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(b) The grant recipient's decision to terminate must not be arbitrary or capricious.

(c) The grant recipient must establish a process for defunding a delegate agency, including an appeal of a defunding decision and must ensure the process is fair and timely.

(d) The grant recipient must notify the responsible HHS official about the appeal and its decision.

Subpart E—Facilities

§ 1303.40 Purpose.

This subpart prescribes what a grant recipient must establish to show it is eligible to purchase, construct and renovate facilities as outlined in section 644(c), (f) and (g) of the Act. It explains how a grant recipient may apply for funds, details what measures a grant recipient must take to protect federal interest in facilities purchased, constructed or renovated with grant funds, and concludes with other administrative provisions. This subpart applies to major renovations. It only applies to minor renovations and repairs, when they are included with a purchase application and are part of purchase costs.

§ 1303.41 Approval of previously purchased facilities.

If a grant recipient purchased a facility after December 31, 1986, and seeks to use grant funds to continue to pay purchase costs for the facility or to refinance current indebtedness and use grant funds to service the resulting debt, the grant recipient may apply for funds to meet those costs. The grant recipient must submit an application that conforms to requirements in this part and in the Act to the responsible HHS official. If the responsible HHS official approves the grant recipient's application, Head Start funds may be used to pay ongoing purchase costs, which include principal and interest on approved loans.

§ 1303.42 Eligibility to purchase, construct, and renovate facilities.

Before a grant recipient can apply for funds to purchase, construct, or renovate a facility under § 1303.44, it must establish that:

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(a) The facility will be available to Indian Tribes, or rural or other low-income communities;

(b) The proposed purchase, construction, or major renovation is within the grant recipient's designated service area;

(c) The proposed purchase, construction, or major renovation is necessary because the lack of suitable facilities in the grant recipient's service area will inhibit the operation of the program; and

(d) The proposed construction of a facility is more cost-effective than the purchase of available facilities or renovation.

[89 FR 67816, Aug. 21, 2024]

§ 1303.43 Use of grant funds to pay fees.

If a recipient seeks to use Federal funds for reasonable fees and costs necessary to submit an application under §§ 1303.42 and 1303.44, they must be granted approval from the responsible HHS official. Once approval is granted to use Federal funds to submit an application, the funds are allowable regardless of the outcome of the preliminary eligibility under § 1303.42 and the application under § 1303.44.

[89 FR 67816, Aug. 21, 2024]

§ 1303.44 Applications to purchase, construct, and renovate facilities.

(a) *Application requirements.* If a grant recipient is preliminarily eligible under § 1303.42 to apply for funds to purchase, construct, or renovate a facility, it must submit to the responsible HHS official:

(1) A statement that explains the anticipated effect the proposed purchase, construction or renovation has had or will have on program enrollment, activities and services, and how it determined what the anticipated effect would be;

(2) A deed or other document showing legal ownership of the real property where facilities activity is proposed, legal description of the facility site, and an explanation why the location is appropriate for the grant recipient's service area;

(3) Plans and specifications for the facility, including square footage,

structure type, the number of rooms the facility will have or has, how the rooms will be used, where the structure will be positioned or located on the building site, whether there is space available for outdoor play, and whether there is space available for parking, if applicable;

(4) Certification by a licensed engineer or architect that the facility is, or will be upon completion, structurally sound and safe for use as a Head Start facility and that the facility complies, or will comply upon completion, with local building codes, applicable child care licensing requirements, the accessibility requirements of the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, the Flood Disaster Protection Act of 1973, and the National Historic Preservation Act of 1966;

(5) A description of proposed renovations or repairs to make the facility suitable for program activities, and plans and specification that describe the facility after renovation or repair;

(6) A proposed schedule that details when the grant recipient will acquire, renovate, repair and occupy the facility;

(7) An estimate by a licensed independent certified appraiser of the facility's value after proposed purchase and associated repairs and renovations, construction, or major renovation is completed, either on-site or virtually, is required for all facilities activities except for major renovations to leased property;

(8) The cost comparison described in § 1303.45;

(9) A statement that shows what share of the purchase, construction, or major renovation will be paid with grant funds and what the grant recipient proposes to contribute as a non-federal match to the purchase, construction or major renovation;

