

## **Pt. 1303**

(3) If a program has had a deficiency identified, it must submit, to the responsible HHS official, a quality improvement plan as required in section 641A(e)(2) of the Act.

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

### **PART 1303—FINANCIAL AND ADMINISTRATIVE REQUIREMENTS**

Sec.

1303.1 Overview.

#### **Subpart A—Financial Requirements**

1303.2 Purpose.

1303.3 Other requirements.

1303.4 Federal financial assistance, non-federal match, and waiver requirements.

1303.5 Limitations on development and administrative costs.

#### **Subpart B—Administrative Requirements**

1303.10 Purpose.

1303.11 Limitations and prohibitions.

1303.12 Insurance and bonding.

#### **Subpart C—Protections for the Privacy of Child Records**

1303.20 Establishing procedures.

1303.21 Program procedures—applicable confidentiality provisions.

1303.22 Disclosures with, and without, parental consent.

1303.23 Parental rights.

1303.24 Maintaining records.

#### **Subpart D—Delegation of Program Operations**

1303.30 Grant recipient responsibility and accountability.

1303.31 Determining and establishing delegate agencies.

1303.32 Evaluations and corrective actions for delegate agencies.

1303.33 Termination of delegate agencies.

#### **Subpart E—Facilities**

1303.40 Purpose.

1303.41 Approval of previously purchased facilities.

1303.42 Eligibility to purchase, construct, and renovate facilities.

1303.43 Use of grant funds to pay fees.

1303.44 Applications to purchase, construct, and renovate facilities.

1304.45 Cost-comparison to purchase, construct, and renovate facilities.

1303.46 Recording and posting notices of federal interest.

## **45 CFR Ch. XIII (10–1–24 Edition)**

1303.47 Contents of notices of federal interest.

1303.48 Grant recipient limitations on Federal interest.

1303.49 Protection of federal interest in mortgage agreements.

1303.50 Third party leases and occupancy arrangements.

1303.51 Subordination of the federal interest.

1303.52 Insurance, bonding, and maintenance.

1303.53 Copies of documents.

1303.54 Record retention.

1303.55 Procurement procedures.

1303.56 Inspection of work.

#### **Subpart F—Transportation**

1303.70 Purpose.

1303.71 Vehicles.

1303.72 Vehicle operation.

1303.73 Trip routing.

1303.74 Safety procedures.

1303.75 Children with disabilities.

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

SOURCE: 81 FR 61412, Sept. 6, 2016, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1303 appear at 89 FR 67816, Aug. 21, 2024.

#### **§ 1303.1 Overview.**

Section 641A of the Act requires that the Secretary modify as necessary program performance standards including administrative and financial management standards (section 641A(a)(1)(C)). This part specifies the financial and administrative requirements of agencies. Subpart A of this part outlines the financial requirements consistent with sections 640(b) and 644(b) and (c) of the Act. Subpart B of this part specifies the administrative requirements consistent with sections 644(a)(1), 644(e), 653, 654, 655, 656, and 657A of the Act. Subpart C of this part implements the statutory provision at section 641A(b)(4) of the Act that directs the Secretary to ensure the confidentiality of any personally identifiable data, information, and records collected or maintained. Subpart D of this part prescribes regulations for the operation of delegate agencies consistent with Section 641(A)(d). Subpart E of this part implements the statutory requirements in Section 644(c), (f) and (g) related to facilities. Subpart F prescribes regulations on transportation consistent with section 640(i) of the Act.

## Administration for Children and Families, HHS

## § 1303.5

### Subpart A—Financial Requirements

and grants management for all grants under the Act.

#### § 1303.2 Purpose.

This subpart establishes regulations applicable to program administration

#### § 1303.3 Other requirements.

The following chart includes HHS regulations that apply to all grants made under the Act:

Cite	Title
45 CFR part 16 .....	Department grant appeals process.
45 CFR part 30 .....	HHS Standards and Procedures for Claims collection.
45 CFR part 46 .....	Protection of human subjects.
45 CFR part 75 .....	Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
45 CFR part 80 .....	Nondiscrimination under programs receiving federal assistance through the Department of Health and Human Services—Effectuation of title VI and VII of the Civil Rights Act of 1964.
45 CFR part 81 .....	Practice and procedure for hearings under part 80.
45 CFR part 84 .....	Nondiscrimination on the basis of handicap in federally assisted programs.
45 CFR part 87 .....	Equal treatment for faith based organizations.
2 CFR part 170 .....	FFATA Sub-award and executive compensation.
2 CFR 25.110 .....	CCR/DUNS requirement.

