time “before the announcement of the competition in which the grantee would be required to compete for renewed funding.” If a decision on appeal is not made by that point then ACF is justified in requiring the grantee to compete since competitions have to be held within certain time periods to ensure that either the existing grantee or a new grantee has been selected by the time the existing grant expires. It does not make sense to delay a competition based on the possibility that a revocation of a license may be overturned or withdrawn sometime in the indefinite future.

If the license of any center where a grantees is serving Head Start or Early Head Start children is revoked, the grantee would be required to compete. As mentioned previously, each grantee is responsible for ensuring that every child it serves, no matter where or by whom, receives high-quality early childhood services. Delegate agencies are required to follow licensing regulations, and grantees should be aware of issues that may jeopardize a delegate agency’s license before that license is revoked.

*Proposed § 1307.3(b)(5)—Suspended by ACF (Note that proposed § 1307.3(b)(5) has been changed to § 1307.3(e) in the final rule.)*

1. *Comment:* Many commenters agreed that agencies that have been suspended by ACF should have to compete for renewed funding. Other commenters stated that the condition only should apply after an agency has exercised all of its due process rights afforded under the appeals process and after final decisions have been made in that appeal process. A few commenters raised the concern that smaller entities may not have adequate resources to appeal a suspension. One commenter

suggested that suspension should not be counted as meeting the condition if a grantee was reinstated. One commenter stated that ACF should ensure that the reason for the suspension was related to the Head Start program. Another commented that suspension was already a tool ACF could use in finding a grantee unsuited for maintaining Federal funding.

*Response:* Under 45 CFR 1303.12(a), a grantee can be subject to summary suspension if it is at “[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.” Suspension under 45 CFR 1303.11 only can be based on “circumstances related to a 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.” Regulations implemented at 45 CFR 1303.10(a) specify that a suspension of either type involves a finding by ACF that a grantee has either failed to live up to one or more standards applicable to Head Start grantees or is at risk for misusing Head Start funds, violating a criminal statute, or harming its staff or program participants. The grounds for suspension and summary suspension are also grounds for finding that the grantee is not conducting a high quality program and should be required to compete for funding.

ACF considered all the comments submitted related to suspension and is making one change in the final rule. We have modified the rule so that if there is a pending appeal and the agency did not have an opportunity to show cause as to why the suspension should not have been imposed or why the suspension should have been lifted if it had already been imposed under 45 CFR Part 1303, the agency will not be required to compete based on this condition. If an agency has received an opportunity to show cause, the condition will be implemented regardless of appeal status, since the performance issues that would lead ACF to suspend a grantee are so serious—and are exercised with such infrequency—that to delay a competition in that service area would not be in the best interest of the children and families in that community.

*Proposed § 1307.3(b)(6)—Debarred From Receiving Federal Funds or Disqualified From CACFP (Note that proposed § 1307.3(b)(6) has been changed to § 1307.3(f) in the final rule.)*

1. *Comment:* In § 1307.3(b)(6) of the NPRM, ACF proposed that a grantee be required to compete that “has been debarred from receiving Federal or State funds from any Federal or State department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP) any time during the period covered by the designated ACF official’s review under § 1307.7 but has not yet been terminated or denied refunding by ACF.” A majority of respondents were supportive of this condition. Some respondents raised questions about aspects of debarment and disqualification and implementation of this condition such as noting that the debarment condition is duplicative because an agency that has been debarred from receiving Federal funds already would have lost its Head Start grant. One commenter suggested that programs disqualified from CACFP due to errors should not have to re compete.

A number of respondents raised concerns that only a final debarment or disqualification decision should be considered, allowing the grantee to go through the entire appeal process and exercise all due process rights. Several commenters recommended that if a delegate agency is debarred, the grantees should terminate the delegate and the grantee should not be required to compete.

*Response:* ACF considered the comments received and has not changed the policy in the final rule. Debarment is grounds for a deficiency finding under the statutory definition of that term, and indicates an agency’s failure to administer a high-quality program. Head Start grantees are eligible to receive funding under the Department of Agriculture’s (USDA) Child and Adult Care Food Program (CACFP) for the food served to children at the meals provided by the Head Start program. If a grantee were disqualified from the USDA program, the grantee would not receive funding for the food served to children in the program. Under 45 CFR 1304.23(b)(1)(i), all grantees are required to use CACFP funds as the first source of funding for program meals under the regulations; therefore, disqualification would mean that the grantee had lost a major funding source for the meals and snacks served in the programs. In addition to requiring grantees to report on this condition, ACF will work with USDA’s Food and Nutrition Services

(FNS) to receive information about grantees that have been disqualified and will check that information against grantee reporting.

*Proposed § 1307.3(b)(7)—Audit Findings (Note that proposed § 1307.3(b)(7) has been changed to § 1307.3(g) in the final rule.)*

1. *Comment:* Commenters raised concerns about the performance of the audits. Many focused on the issue of using A–133 audit findings or State agency audit, review or investigation findings to trigger recompetition automatically. Many commenters stated that ACF would be delegating its statutory duties to third parties. Others stated that by accepting the findings of outside sources, ACF would be denying the grantee’s due process. Although many agreed with the intent of this condition, they recommended that qualified fiscal officers or Certified Public Accountants within the Office of Head Start be tasked with reviewing the outside audit results.

A small number of commenters expressed concerns that auditors could lose some of their independence if they realized that their findings could cause grantees to face competition.

Other commenters supported the need to have strong, financially sound grantees. Some commenters were concerned with the idea of allowing only one material weakness, which might be a minor problem, to lead to a recompetition. They stated that ACF should instead look for a pattern of problems indicating a grantee’s financial weakness that could place Federal funds at risk.

*Response:* In response to comments, ACF is removing the material weakness component from the proposed condition. ACF has concluded that while in many instances a single finding of material weakness represents a serious issue, that there are instances where a material weakness finding would not be adequate as a singular indicator of program quality that would trigger competition.

Nevertheless, ACF takes audit findings seriously and for any year in which an entity’s audit as required by OMB Circular A–133 classifies Head Start as a major program and the report to the Federal Audit Clearinghouse (FAC) shows other than an unqualified (“clean”) opinion (e.g., qualified opinion, adverse opinion, or disclaimer of opinion) for the Head Start program, ACF will consider this as a “red flag” that will trigger additional fiscal oversight through on-going monitoring and-additional targeted review, including unannounced on-site

monitoring reviews, to make a determination (concurrent with program officials and senior ACF management) as to whether the issue identified raises to the level of a deficiency as defined in the Act. Failure to complete the required audit under OMB Circular A-133 and submit the results to the FAC will be considered a “red flag” in the same manner. If the fiscal issue identified does lead to a deficiency in Head Start monitoring, that deficiency finding would lead to competition under § 1307.3(a).