(10) A statement from a lender, if a grant recipient applies to use Head Start funds to continue purchase on a facility or refinance existing debt on a facility that indicates the lender is willing to comply with § 1303.49;

(11) The terms of any proposed or existing loan(s) related to purchase, construction or major renovation of the facility, including copies of any fund-

ing commitment letters, mortgages, promissory notes, potential security agreements to be entered into, information on all other sources of funding, construction or major renovation, and any restrictions or conditions imposed by other funding sources;

(12) A Phase I environmental site assessment that describes the environmental condition of the proposed facility site and any structures on the site;

(13) A description of the efforts by the grant recipient to coordinate or collaborate with other providers in the community to seek assistance, including financial assistance, prior to the use of funds under this section; and,

(14) Any additional information the responsible HHS official needs to determine compliance with the regulations in this part.

(b) *Additional requirements for leased properties.* (1) If a grant recipient applies to renovate leased property, it must submit to the responsible HHS official information described in paragraph (a) of this section, a copy of the existing or proposed lease agreement, and the landlord or lessor's consent.

(2) If a grant recipient applies to purchase a modular unit it intends to site on leased property or on other property the grant recipient does not own, the grant recipient must submit to the responsible HHS official information described in paragraph (a) of this section and a copy of the proposed lease or other occupancy agreement that will allow the grant recipient access to the modular unit for at least 15 years.

(c) *Non-federal match.* Any non-federal match associated with facilities activities becomes part of the federal share of the facility.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67816, Aug. 21, 2024]

§ 1303.45 Cost-comparison to purchase, construct, and renovate facilities.

(a) *Cost comparison.* (1) If a grant recipient proposes to purchase, construct, or renovate a facility, it must submit a detailed cost estimate of the proposed activity, compare the costs associated with the proposed activity to other available alternatives in the service area, and provide any additional information the responsible HHS official requests. The grant recipient

must demonstrate that the proposed activity will result in savings when compared to the costs that would be incurred to acquire the use of an alternative facility to carry out program.

(2) In addition to requirements in paragraph (a)(1) of this section, the grant recipient must:

- (i) Identify who owns the property;
- (ii) List all costs related to the purchase, construction, or renovation;
- (iii) Identify costs over the structure's useful life, which is at least 20 years for a facility that the grant recipient purchased or constructed and at least 15 years for a modular unit the grant recipient renovated, and deferred costs, including mortgage payments, as costs with associated due dates; and,
- (iv) Demonstrate how the proposed purchase, construction, or major renovation is consistent with program management and fiscal goals, community needs, enrollment and program options and how the proposed facility will support the grant recipient as it provides quality services to children and families.

(b) *Continue purchase or refinance.* To use funds to continue purchase on a facility or to refinance an existing indebtedness, the grant recipient must compare the costs of continued purchase against the cost of purchasing a comparable facility in the service area over the remaining years of the facility's useful life. The grant recipient must demonstrate that the proposed activity will result in savings when compared to the cost that would be incurred to acquire the use of an alternative facility to carry out the program.

(c) *Multi-purpose use.* If the grant recipient intends to use a facility to operate a Head Start program and for another purpose, it must disclose what percentage of the facility will be used for non-Head Start activities, along with costs associated with those activities, in accordance with applicable cost principles.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67816, Aug. 21, 2024]

§ 1303.46 Recording and posting notices of federal interest.

(a) *Survival of federal interest.* A grant recipient that receives funds under this

subpart must file notices of federal interest as set forth in paragraph (b) of this section. Federal interest cannot be defeated by a grant recipient's failure to file a notice of federal interest.

(b) *Recording notices of federal interest.*

(1) If a grant recipient uses federal funds to purchase real property or a facility, excluding modular units, appurtenant to real property, it must record a notice of federal interest in the official real property records for the jurisdiction where the facility is or will be located. The grant recipient must file the notice of federal interest as soon as it uses Head Start funds to either fully or partially purchase a facility or real property where a facility will be constructed or as soon as it receives permission from the responsible HHS official to use Head Start funds to continue purchase on a facility.