#### § 1303.4 Federal financial assistance, non-federal match, and waiver requirements.

In accordance with section 640(b) of the Act, federal financial assistance to a grant recipient will not exceed 80 percent of the approved total program costs. A grant recipient must contribute 20 percent as non-federal match each budget period. The responsible HHS official may approve a waiver of all or a portion of the non-federal match requirement on the basis of the grant recipient's written application submitted for the budget period and any supporting evidence the responsible HHS official requires. In deciding whether to grant a waiver, the responsible HHS official will consider the circumstances specified at section 640(b) of the Act and whether the grant recipient has made a reasonable effort to comply with the non-federal match requirement.

#### § 1303.5 Limitations on development and administrative costs.

(a) *Limitations.* (1) Costs to develop and administer a program cannot be excessive or exceed 15 percent of the total approved program costs. Allowable costs to develop and administer a Head Start program cannot exceed 15 percent of the total approved program costs, which includes both federal costs and non-federal match, unless the responsible HHS official grants a waiver under paragraph (b) of this section that

approves a higher percentage in order to carry out the purposes of the Act.

(2) To assess total program costs and determine whether a grant recipient meets this requirement, the grant recipient must:

(i) Determine the costs to develop and administer its program, including the local costs of necessary resources;

(ii) Categorize total costs as development and administrative or program costs;

(iii) Identify and allocate the portion of dual benefits costs that are for development and administration;

(iv) Identify and allocate the portion of indirect costs that are for development and administration versus program costs; and,

(v) Delineate all development and administrative costs in the grant application and calculate the percentage of total approved costs allocated to development and administration.

(b) *Waivers.* (1) The responsible HHS official may grant a waiver for each budget period if a delay or disruption to program services is caused by circumstances beyond the agency's control, or if an agency is unable to administer the program within the 15 percent limitation and if the agency can demonstrate efforts to reduce its development and administrative costs.

(2) If at any time within the grant funding cycle, a grant recipient estimates development and administration

## **§ 1303.10**

costs will exceed 15 percent of total approved costs, it must submit a waiver request to the responsible HHS official that explains why costs exceed the limit, that indicates the time period the waiver will cover, and that describes what the grant recipient will do to reduce its development and administrative costs to comply with the 15 percent limit after the waiver period.

### **Subpart B—Administrative Requirements**

#### **§ 1303.10 Purpose.**

A grant recipient must observe standards of organization, management, and administration that will ensure, so far as reasonably possible, that all program activities are conducted in a manner consistent with the purposes of the Act and the objective of providing assistance effectively, efficiently, and free of any taint of partisan political bias or personal or family favoritism.

#### **§ 1303.11 Limitations and prohibitions.**

An agency must adhere to sections 644(e), 644(g)(3), 653, 654, 655, 656, and 657A of the Act. These sections pertain to union organizing, the Davis-Bacon Act, limitations on compensation, non-discrimination, unlawful activities, political activities, and obtaining parental consent.

#### **§ 1303.12 Insurance and bonding.**

An agency must have an ongoing process to identify risks and have cost-effective insurance for those identified risks; a grant recipient must require the same for its delegates. The agency must specifically consider the risk of accidental injury to children while participating in the program. The grant recipient must submit proof of appropriate coverage in its initial application for funding. The process of identifying risks must also consider the risk of losses resulting from fraudulent acts by individuals authorized to disburse Head Start funds. Consistent with 45 CFR part 75, if the agency lacks sufficient coverage to protect the federal government's interest, the agency must maintain adequate fidelity bond coverage.