Since inability to continue to operate as a going concern is a more serious problem, ACF is maintaining this part of the proposed condition with the same definition and the same time frame as proposed in the NPRM.

Aside from that modification, this condition remains unchanged. In response to concerns commenters raised that ACF is impermissibly delegating its responsibility to non-federal auditors, note that the final regulation still requires that ACF review the auditor’s findings before making the final decision to require the grantee to compete based upon an auditor’s findings.

#### *Proposed § 1307.3(c)—Possible Eighth Condition*

1. *Comment:* ACF received a significant number of comments related to possible additional criteria (an eighth condition) that would be utilized if the seven conditions outlined in proposed § 1307.3(b)(1)–(7) of the NPRM did not result in 25 percent of grantees competing in a given review cycle. Nearly all of the comments opposed, the inclusion of additional criteria for the purpose of reaching a minimum percent of grantees competing because of concerns about setting a 25 percent quota for redesignation. These comments stated that a 25 percent quota does not reflect Congressional intent.

*Response:* As explained above in the discussion regarding proposed § 1307.3(a), we replaced the 25 percent minimum requirement with the two-part CLASS criteria and have made a conforming change to § 1307.3(c). A discussion of comments received on the proposed additional criteria that were open for public comment and our responses to these comments follows, although neither of these criteria was incorporated into the final rule.

2. *Comment:* In the preamble text of the NPRM, ACF requested comments on two possible approaches to defining additional criteria to be met if needed to satisfy the 25 percent minimum standard. Commenters stated that even though ACF described in general terms

two approaches under consideration for reaching the minimum requirement of grantees competing (*i.e.*, assigning values to noncompliances, using evidence-based rating tools or some combination), the NPRM does not describe adequately these criteria or how they would be used in the Designation Renewal System.

Comments also were received specific to each of the two possible approaches to defining additional criteria. The first approach would use noncompliance findings from monitoring reviews by assigning a value to each noncompliance, weighting more serious or problematic noncompliances more heavily, and giving each grantee an overall score for noncompliances. Many respondents objected to the inclusion of noncompliances entirely, stating that the term “noncompliance” is broad and captures such a continuum of violations—from minor infractions to more serious health and safety issues—which respondents stated might not be indicative of poor performance. Respondents emphasized that using such a broad framework is inappropriate as a basis for measuring program quality.

Many respondents stated that an approach that involves a ranking system and complex scoring of noncompliances would be burdensome to ACF and to grantees and contrary to the requirement that the Designation Renewal System be reliable and transparent. Several comments questioned why ACF would create a separate ranking system, in addition to the existing review processes in place. ACF also requested public comment specifically on the relative weighting of noncompliance findings, whether some noncompliances should be weighted more heavily than others, and whether the size of the grantee should be a factor taken into consideration in the ranking system. In response, many respondents stated that selecting which noncompliance findings should be included and what their relative weighting should be is arbitrary and introduces a high level of subjectivity that makes measuring quality consistently across programs difficult. Respondents questioned how ACF would distinguish between noncompliance findings and determine which are most important. Other comments, while objecting generally to using noncompliance findings, stated that weighting noncompliances would be a logical step if noncompliances were used. These respondents stated that some noncompliance should be weighted more heavily than others and doing so would prevent minor issues from requiring grantees to compete.

*Response:* We appreciate the comments and recommendations respondents offered regarding the use of noncompliances as an additional criterion to reaching a 25 percent minimum of grantees competing. While ACF believes that noncompliance findings as a category are integral to the monitoring process and that such findings are critical to understanding whether grantees are meeting the Head Start Program Performance Standards, we are not using them for the purpose of designation renewal, provided that grantees correct them in the specified timeframes; uncorrected noncompliance findings that become deficiencies still will be included in the Designation Renewal System as part of the deficiency condition under § 1307.3(a). We agree that noncompliances represent a broad range of areas and believe that assigning values for purposes of determining which grantees compete would be difficult and imprecise. In response to comments and because the deficiency condition already is inclusive of uncorrected noncompliances, we have not added a condition related to noncompliance in the final rule.

3. *Comment:* Many comments also were received related to the second approach to defining additional criteria that would introduce the use of evidence-based rating instruments (*e.g.*, the Early Childhood Environmental Rating Scale, Infant and Toddler Environment Rating Scale, and the Family Child Care Environment Rating Scale) into the Head Start monitoring review system. Some of the comments received expressed a preference for use of the environment rating scales (ERS) over noncompliance data if the proposed 25 percent minimum standard is maintained in the final rule and one of the two proposed additional criteria must be selected.

Although comments supporting the use of ERS were received and many stated that they held the ERS instruments in high regard, the majority of commenters expressed concerns and objected to the use of ERS as criteria for determining whether grantees would have to compete for renewed funding. Commenters viewed the ERS as primarily input driven (*e.g.*, focusing on furnishings, personal care, and the structure of activities) and would not capture some of the central features of the program, such as comprehensive services. A concern also was raised that the ERS focuses on the classroom environment and does not give attention to governance or administrative structures. Many commenters also expressed concerns that the ERS does

not provide a thorough assessment of the central element of quality for children under three—the relationship between caregiver, child, and family.

We also received numerous comments expressing concerns about the implementation of ERS in the monitoring review system and as a condition for designation renewal. Some commenters expressed concerns over the complexity of the administration of the ERS, noting that they are sophisticated instruments, requiring reviewers to make subjective judgments on some 40 different dimensions of classroom quality. Concerns were raised around the cost and burden associated with the need for appropriate training of teams of outside professional reviewers and ongoing monitoring of inter-rater reliability.

*Response:* We appreciate the comments and suggestions received regarding the proposed use of ERS as additional criteria to identify grantees for competition if the 25 percent minimum standard is not met through the seven conditions. We believe the ERS instruments are high quality, research-based measures of the quality of the environment in early childhood settings, including Head Start and Early Head Start. However, we also agree with comments regarding the limitations of the instruments (*i.e.*, they are not able to capture some of the key features of quality of Head Start and Early Head Start programs) and view them as overlapping to some extent with existing measures, such as the monitoring reviews. As a result, as indicated previously, we replaced the proposed 25 percent threshold in this final rule and modified the CLASS: Pre-K related criteria to have two subparts to ensure that there is robust competition.