(2) If a grant recipient uses federal funds in whole or in part to construct a facility, it must record the notice of federal interest in the official real property records for the jurisdiction in which the facility is located as soon as it receives the notice of award to construct the facility.

(3) If a grant recipient uses federal funds to renovate a facility that it, or a third party owns, the grant recipient must record the notice of federal interest in the official real property records for the jurisdiction in which the facility is located as soon as it receives the notice of award to renovate the facility.

(4) If a grant recipient uses federal funds in whole or in part to purchase a modular unit or to renovate a modular unit, the grant recipient must post the notice of federal interest, in clearly visible locations, on the exterior of the modular unit and inside the modular unit.

§ 1303.47 Contents of notices of federal interest.

(a) *Facility and real property a grant recipient owns.* A notice of federal interest for a facility, other than a modular unit, and real property the grant recipient owns or will own, must include:

- (1) The grant recipient's correct legal name and current mailing address;
- (2) A legal description of the real property;

(3) Grant award number, amount and date of initial facilities funding award or initial use of base grant funds for ongoing purchase or mortgage payments;

(4) A statement that the notice of federal interest includes funds awarded in grant award(s) and any Head Start funds subsequently used to purchase, construct or to make major renovations to the real property;

(5) A statement that the facility and real property will only be used for purposes consistent with the Act and applicable Head Start regulations;

(6) A statement that the facility and real property will not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the responsible HHS official's written permission;

(7) A statement that the federal interest cannot be subordinated, diminished, nullified or released through encumbrance of the property, transfer of the property to another party or any other action the grant recipient takes without the responsible HHS official's written permission;

(8) A statement that confirms that the agency's governing body received a copy of the notice of federal interest prior to filing and the date the governing body was provided with a copy; and,

(9) The name, title, and signature of the person who drafted the notice.

(b) *Facility leased by a grant recipient.*

(1) A notice of federal interest for a leased facility, excluding a modular unit, on land the grant recipient does not own, must be recorded in the official real property records for the jurisdiction where the facility is located and must include:

(i) The grant recipient's correct legal name and current mailing address;

(ii) A legal description of affected real property;

(iii) The grant award number, amount and date of initial funding award or initial use of base grant funds for major renovation;

(iv) Acknowledgement that the notice of federal interest includes any Head Start funds subsequently used to make major renovations on the affected real property;

(v) A statement the facility and real property will only be used for purposes consistent with the Act and applicable Head Start regulations; and,

(vi) A lease or occupancy agreement that includes the required information from paragraphs (b)(1)(i) through (v) of this section may be recorded in the official real property records for the jurisdiction where the facility is located to serve as a notice of federal interest.

(2) If a grant recipient cannot file the lease or occupancy agreement described in paragraph (b)(1)(vi) of this section in the official real property records for the jurisdiction where the facility is located, it may file an abstract. The abstract must include the names and addresses of parties to the lease or occupancy agreement, terms of the lease or occupancy agreement, and information described in paragraphs (a)(1) through (9) of this section.

(c) *Modular units.* A notice of federal interest on a modular unit the grant recipient purchased or renovated must be visible and clearly posted on the exterior of the modular and inside the modular and must include:

(1) The grant recipient's correct legal name and current mailing address;

(2) The grant award number, amount and date of initial funding award or initial use of base grant funds to purchase or renovate;

(3) A statement that the notice of federal interest includes any Head Start funds subsequently used for major renovations to the modular unit;

(4) A statement that the facility and real property will only be used for purposes consistent with the Act and applicable Head Start regulations;

(5) A statement that the modular unit will not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the responsible HHS official's written permission;

(6) A statement that the federal interest cannot be subordinated, diminished, nullified or released through encumbrance of the property, transfer to another party, or any other action the grant recipient takes without the responsible HHS official's written permission;

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(7) A statement that the modular unit cannot be moved to another location without the responsible HHS official's written permission;

(8) A statement that confirms that the agency's governing body has received a copy of the filed notice of federal interest and the date the governing body was provided with a copy; and,

(9) The name, title, and signature of the person who completed the notice for the grant recipient agency.

§ 1303.48 Grant recipient limitations on Federal interest.