## **45 CFR Ch. XIII (10–1–24 Edition)**

### **Subpart C—Protections for the Privacy of Child Records**

#### **§ 1303.20 Establishing procedures.**

A program must establish procedures to protect the confidentiality of any personally identifiable information (PII) in child records.

#### **§ 1303.21 Program procedures—applicable confidentiality provisions.**

(a) If a program is an educational agency or institution that receives funds under a program administered by the Department of Education and therefore is subject to the confidentiality provisions under the Family Educational Rights and Privacy Act (FERPA), then it must comply with those confidentiality provisions of FERPA instead of the provisions in this subpart.

(b) If a program serves a child who is referred to, or found eligible for services under, IDEA, then a program must comply with the applicable confidentiality provisions in Part B or Part C of IDEA to protect the PII in records of those children, and, therefore, the provisions in this subpart do not apply to those children.

#### **§ 1303.22 Disclosures with, and without, parental consent.**

(a) *Disclosure with parental consent.* (1) Subject to the exceptions in paragraphs (b) and (c) of this section, the procedures to protect PII must require the program to obtain a parent's written consent before the program may disclose such PII from child records.

(2) The procedures to protect PII must require the program to ensure the parent's written consent specifies what child records may be disclosed, explains why the records will be disclosed, and identifies the party or class of parties to whom the records may be disclosed. The written consent must be signed and dated.

(3) "Signed and dated written consent" under this part may include a record and signature in electronic form that:

- (i) Identifies and authenticates a particular person as the source of the electronic consent; and,
- (ii) Indicates such person's approval of the information.

(4) The program must explain to the parent that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive and therefore it does not apply to an action that occurred before the consent was revoked.

(b) *Disclosure without parental consent but with parental notice and opportunity to refuse.* The procedures to protect PII must allow the program to disclose such PII from child records without parental consent if the program notifies the parent about the disclosure, provides the parent, upon the parent's request, a copy of the PII from child records to be disclosed in advance, and gives the parent an opportunity to challenge and refuse disclosure of the information in the records, before the program forwards the records to officials at a program, school, or school district in which the child seeks or intends to enroll or where the child is already enrolled so long as the disclosure is related to the child's enrollment or transfer.

(c) *Disclosure without parental consent.* The procedures to protect PII must allow the program to disclose such PII from child records without parental consent to:

(1) Officials within the program or acting for the program, such as contractors and subrecipients, if the official provides services for which the program would otherwise use employees, the program determines it is necessary for Head Start services, and the program maintains oversight with respect to the use, further disclosure, and maintenance of child records, such as through a written agreement;

(2) Officials within the program, acting for the program, or from a federal or state entity, in connection with an audit or evaluation of education or child development programs, or for enforcement of or compliance with federal legal requirements of the program; provided the program maintains oversight with respect to the use, further disclosure, and maintenance of child records, such as through a written agreement, including the destruction of the PII when no longer needed for the purpose of the disclosure, except when the disclosure is specifically au-

thorized by federal law or by the responsible HHS official;

(3) Officials within the program, acting for the program, or from a federal or state entity, to conduct a study to improve child and family outcomes, including improving the quality of programs, for, or on behalf of, the program, provided the program maintains oversight with respect to the use, further disclosure, and maintenance of child records, such as through a written agreement, including the destruction of the PII when no longer needed for the purpose of the disclosure;

(4) Appropriate parties in order to address a disaster, health or safety emergency during the period of the emergency, or a serious health and safety risk such as a serious food allergy, if the program determines that disclosing the PII from child records is necessary to protect the health or safety of children or other persons;

(5) Comply with a judicial order or lawfully issued subpoena, provided the program makes a reasonable effort to notify the parent about all such subpoenas and court orders in advance of the compliance therewith, unless:

(i) A court has ordered that neither the subpoena, its contents, nor the information provided in response be disclosed;

(ii) The disclosure is in compliance with an ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.

(iii) A parent is a party to a court proceeding directly involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101)) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the program is not required; or,

(iv) A program initiates legal action against a parent or a parent initiates legal action against a program, then a program may disclose to the court, also without a court order or subpoena, the child records relevant for the program to act as plaintiff or defendant.