*Proposed § 1307.4—Grantee Reporting Requirements Concerning Certain Conditions*

1. *Comment:* In the NPRM, we proposed that Head Start agencies must report in writing to the designated ACF official within 10 working days of the occurrence any of the following events: (1) The agency has had a revocation of a license to operate a center by a State or local licensing entity; (2) the agency has filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement; (3) the agency has been debarred from receiving Federal or State funds from any Federal or State department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP); and (4) the agency has received an audit, audit review, investigation or inspection

report from the agency's auditor, a State agency, or the cognizant Federal audit agency containing a determination that the agency is at risk for ceasing to be a going concern. Commenters raised concern that it is an undue burden on programs to provide this information and that ACF should be able to collect this information. In addition, some commenters agreed that reporting this information was necessary but that the 10-day time frame was not feasible.

*Response:* We are not making any changes to the requirement for grantees to report to ACF on these four conditions. We believe that each of these conditions indicates a serious problem and that ACF should know about them as soon as possible so that appropriate action can be taken. The most efficient method for ACF to learn of these conditions is to require grantees to report them directly.

However, in response to comments, we have made a couple of changes to the final reporting requirements. First, based on comments that license revocation is a serious and problematic occurrence, we have modified the reporting requirements for certain events based on whether they occurred before or after the effective date of the Part. Specifically, for licensing revocations, we require that Head Start agencies must report in writing to the responsible HHS official within 30 working days of the effective date of this Part if the agency has had a revocation of a license to operate a center by a State or local licensing entity during the period between June 12, 2009, and the effective date of this Part. This modification to the NPRM was made since there is not a source of information for ACF to check to determine whether a grantee had its license revoked.

Regarding reporting of debarment and disqualification from CACFP, many commenters suggested that HHS use existing sources of information rather than having grantees report. In the case of debarment from Federal funds, there is a database that is publicly available. As proposed in the NPRM, ACF still will still require grantees to report on this condition. We also will check the information grantees provide against the national List of Excluded Parties. Regarding CACFP disqualification, the National Disqualified List is not part of the other Federal funding database nor is the list publicly available or available to other Federal agencies. Grantees will be required to report CACFP disqualification and ACF will work with USDA (administering agency for CACFP) to acquire this information as well.

While we appreciate comments asking for a longer timeframe to report, we have retained the 10 day requirement due to the very serious nature of these events. HHS believes that each of these conditions is so serious that we should be notified as soon as possible. We believe that it does not put an undue burden on programs to report within 10 working days.

*Proposed § 1307.5—Requirements To Be Considered for Designation for a Five-year Period When the Existing Entity in a Community Is Not Determined To Be Delivering a High-quality and Comprehensive Head Start Program and Is Not Automatically Renewed*

1. *Comment:* A few comments were received on the application process described in this section for cases where the existing grantee in a community is not determined to be delivering a high-quality program and so there will be a competition in that community. Those comments expressed confusion about the provision and asked for clarification in the final rule. The commenters on this provision expressed strong concern in all cases when there is a transition between grantees. Commenters also asked whether grantees that voluntarily relinquished their grant would be considered a terminated grantee and therefore prohibited from applying from competition.

*Response:* This language is taken directly from the description of DRS in the Act at section 641(d) but we have added additional language for clarification. We also clarify that the criteria at section 641(d) of the Act apply to Head Start.

As proposed in the NPRM, terminated grantees will be excluded from competing for funding for the next five years. This provision applies beginning with the effective date of the regulation and that exclusion is for a five-year period beginning with the former grantee's termination by ACF. We have clarified that this only applies to grantees terminated for cause. ACF has made one modification to 1307.5, however; similar to terminated grantees, a Head Start or Early Head Start agency that has had a "denial of refunding," defined in 45 CFR 1303.2, is also excluded from competing for the next five years. ACF has added the reference to denials of refunding because denials of refunding are made on the same grounds as terminations and have the same effect under 45CFR 1303.15(c). A determination that a grantee will not be awarded funding noncompetitively is not a denial of refunding and in no way limits the ability of that grantee to apply for funding.



ACF acknowledges concerns about continuity of Head Start services and always seeks to minimize disruption in services to children and families. In cases in which a new grantee is selected as a result of recompetition, ACF believes that the transition generally will proceed without significant disruption of services to children and families in the community served. If ACF determines that a particular transition poses a risk of disruption of services, ACF may exercise its statutory authority to appoint an interim grantee in exceptional circumstances.

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

1. *Comment:* Many commenters expressed concern that there had not been appropriate Tribal consultation on the proposed regulation. Some commenters mentioned that all grantees should have the same process for Tribal programs. Commenters said that MSHS grantees and rural grantees especially should be allowed to comply with the same provisions as described for Tribal programs.

*Response:* Because this rule simply implements the specific redesignation provisions related to Tribes that are required by the Act, the policies related to Tribal programs proposed in the NPRM are maintained.

Regarding concerns about consultation, consistent with Executive Order 13175, the Department of Health and Human Services (HHS) has established a Tribal Consultation Policy (Policy).

This Policy affirms the authority of HHS to utilize notice and comment rulemaking as one form of consultation. ACF consulted with Tribes by raising the issues related to the Designation Renewal System at OHS Tribal consultations in 2009 and 2010 and by providing the 90-day opportunity to submit comments on this NPRM.

*Proposed § 1307.7—Designation Request and Review Process. (Note that the proposed title of § 1307.7 “Designation request and review process” has been changed to “Designation request, review and notification process” in the final rule.)*

1. *Comment:* Commenters raised concerns that requiring grantees to apply to have their funding renewed without competition is burdensome to grantees and could result in programs not being considered if they miss the deadline to submit the paperwork.

*Response:* While ACF appreciates the comments on this provision, we are unable to change this provision because of the statutory requirement at Section 641(b) entitled “Application for Designation Renewal” which states “to be considered for designation renewal, an entity shall submit an application to the Secretary, at such time and in such manner as the Secretary may require.” ACF has tried to make this requirement that grantees officially apply for designation renewal as least burdensome as possible. We have modified the final rule to only require that grantees submit their intent to be considered for designation renewal once during the transition period and during the period after the transition only once during the five year grant period.

2. *Comment:* Commenters also expressed concern over the proposed three-year transition period and suggested that the transition period be lengthened to five years. Commenters suggested ACF make it clear that reviews under the Designation Renewal System taking place after the transition period focus on findings since the beginning of a grantee’s current grant.