(a) A grant recipient cannot mortgage, use as collateral for a credit line or for other loan obligations, or, sell or transfer to another party, a facility, real property, or a modular unit it has purchased, constructed or renovated with Head Start funds, without the responsible HHS official's written permission.

(b) A grant recipient must have the responsible HHS official's written permission before it can use real property, a facility, or a modular unit subject to federal interest for a purpose other than that for which the grant recipient's application was approved.

§ 1303.49 Protection of federal interest in mortgage agreements.

(a) Any mortgage agreement or other security instrument that is secured by real property or a modular unit constructed or purchased in whole or in part with federal funds or subject to renovation with federal funds must:

(1) Specify that the responsible HHS official can intervene in case the grant recipient defaults on, terminates or withdraws from the agreement;

(2) Designate the responsible HHS official to receive a copy of any notice of default given to the grant recipient under the terms of the agreement and include the regional grants management officer's current address;

(3) Include a clause that requires any action to foreclose the mortgage agreement or security agreement be suspended for 60 days after the responsible HHS official receives the default notice to allow the responsible HHS official reasonable time to respond;

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(4) Include a clause that preserves the notice of federal interest and the grant recipient's obligation for its federal share if the responsible HHS official fails to respond to any notice of default provided under this section;

(5) Include a statement that requires the responsible HHS official to be paid the federal interest before foreclosure proceeds are paid to the lender, unless the official's rights under the notice of federal interest have been subordinated by a written agreement in conformance with § 1303.51;

(6) Include a clause that gives the responsible HHS official the right to cure any default under the agreement within the designated period to cure the default; and,

(7) Include a clause that gives the responsible HHS official the right to assign or transfer the agreement to another interim or permanent grant recipient.

(b) A grant recipient must immediately notify the responsible HHS official of any default under an agreement described in paragraph (a) of this section.

§ 1303.50 Third party leases and occupancy arrangements.

(a) After November 7, 2016, if a grant recipient receives federal funds to purchase, construct or renovate a facility on real property the grant recipient does not own or to purchase or renovate a modular unit on real property the grant recipient does not own, the grant recipient must have a lease or other occupancy agreement of at least 30 years for purchase or construction of a facility and at least 15 years for a major renovation or placement of a modular unit.

(b) The lease or occupancy agreement must:

(1) Provide for the grant recipient's right of continued use and occupancy of the leased or occupied premises during the entire term of the lease;

(2) Designate the regional grants management officer to receive a copy of any notice of default given to the grant recipient under the terms of the agreement and include the regional grants management officer's current address;

(3) Specify that the responsible HHS official has the right to cure any default under the lease or occupancy agreement within the designated period to cure default; and,

(4) Specify that the responsible HHS official has the right to transfer the lease to another interim or replacement grant recipient.

§ 1303.51 Subordination of the federal interest.

Only the responsible HHS official can subordinate federal interest to the rights of a lender or other third party. Subordination agreements must be in writing and the mortgage agreement or security agreement for which subordination is requested must comply with § 1303.49. When the amount of federal funds already contributed to the facility exceeds the amount to be provided by the lender seeking subordination, the federal interest may only be subordinated if the grant recipient can show that funding is not available without subordination of the federal interest.

§ 1303.52 Insurance, bonding, and maintenance.

(a) *Purpose.* If a grant recipient uses federal funds to purchase or continue purchase on a facility, excluding modular units, the grant recipient must obtain a title insurance policy for the purchase price that names the responsible HHS official as an additional loss payee.

(b) *Insurance coverage.* (1) If a grant recipient uses federal funds to purchase or continue purchase on a facility or modular unit the grant recipient must maintain physical damage or destruction insurance at the full replacement value of the facility, for as long as the grant recipient owns or occupies the facility.

(2) If a facility is located in an area the National Flood Insurance Program defines as high risk, the grant recipient must maintain flood insurance for as long as the grant recipient owns or occupies the facility.

(3) A grant recipient must submit to the responsible HHS official, within 10 days after coverage begins, proof of insurance coverage required under paragraphs (a) and (b) of this section.

(c) *Maintenance.* A grant recipient must keep all facilities purchased or constructed in whole or in part with Head Start funds in good repair in accordance with all applicable federal, state, and local laws, rules and regulations, including Head Start requirements, zoning requirements, building codes, health and safety regulations and child care licensing standards.