## § 1303.23

(6) The Secretary of Agriculture or an authorized representative from the Food and Nutrition Service to conduct program monitoring, evaluations, and performance measurements for the Child and Adult Care Food Program under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966, if the results will be reported in an aggregate form that does not identify any individual: Provided, that any data collected must be protected in a manner that will not permit the personal identification of students and their parents by other than the authorized representatives of the Secretary of Agriculture and any PII must be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements;

(7) A caseworker or other representative from a state, local, or tribal child welfare agency, who has the right to access a case plan for a child who is in foster care placement, when such agency is legally responsible for the child's care and protection, under state or tribal law, if the agency agrees in writing to protect PII, to use information from the child's case plan for specific purposes intended of addressing the child's needs, and to destroy information that is no longer needed for those purposes; and,

(8) Appropriate parties in order to address suspected or known child maltreatment and is consistent with applicable federal, state, local, and tribal laws on reporting child abuse and neglect.

(d) *Written agreements.* When a program establishes a written agreement with a third party, the procedures to protect such PII must require the program to annually review and, if necessary, update the agreement. If the third party violates the agreement, then the program may:

(1) Provide the third party an opportunity to self-correct; or,

(2) Prohibit the third party from access to records for a set period of time as established by the programs governing body and policy council.

(e) *Annual notice.* The procedures to protect PII must require the program to annually notify parents of their rights in writing described in this sub-

## 45 CFR Ch. XIII (10–1–24 Edition)

part and applicable definitions in part 1305 of this chapter, and include in that notice a description of the types of PII that may be disclosed, to whom the PII may be disclosed, and what may constitute a necessary reason for the disclosure without parental consent as described in paragraph (c) of this section.

(f) *Limit on disclosing PII.* A program must only disclose the information that is deemed necessary for the purpose of the disclosure.

### § 1303.23 Parental rights.

(a) *Inspect record.* (1) A parent has the right to inspect child records.

(2) If the parent requests to inspect child records, the program must make the child records available within a reasonable time, but no more than 45 days after receipt of request.

(3) If a program maintains child records that contain information on more than one child, the program must ensure the parent only inspects information that pertains to the parent's child.

(4) The program shall not destroy a child record with an outstanding request to inspect and review the record under this section.

(b) *Amend record.* (1) A parent has the right to ask the program to amend information in the child record that the parent believes is inaccurate, misleading, or violates the child's privacy.

(2) The program must consider the parent's request and, if the request is denied, render a written decision to the parent within a reasonable time that informs the parent of the right to a hearing.

(c) *Hearing.* (1) If the parent requests a hearing to challenge information in the child record, the program must schedule a hearing within a reasonable time, notify the parent, in advance, about the hearing, and ensure the person who conducts the hearing does not have a direct interest in its outcome.

(2) The program must ensure the hearing affords the parent a full and fair opportunity to present evidence relevant to the issues.

(3) If the program determines from evidence presented at the hearing that the information in the child records is inaccurate, misleading, or violates the

child's privacy, the program must either amend or remove the information and notify the parent in writing.

(4) If the program determines from evidence presented at the hearing that information in the child records is accurate, does not mislead, or otherwise does not violate the child's privacy, the program must inform the parent of the right to place a statement in the child records that either comments on the contested information or that states why the parent disagrees with the program's decision, or both.

(d) *Right to copy of record.* The program must provide a parent, free of charge, an initial copy of child records disclosed to third parties with parental consent and, upon parent request, an initial copy of child records disclosed to third parties, unless the disclosure was for a court that ordered neither the subpoena, its contents, nor the information furnished in response be disclosed.

(e) *Right to inspect written agreements.* A parent has the right to review any written agreements with third parties.

#### **§ 1303.24 Maintaining records.**

(a) A program must maintain child records in a manner that ensures only parents, and officials within the program or acting on behalf of the program have access, and such records must be destroyed within a reasonable timeframe after such records are no longer needed or required to be maintained.

(b) A program must maintain, with the child records, for as long as the records are maintained, information on all individuals, agencies, or organizations to whom a disclosure of PII from the child records was made (except for program officials and parents) and why the disclosure was made. If a program uses a web-based data system to maintain child records, the program must ensure such child records are adequately protected and maintained according to current industry security standards.