*Response:* Since the transition period of three years is established under section 641(c)(9) of the Act, we do not have the authority to modify its length. Therefore, we have not made any changes to the timeframe of the transition period in the final regulation. After the transition period, the time periods for relevant data will be only within that five-year grant period, as explained in final § 1307.7(b)(3).

3. *Comment:* Some commenters were confused about whether the designation review process was another on-site review separate from the on-site monitoring reviews required under section 641A(c)(1) of the Act.

*Response:* In response to comments, ACF has amended this section to explain the process more clearly. We also note that the DRS review is separate from the monitoring reviews required under section 641A(c)(1)(A), (C), or (D) of the Act. The language in final § 1307.7(b) explains that the DRS reviews under Part 1307 consist of an ACF review of data to determine if one or more of the conditions under § 1307.3 had been met by the Head Start and Early Head Start agency’s program. This DRS review is a review of all performance data available on a grantee, and is consistent with the focus on continuous program improvement by Head Start. It is not intended to comprise an additional on-site review, data from the monitoring reviews required under section 641A(c)(1)(A),

(C), or (D) of the Act will be used in the DRS determination.

Final § 1307.7(b) also describes the data that will be reviewed by ACF for three distinct time periods. First, § 1307.7(b)(1) explains that during the first year of the transition period, ACF will review the data on each Head Start and Early Head Start agency to determine if any of the conditions under final § 1307.3(a) or (d)–(g) (*i.e.*, the five conditions excluding the school readiness goals and CLASS: Pre-K conditions) were met by the agency’s program since June 12, 2009. As explained previously, we have maintained the beginning date of June 12, 2009, on which data will be considered for the conditions described under final § 1307.3(a) and (d)–(g) (proposed § 1307.3(b)(1) and (4)–(7)). However we will not consider the school readiness condition described under § 1307.3(b) (proposed § 1307.3(b)(2)) during the timeframe that had been proposed in the NPRM. Instead, this condition will be applied using data beginning after the effective date of this part during the second year of the transition period, as explained below. We maintain the provision in the NPRM that we will use data for the condition described under final § 1307.3(c) (proposed § 1307.3(b)(3)) beginning on the effective date of this part but have changed the timing of when this will be used in the transition. In the final regulation, the results of the CLASS: Pre-K Instrument obtained in on-site reviews under Section 641A of the Act after the effective date of the regulation will be used to determine if grantees will have to compete for further funding. For reasons already noted, we will use CLASS: Pre-K data in the second year of the transition.

Then, during the remainder of the transition period, § 1307.7(b)(2) explains that ACF will review the data on each Head Start and Early Head Start agency still operating under grants with indefinite project periods and for whom ACF has relevant data on the conditions in § 1307.3(a) through (g) to determine if any of the conditions under § 1307.3(a) or (d) through (g) were met by the agency’s program since June 12, 2009, or if the conditions under § 1307.3(b) or (c) existed in the agency’s program since the effective date of this Part. This means, that over the course of the transition period, no program will receive a Head Start or Early Head Start grant automatically before being judged on all of the criteria. If a program meets one or more of the criteria, the program will have to compete to receive continued funding.



The table below is provided to illustrate which criteria will be considered during the relevant periods.

Time period	1307.3 Conditions to be considered (specific provisions in 1307.3 have been abbreviated in this table, see 1307.3 for full text of conditions)	Designation renewal review
Year 1 of Transition .....	(a) A deficiency on a review conducted under Section 641A ..... (d) Revocation of a License to Operate. (e) Suspension by OHS. (f) Debarred from receiving state or federal funds or Disqualified from CACFP. (g) Audit finding of being at risk of failing to continue functioning as a Going Concern.	<ul style="list-style-type: none"> <li>• Data on all grantees will be reviewed.</li> <li>• Those meeting any of the conditions of 1307.3(a), (d), (e), (f) or (g) from data collected since June 12, 2009 will be required to compete.</li> <li>• No grantees will be moved to five year grants non-competitively this year.</li> </ul>
Remainder of Transition	(a) A deficiency on a review conducted under Section 641A ..... (b) Failure to establish program goals for improving the school readiness of children and taking steps to achieve those school readiness goals. (c) Low CLASS scores as described in 1307.3(c). (d) Revocation of a License to Operate. (e) Suspension by OHS. (f) Debarred from receiving state or federal funds or Disqualified from CACFP. (g) Audit finding of being at risk of failing to continue functioning as a Going Concern.	<ul style="list-style-type: none"> <li>• All grantees still under continuous grants and that ACF has complete data on the conditions of 1307.3(b)–(c) will have their data reviewed to determine if they meet those conditions since the effective date of this rule.</li> <li>• All grantees still under continuous grants will have their data reviewed to determine if they meet the conditions of 1307.3(a), (c), (d), (e), (f) or (g) since June 12, 2009.</li> </ul>
Five Year Grant Period	(a) A deficiency on a review conducted under Section 641A ..... (b) Failure to establish program goals for improving the school readiness of children and taking steps to achieve those school readiness goals. (c) Low CLASS scores as described in 1307.3(c). (d) Revocation of a License to Operate. (e) Suspension by OHS. (f) Debarred from receiving state or federal funds or Disqualified from CACFP. (g) Audit finding of being at risk of failing to continue functioning as a Going Concern.	<ul style="list-style-type: none"> <li>• ACF will review the data on each Head Start and Early Head Start agency in the fourth year of the grant to determine if any of the conditions under § 1307.3 existed in the agency's program during the period of that grant.</li> </ul>

We explain in § 1307.7(b)(3) that following the transition period, ACF will review the data on each Head Start and Early Head Start agency in the fourth year of the grant to determine if any of the conditions under § 1307.3 existed in the agency's program during the period of that grant.

In final § 1307.7(c), we explain the method ACF will follow to provide notice to grantees on their Designation Renewal System status during each of the time periods. We also note that this process does not apply for Tribal Head Start programs; the process for those grantees is described under § 1307.6. In the NPRM, ACF proposed sending grantees a preliminary notice 6 months prior to the ending of their grant to indicate whether they would be required to re compete. In response to public comment, this provision has been removed from the final rule because it is not necessary and causes additional burden on ACF and grantees.

In § 1307.7(c)(1), we explain that during the first year of the transition period, ACF will give written notice to all grantees meeting any of the conditions under § 1307.3(a) or (d)–(g) since June 12, 2009, by certified mail return receipt requested or other system

that establishes the date of receipt of the notice by the addressee, stating that the agency will be required to compete for funding for an additional five-year period. All other grantees that did not meet any of the conditions under § 1307.3(a) or (d)–(g) will remain under indefinite project periods until the time period specified in § 1307.7(c)(2).