§ 1303.53 Copies of documents.

A grant recipient must submit to the responsible HHS official, within 10 days after filing or execution, copies of deeds, leases, loan instruments, mortgage agreements, notices of federal interest, and other legal documents related to the use of Head Start funds for purchase, construction, major renovation, or the discharge of any debt secured by the facility.

§ 1303.54 Record retention.

A grant recipient must retain records pertinent to the lease, purchase, construction or renovation of a facility funded in whole or in part with Head Start funds, for as long as the grant recipient owns or occupies the facility, plus three years.

§ 1303.55 Procurement procedures.

(a) A grant recipient must comply with all grants management regulations, including specific regulations applicable to transactions in excess of the current simplified acquisition threshold, cost principles, and its own procurement procedures, and must provide, to the maximum extent practical, open and full competition.

(b) A grant recipient must obtain the responsible HHS official's written approval before it uses Head Start funds, in whole or in part, to contract construction or renovation services. The grant recipient must ensure these contracts are paid on a lump sum fixed-price basis.

(c) A grant recipient must obtain prior written approval from the responsible HHS official for contract modifications that would change the scope or objective of a project or would materially alter the costs, by increasing the amount of grant funds needed to complete the project.

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(d) A grant recipient must ensure all construction and renovation contracts paid, in whole or in part with Head Start funds contain a clause that gives the responsible HHS official or his or her designee access to the facility, at all reasonable times, during construction and inspection.

§ 1303.56 Inspection of work.

The grant recipient must submit to the responsible HHS official a final facility inspection report by a licensed engineer or architect within 30 calendar days after the project is completed. The inspection report must certify that the facility complies with local building codes, applicable child care licensing requirements, is structurally sound and safe for use as a Head Start facility, complies with the access requirements of the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and the Flood Disaster Protection Act of 1973, and complies with National Historic Preservation Act of 1966.

Subpart F—Transportation

§ 1303.70 Purpose.

(a) *Applicability.* This rule applies to all agencies, including those that provide transportation services, with the exceptions and exclusions provided in this section, regardless of whether such transportation is provided directly on agency owned or leased vehicles or through arrangement with a private or public transportation provider.

(b) *Providing transportation services.* (1) If a program does not provide transportation services, either for all or a portion of the children, it must provide reasonable assistance, such as information about public transit availability, to the families of such children to arrange transportation to and from its activities, and provide information about these transportation options in recruitment announcements.

(2) A program that provides transportation services must make reasonable efforts to coordinate transportation resources with other human services agencies in its community in order to control costs and to improve the quality and the availability of transportation services.

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(3) A program that provides transportation services must ensure all accidents involving vehicles that transport children are reported in accordance with applicable state requirements.

(c) *Waiver.* (1) A program that provides transportation services must comply with all provisions in this subpart. A Head Start Preschool program may request to waive a specific requirement in this part, in writing, to the responsible HHS official, as part of an agency's annual application for financial assistance or amendment and must submit any required documentation the responsible HHS official deems necessary to support the waiver. The responsible HHS official is not authorized to waive any requirements with regard to children enrolled in an Early Head Start program. A program may request a waiver when:

(i) Adherence to a requirement in this part would create a safety hazard in the circumstances faced by the agency; and,

(ii) For preschool children, compliance with requirements related to child restraint systems at §§1303.71(d) and 1303.72(a)(1) or bus monitors at §1303.72(a)(4) will result in a significant disruption to the program and the agency demonstrates that waiving such requirements is in the best interest of the children involved.

(2) The responsible HHS official is not authorized to waive any requirements of the Federal Motor Vehicle Safety Standards (FMVSS) made applicable to any class of vehicle under 49 CFR part 571.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67816, Aug. 21, 2024]

§ 1303.71 Vehicles.

(a) *Required use of schools buses or allowable alternative vehicles.* A program, with the exception of transportation services to children served under a home-based option, must ensure all vehicles used or purchased with grant funds to provide transportation services to enrolled children are school buses or allowable alternate vehicles that are equipped for use of height- and weight-appropriate child restraint systems, and that have reverse beepers.