In § 1307.7(c)(2), we explain that during the remainder of the transition period, ACF will give written notice to all grantees still under grants with indefinite project periods on the conditions in § 1307.3(a)–(g) by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee. This written notice will state either that the agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions under § 1307.3 has been met during the relevant time period described in paragraph (b) of this section, will identify the conditions ACF found, and will summarize the basis for the finding or that such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF finds that none of the

conditions under § 1307.3 have been met during the relevant time period described in paragraph (b) of this section. However, we specify that if prior to the award of that grant, ACF determines that the grantee has met one of the conditions, this determination will change and the grantee will receive notice that it will be required to compete for funding for an additional five-year period.

In § 1307.7(c)(3), we explain that following the transition period, ACF will give written notice to all grantees at least 12 months before the expiration date of an agency's five year grant period by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee, stating the same information described under § 1307.7(b)(2). In addition, we specify that if prior to the award of that grant, ACF determines that the grantee has met one or more of the conditions, this determination will change and the grantee will receive notice that it will be required to compete for funding for an additional five-year period.

*Proposed § 1307.8—Use of CLASS: Pre-K Instrument in the Designation Renewal System*

1. *Comment:* Section 1307.8 specifically addresses the implementation of CLASS: Pre-K in the Designation Renewal System. Many commenters raised concerns that OHS does not follow the University of Virginia's protocol in its use of CLASS: Pre-K. These comments stated that ACF must adhere strictly to the protocol with respect to the number of observation cycles, length and frequency of observations and timing, and training of reviewers in order to maintain the integrity of the CLASS: Pre-K tool in monitoring.

*Response:* ACF has worked with the developers in determining the most appropriate number of observations. Although the Classroom Assessment Scoring System manual describes that the recommended protocol for conducting CLASS observations is four cycles in each class that are each 30 minutes (*i.e.*, 20-minute observe, 10 minute record), the University of Virginia (UVA) has advised ACF that four cycles with a single teacher, while appropriate for research, is not the best use of resources when ACF's objective is to get a picture of classroom quality at the grantee level. Instead, UVA has recommended a protocol that involves fewer cycles per teacher, but that includes more teachers. Given the importance of observing more classes, rather than fewer classes for a longer period of time, ACF will conduct two cycles in each class in the sample.

Further, data from the HHS Family and Child Experiences Survey (FACES) study, which provides descriptive data on a nationally representative sample of three and four-year olds entering Head Start, reinforced ACF's decision to conduct two rather than four CLASS observations. FACES data indicates that four CLASS observations were not consistently conducted of all grantees, even though that was the intention in the study design. Attempting to conduct four observations in every monitoring review when it could not be accomplished in FACES, and doing so on a scale much larger than the FACES study, likely would result in differential treatment of grantees since some grantees would likely get four observations and others would get

fewer. Given the importance of observing more classrooms, rather than fewer classrooms for a longer period of time, ACF will conduct two cycles in each classroom in the sample.

2. *Comment:* A number of respondents also raised concerns regarding inconsistencies in how CLASS: Pre-K is used in monitoring and how reviewers conduct the observations. Grantees from a particular State relayed their experiences with a reviewer who did not follow the process specified in the CLASS: Pre-K protocol. Other respondents raised concern with the reliability of the CLASS: Pre-K instrument when it is used at different times during the day or year. These comments expressed concerns that grantees would be treated differently depending on the time of day or season of the review or observations at a certain point in time would not be a fair representation of classroom quality. These comments stated that CLASS: Pre-K scores were lower, for example, for programs reviewed in the spring than those reviewed in the winter. Others raised concerns about the continued reliability of the reviewers.

*Response:* ACF has focused considerable attention on its implementation of the CLASS: Pre-K in the monitoring review system to ensure that CLASS: Pre-K observations are conducted consistently across monitoring reviews. In addition to developing a random sampling methodology, ACF has integrated ongoing training for CLASS: Pre-K reviewers to ensure their continued reliability, as well as a reviewer double coding process to assure the consistency of the implementation. "Double coding" is a technical term that refers to the process of using two reviewers during observational measures to ensure that both reviewers reach the same conclusion, and it offers evidence of reliability and consistency. ACF also has made the determination that reviews will not be conducted in the first two and last two weeks of the program year, as well as the two weeks surrounding the winter holidays because grantees' classrooms when the program is beginning and concluding its year, and preparing for the winter break, is not representative of the environment during the program year. While ACF has made some adjustments for time of year, we believe strongly that children need

to be in high-quality early childhood settings for the entire length of their day; thus, we will continue to conduct CLASS: Pre-K observations at any time throughout the day with the exception of naptime and outdoor unstructured free play. Since all programs will be observed at all points when they are operating, with the exception of nap time and outdoor free play, we are confident that this is a fair standard that will yield consistent results.

3. *Comment:* Many respondents raised concerns about the sampling methodology used to determine which classrooms would be observed. Respondents requested clarification on the "subset of classrooms" referenced as the sample in the NPRM and urged that the sample be statistically valid.

*Response:* ACF has worked with statisticians to develop a statistically sound methodology for sampling the center-based preschool classes of grantees that will be observed using CLASS: Pre-K. This methodology will select a random sample (subset) of each grantee's classes and that subset will be representative of the grantee. The sampling methodology ensures that a sufficient number of classes are selected from across the grantee's total classes; as a result, the resulting score will be generalizable to the grantee's total classes overall. This approach also was vetted through an external review process. For more information on ACF's sampling methodology, please reference the following link: <http://eclkc.ohs.acf.hhs.gov/hslc>. As noted previously, since ACF is implementing a significantly improved and more rigorous random sampling of each grantee's classes, determinations for designation renewal will be made based on the most recent CLASS: Pre-K observation, rather than the two most recent CLASS: Pre-K observations as was proposed in the NPRM.

## **VI. Paperwork Reduction Act**

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

Requirement	Respondents	Annual	Average burden per respondent (hours)	Total burden hours
<p>Per § 1307.4, Head Start and Early Head Start agencies must report in writing to the responsible HHS official within 30 working days of the effective date of this Part if the agency has had a revocation of a license to operate a center by a State or local licensing entity during the period between June 12, 2009 and the effective date of this Part.</p> <p>Following the effective date of this Part, Head Start and Early Head Start agencies must report to ACF within 10 working days of occurrence of any of the following:</p> <p>(1) The agency has had a license to operate a center revoked by a State or local licensing entity.</p> <p>(2) The agency has filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement.</p> <p>(3) The agency has been debarred from receiving Federal or State funds from any Federal or State agency or has been disqualified from The Child and Adult Care Food Program (CACFP).</p> <p>(4) The agency has received an audit, audit review, investigation or inspection report from the agency's auditor, a State agency, or the cognizant Federal audit agency containing a determination that the agency is at risk of failing to function as a going concern.</p>	20–40 grantees .....	1 hour or less .....	1 hour or less .....	20–40 hours.
<p>Per section 1307.7(a) each Head Start or Early Head Start agency wishing to be renewed for five years without competition shall request that status from ACF.</p>	1,600 grantees .....	1 hour or less .....	1 hour or less .....	1,600 hours.
<p>Agencies required to compete will have to complete applications consistent with the criteria at 1307.5.</p>	480 grantees .....	40 hours .....	40 hours .....	19,200 hours.

In the NPRM we estimated the costs of implementing these requirements to be approximately \$481,000 annually across all 1,600 grantees. This estimate includes approximately \$1,000 across all grantees and \$480,000 across those grantees that are required to submit competitive applications.

We do not anticipate that Head Start agencies will be gathering new information to accomplish these changes. They only will be required to inform ACF if one of four events specified in § 1307.4 has occurred.

In the NPRM, ACF asked for public comments on collection of information in the following areas:

(a) Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;

(b) Evaluating the accuracy of ACF's estimate of the proposed collection of information, including the validity of the methodology and the assumptions used;

(c) Enhancing the quality, usefulness, and clarity of the information to be collected; and

(d) Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.*, permitting electronic submission of responses.

We received some comments regarding the reporting requirements proposed in § 1307.4, which explained the grantee reporting requirements concerning certain conditions. In the NPRM, we had proposed that Head Start agencies must report in writing to the

designated ACF official within 10 working days of the occurrence any of the following events: (1) The agency has had a revocation of a license to operate a center by a State or local licensing entity; (2) the agency has filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement; (3) the agency has been debarred from receiving Federal or State funds from any Federal or State department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP); and (4) The agency has received an audit, audit review, investigation or inspection report from the agency's auditor, a State agency, or the cognizant Federal audit agency containing a determination that the agency is at risk for ceasing to be a going concern. The specific concerns with this

proposed provision included: That it was an undue burden on programs to provide this information, that ACF had not made clear what it intends to do with this information and why it requires agencies to report, that ACF had underestimated the cost to grantees of the reporting requirements, and that ACF should be able to collect this information. ACF has considered these comments and will maintain this provision in the final regulation requiring grantees to report to ACF on these four conditions. ACF believes that each of these conditions is a serious problem and that ACF should know about the occurrence as soon as possible so that appropriate action can be taken. The most efficient method for ACF to learn of these conditions is to require grantees to report them directly. As stated in the preamble to § 1307.4, the reporting timelines remain unchanged.

Commenters also stated that requiring grantees to apply to have their funding renewed without competition is burdensome to grantees and could result in programs not being considered if they miss the deadline to submit the paperwork. As indicated earlier in this preamble, while ACF appreciates the comments on this provision, we are unable to change this provision because of the statutory requirement at section 641(b) which states “to be considered for designation renewal, an entity shall submit an application to the Secretary.” ACF has tried to make this as least burdensome as possible and has modified the final rule to only require grantees to submit their intent once during the transition period and once during the five year grant period. Consistent with comments received on the burden of preparing applications for competitions, ACF has added an estimate of 40 hours of burden for the roughly one-third of grantees that will be required to compete. This has increased the burden estimate significantly.

#### VII. Regulatory Flexibility Act

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

Specifically, as noted under the Paperwork Reduction Act section of this preamble, we estimate the cost of implementing new reporting requirements to be approximately

\$481,000 annually, which when applied to all 1,600 grantees nationally, results in a cost per grantee of less than \$300. This reflects approximately \$1,000 in reporting requirements across all grantees for the unusual events such as debarment or license revocation and the estimated 480,000 in costs associated with competitive applications for those grantees required to compete. As in the NPRM, this assumes that agencies would not be gathering any new information, since such information would have to be known to grantees in order to efficiently manage their programs. In addition, only a subset of the 1,600 grantees will be required to compete for renewal of a grant under these regulations. We estimate that roughly one-third of grantees reviewed in a review cycle will be affected by the regulation. Those grantees that need to compete for another five-year grant are required to submit an application. Since all grantees currently are required to submit a refunding application each year for their noncompetitive grant, there only will be an incremental increase in costs for grantees that must prepare and submit a competitive application. We estimate those costs to be less than \$3,000 for each grantee submitting a competitive application. In developing this estimate, we assumed that it would take 40 hours for two senior level staff and one administrative staff person to complete a refunding application. Further, we assumed that grantees could spend more than twice as much time preparing this competitive application as they do on their regular annual refunding application.

These rules primarily are intended to ensure accountability for Federal funds consistent with the purposes of the Head Start Act, to ensure that communities receive the highest quality services available, and are not duplicative of other requirements. In developing this rule, we sought to implement the new and expanded requirements of the Head Start Act in a manner that does not impinge on a small entity’s ability to design and manage effective and responsive Head Start programs. At the same time, we sought to focus renewed attention on strengthening accountability for Head Start programs and increasing program quality and improving outcomes for low-income families. We believe this rule implements the aims of the Head Start Act, as amended, to improve the effectiveness of Head Start programs while preserving Head Start grantees’ abilities to continue using creativity and innovation to promote the school readiness of children from low-income

families. In the NPRM, we had requested public comments on whether we have adequately considered all costs for small entities and achieved the balance described above. We received comments that we under-estimated the costs associated with the application. In response, we have increased the estimate significantly to assure we are adequately reflecting the potential costs.

#### VIII. Regulatory Impact Analysis

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 in particular emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has determined that this rule is consistent with these priorities and principles.

These regulations primarily implement statutory changes to the Head Start program enacted in the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110–134). ACF does not believe there will be a significant economic impact from this regulatory action. We estimate that roughly one-third of grantees reviewed in each review cycle will be affected by the regulation. The costs of implementation of these rules for the subset of grantees that would be required to compete in any year (estimated to be no more than \$1,500 for each grantee), the total cost per year resulting from this regulation is well under \$1 million. This rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

These regulations are also consistent with section 6 of Executive Order 13563, which directs agencies to engage in “periodic review of existing significant regulations” and to “promote retrospective analysis of rules.” These regulations grow out of a careful process of review and retrospective analysis, and hence are part of a general effort, in HHS and government-wide, to improve regulatory programs as a result of “what has been learned.”

### IX. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$136 million or more in any one year. If an agency must prepare a budgetary impact statement, section 205 requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule consistent with the statutory requirements. Section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted. The Department has determined that this rule, in implementing the new statutory requirements, would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$136 million in any one year.

### X. Congressional Review

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

### XI. Executive Order 13132

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

### XII. Treasury and General Government Appropriations Act of 1999

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

### List of Subjects in 45 CFR Part 1307

Education of disadvantaged, Grant programs—social programs.

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

Dated: September 8, 2011.

**George H. Sheldon,**

*Acting Assistant Secretary for Children and Families.*

Approved: September 30, 2011.

**Kathleen Sebelius,**

*Secretary.*

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

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

Sec.

1307.1 Purpose and scope.

1307.2 Definitions.

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

1307.4 Grantee reporting requirements concerning certain conditions.

1307.5 Requirements to be considered for designation for a five-year period when the existing grantee in a community is not determined to be delivering a high-quality and comprehensive Head Start program and is not automatically renewed.

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

1307.7 Designation request, review and notification process.

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

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

#### § 1307.1 Purpose and scope.

The purpose of this Part is to set forth policies and procedures for the designation renewal of Head Start and Early Head Start programs. It is intended that these programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start and Early Head Start grantees be fully protected. The Designation Renewal System is established in this Part to determine whether Head Start and Early Head Start agencies deliver high-quality services to meet the educational, health, nutritional, and social needs of the children and families they serve; meet the program and financial requirements and standards described in section 641A(a)(1) of the Head Start Act; and

qualify to be designated for funding for five years without competing for such funding as required under section 641(c) of the Head Start Act with respect to Head Start agencies and pursuant to section 645A(b)(12) and (d) with respect to Early Head Start agencies. A competition to select a new Head Start or Early Head Start agency to replace a Head Start or Early Head Start agency that has been terminated voluntarily or involuntarily is not part of the Designation Renewal System established in this Part, and is subject instead to the requirements of part 1302.

#### § 1307.2 Definitions.

As used in this Part—

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

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

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

*Aggregate child-level assessment data* means the data collected by an agency on the status and progress of the children it serves that have been combined to provide summary information about groups of children enrolled in specific classrooms, centers, home-based or other options, groups or settings, or other groups of children such as dual language learners, or to provide summary information by specific domains of development.

*Child-level assessment data* means the data collected by an agency on an individual child from one or more valid and reliable assessments of a child's status and progress, including but not limited to direct assessment, structured observations, checklists, staff or parent report measures, and portfolio records or work samples.

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

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

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

*School readiness goals* mean the expectations of children's status and

progress across domains of language and literacy development, cognition and general knowledge, approaches to learning, physical well-being and motor development, and social and emotional development that will improve their readiness for kindergarten.

*Transition period* means the three-year time period after December 9, 2011, on the Designation Renewal System during which ACF will convert all of the current continuous Head Start and Early Head Start grants into five-year grants after reviewing each grantee to determine if it meets any of the conditions under section 1307.3 that require recompetition or if the grantee will receive its first five-year grant non-competitively.

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

A Head Start or Early Head Start agency shall be required to compete for its next five years of funding whenever the responsible HHS official determines that one or more of the following seven conditions existed during the relevant time period covered by the responsible HHS official's review under § 1307.7 of this part:

(a) An agency has been determined by the responsible HHS official to have one or more deficiencies on a single review conducted under section 641A(c)(1)(A), (C), or (D) of the Act in the relevant time period covered by the responsible HHS official's review under section 1307.7.

(b) An agency has been determined by the responsible HHS official based on a review conducted under section 641A(c)(1)(A), (C), or (D) of the Act during the relevant time period covered by the responsible HHS official's review under § 1307.7 not to have:

(1) After December 9, 2011, established program goals for improving the school readiness of children participating in its program in accordance with the requirements of section 641A(g)(2) of the Act and demonstrated that such goals:

(i) Appropriately reflect the ages of children, birth to five, participating in the program;

(ii) Align with the Head Start Child Development and Early Learning Framework, State early learning guidelines, and the requirements and expectations of the schools, to the extent that they apply to the ages of children, birth to five, participating in the program and at a minimum address the domains of language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor

development, and social and emotional development;

(iii) Were established in consultation with the parents of children participating in the program.

(2) After December 9, 2011, taken steps to achieve the school readiness goals described under paragraph (b)(1) of this section demonstrated by:

(i) Aggregating and analyzing aggregate child-level assessment data at least three times per year (except for programs operating less than 90 days, which will be required to do so at least twice within their operating program period) and using that data in combination with other program data to determine grantees' progress toward meeting its goals, to inform parents and the community of results, and to direct continuous improvement related to curriculum, instruction, professional development, program design and other program decisions; and

(ii) Analyzing individual ongoing, child-level assessment data for all children birth to age five participating in the program and using that data in combination with input from parents and families to determine each child's status and progress with regard to, at a minimum, language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development and to individualize the experiences, instructional strategies, and services to best support each child.

(c) An agency has been determined during the relevant time period covered by the responsible HHS official's review under § 1307.7:

(1) After December 9, 2011, to have an average score across all classrooms observed below the following minimum thresholds on any of the three CLASS: Pre-K domains from the most recent CLASS: Pre-K observation:

(i) For the Emotional Support domain the minimum threshold is 4;

(ii) For the Classroom Organization domain, the minimum threshold is 3;

(iii) For the Instructional Support domain, the minimum threshold is 2;

(2) After December 9, 2011, to have an average score across all classrooms observed that is in the lowest 10 percent on any of the three CLASS: Pre-K domains from the most recent CLASS: Pre-K observation among those currently being reviewed unless the average score across all classrooms observed for that CLASS: Pre-K domain is equal to or above the standard of excellence that demonstrates that the classroom interactions are above an exceptional level of quality. For all three

domains, the "standard of excellence" is a 6.

(d) An agency has had a revocation of its license to operate a Head Start or Early Head Start center or program by a State or local licensing agency during the relevant time period covered by the responsible HHS official's review under § 1307.7 of this part, and the revocation has not been overturned or withdrawn before a competition for funding for the next five-year period is announced. A pending challenge to the license revocation or restoration of the license after correction of the violation shall not affect application of this requirement after the competition for funding for the next five-year period has been announced.

(e) An agency has been suspended from the Head Start or Early Head Start program by ACF during the relevant time period covered by the responsible HHS official's review under § 1307.7 of this part and the suspension has not been overturned or withdrawn. If there is a pending appeal and the agency did not have an opportunity to show cause as to why the suspension should not have been imposed or why the suspension should have been lifted if it had already been imposed under 45 CFR part 1303, the agency will not be required to compete based on this condition. If an agency has received an opportunity to show cause, the condition will be implemented regardless of appeal status.

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

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

**§ 1307.4 Grantee reporting requirements concerning certain conditions.**

(a) Head Start agencies must report in writing to the responsible HHS official within 30 working days of December 9, 2011, if the agency has had a revocation of a license to operate a center by a State or local licensing entity during the period between June 12, 2009, and December 9, 2011.

(b) Head Start agencies must report in writing to the responsible HHS official within 10 working days of occurrence any of the following events following December 9, 2011:

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

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

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

(4) The agency has received an audit, audit review, investigation or inspection report from the agency's auditor, a State agency, or the cognizant Federal audit agency containing a determination that the agency is at risk for ceasing to be a going concern.

**§ 1307.5 Requirements to be considered for designation for a five-year period when the existing grantee in a community is not determined to be delivering a high-quality and comprehensive Head Start program and is not automatically renewed.**

In order to compete for the opportunity to be awarded a five-year grant, an agency must submit an application to the responsible HHS official that demonstrates that it is the most qualified entity to deliver a high-quality and comprehensive Head Start or Early Head Start program. The application must address the criteria for selection listed at section 641(d)(2) of the Act for Head Start. Any agency that has had its Head Start or Early Head Start grant terminated for cause in the preceding five years is excluded from competing in such competition for the next five years. A Head Start or Early Head Start agency that has had a denial of refunding, as defined in 45 CFR 1303.2, in the preceding five years is also excluded from competing.

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

(a) In the case of an Indian Head Start or Early Head Start agency determined not to be delivering a high-quality and comprehensive Head Start or Early Head

Start program, the responsible HHS official will engage in government-to-government consultation with the appropriate Tribal government or governments for the purpose of establishing a plan to improve the quality of the Head Start program or Early Head Start program operated by the Indian Head Start or Indian Early Head Start agency.

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

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

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

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

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

**§ 1307.7 Designation request, review and notification process.**

(a) Grantees must apply to be considered for Designation Renewal

(1) For the transition period, each Head Start or Early Head Start agency wishing to be considered to have their designation as a Head Start or Early Head Start agency renewed for a five year period without competition shall request that status from ACF within six months of December 9, 2011.

(2) After the transition period, each Head Start or Early Head Start agency wishing to be considered to have their designation as a Head Start or Early Head Start agency renewed for another five year period without competition shall request that status from ACF at least 12 months before the end of their five year grant period or by such time as required by the Secretary.

(b) ACF will review the relevant data to determine if one or more of the

conditions under § 1307.3 of this part were met by the Head Start and Early Head Start agency's program:

(1) During the first year of the transition period, ACF shall review the data on each Head Start and Early Head Start agency to determine if any of the conditions under § 1307.3(a) or (d) through (g) of this part were met by the agency's program since June 12, 2009.

(2) During the remainder of the transition period, ACF shall review the data on each Head Start and Early Head Start agency still under grants with indefinite project periods and for whom ACF has relevant data on all of the conditions in § 1307.3(a) through (g) of this part to determine if any of the conditions under § 1307.3(a) or (d) through (g) were met by the agency's program since June 12, 2009, or if the conditions under § 1307.3(b) or (c) existed in the agency's program since December 9, 2011.

(3) Following the transition period, ACF shall review the data on each Head Start and Early Head Start agency in the fourth year of the grant to determine if any of the conditions under § 1307.3 of this part existed in the agency's program during the period of that grant.

(c) ACF will give notice to grantees on Designation Renewal System status, except as provided in § 1307.6 of this part:

(1) During the first year of the transition period, ACF shall give written notice to all grantees meeting any of the conditions under § 1307.3(a) or (d) through (g) of this part since June 12, 2009, by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee, stating that the Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period, identifying the conditions ACF found, and summarizing the basis for the finding. All grantees that do not meet any of the conditions under § 1307.3(a) or (d) through (g) will remain under indefinite project periods until the time period described under § 1307.7(b)(2).

(2) During the remainder of the transition period, ACF shall give written notice to all grantees still under grants with indefinite project periods and on the conditions in § 1307.3(a) through (g) by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee stating either:

(i) The Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions under § 1307.3(a) through (g) has been met during the

relevant time period described in paragraph (b) of this section, identifying the conditions ACF found, and summarizing the basis for the finding; or

(ii) That such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF finds that none of the conditions under § 1307.3 of this part have been met during the relevant time period described in paragraph (b) of this section. If prior to the award of that grant, ACF determines that the grantee has met one of the conditions under § 1307.3 during the relevant time period described in paragraph (b) of this section, this determination will change and the grantee will receive notice under paragraph (c)(2)(i) of this section that it will be required to compete for funding for an additional five-year period.

(3) Following the transition period, ACF shall give written notice to all grantees at least 12 months before the expiration date of a Head Start or Early Head Start agency's then current grant by certified mail return receipt requested or other system that

establishes the date of receipt of the notice by the addressee, stating:

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

(ii) That such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF finds that none of the conditions under § 1307.3 have been met during the relevant time period described in paragraph (b) of this section. If prior to the award of that grant, ACF determines that the grantee has met one of the conditions under § 1307.3 during the relevant time period described in paragraph (b) of this section, this determination will change and the grantee will receive notice under paragraph (c)(3)(i) of this section that it

will be required to compete for funding for an additional five-year period.

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

Except when all children are served in a single classroom, ACF will conduct observations of multiple classes operated by the grantee based on a random sample of all classes and rate the conduct of the classes observed using the CLASS: Pre-K instrument. When the grantee serves children in its program in a single class, that class will be observed and rated using the CLASS: Pre-K instrument. The domain scores for that class will be the domain scores for the grantee for that observation. After the observations are completed, ACF will report to the grantee the scores of the classes observed during the CLASS: Pre-K observations in each of the domains covered by the CLASS: Pre-K instrument. ACF will average CLASS: Pre-K instrument scores in each domain for the classes operated by the agency that ACF observed to determine the agency's score in each domain.

[FR Doc. 2011-28880 Filed 11-8-11; 8:45 am]

**BILLING CODE 4184-01-P**