(c) If a parent places a statement in the child record, the program must maintain the statement with the contested part of the child record for as long as the program maintains the record and, disclose the statement

whenever it discloses the portion of the child record to which the statement relates.

### **Subpart D—Delegation of Program Operations**

#### **§ 1303.30 Grant recipient responsibility and accountability.**

A grant recipient is accountable for the services its delegate agencies provide. The grant recipient supports, oversees and ensures delegate agencies provide high-quality services to children and families and meet all applicable Head Start requirements. The grant recipient can only terminate a delegate agency if the grant recipient shows cause why termination is necessary and provides a process for delegate agencies to appeal termination decisions. The grant recipient retains legal responsibility and authority and bears financial accountability for the program when services are provided by delegate agencies.

#### **§ 1303.31 Determining and establishing delegate agencies.**

(a) If a grant recipient enters into an agreement with another entity to serve children, the grant recipient must determine whether the agreement meets the definition of "delegate agency" in section 637(3) of the Act.

(b) A grant recipient must not award a delegate agency federal financial assistance unless there is a written agreement and the responsible HHS official approves the agreement before the grant recipient delegates program operations.

#### **§ 1303.32 Evaluations and corrective actions for delegate agencies.**

A grant recipient must evaluate and ensure corrective action for delegate agencies according to section 641A(d) of the Act.

#### **§ 1303.33 Termination of delegate agencies.**

(a) If a grant recipient shows cause why termination is appropriate or demonstrates cost effectiveness, the grant recipient may terminate a delegate agency's contract.

## § 1303.40

(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:

## 45 CFR Ch. XIII (10–1–24 Edition)

(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;

#### **§ 1303.48**

(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;

#### **45 CFR Ch. XIII (10–1–24 Edition)**

(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.

## § 1303.56

(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.

## 45 CFR Ch. XIII (10–1–24 Edition)

(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.

(b) *Emergency equipment.* A program must ensure each vehicle used in providing such services is equipped with an emergency communication system clearly labeled and appropriate emergency safety equipment, including a seat belt cutter, charged fire extinguisher, and first aid kit.

(c) *Auxiliary seating.* A program must ensure any auxiliary seating, such as temporary or folding jump seats, used in vehicles of any type providing such services are built into the vehicle by the manufacturer as part of its standard design, are maintained in proper working order, and are inspected as part of the annual inspection required under paragraph (e)(2)(i) of this section.

(d) *Child restraint systems.* A program must ensure each vehicle used to transport children receiving such services is equipped for use of age-, height- and weight-appropriate child safety restraint systems as defined in part 1305 of this chapter.

(e) *Vehicle maintenance.* (1) A program must ensure vehicles used to provide such services are in safe operating condition at all times.

(2) The program must:

(i) At a minimum, conduct an annual thorough safety inspection of each vehicle through an inspection program licensed or operated by the state;

(ii) Carry out systematic preventive maintenance on vehicles; and,

(iii) Ensure each driver implements daily pre-trip vehicle inspections.

(f) *New vehicle inspection.* A program must ensure bid announcements for school buses and allowable alternate vehicles to transport children in its program include correct specifications and a clear statement of the vehicle's intended use. The program must ensure vehicles are examined at delivery to ensure they are equipped in accordance with the bid specifications and that the manufacturer's certification of compliance with the applicable FMVSS is included with the vehicle.

#### § 1303.72 Vehicle operation.

(a) *Safety.* A program must ensure:

(1) Each child is seated in a child restraint system appropriate to the child's age, height, and weight;

(2) Baggage and other items transported in the passenger compartment are properly stored and secured, and the aisles remain clear and the doors and emergency exits remain unobstructed at all times;

(3) Up-to-date child rosters and lists of the adults each child is authorized to be released to, including alternates in case of emergency, are maintained and no child is left behind, either at the classroom or on the vehicle at the end of the route; and,

(4) With the exception of transportation services to children served under a home-based option, there is at least one bus monitor on board at all times, with additional bus monitors provided as necessary.

(b) *Driver qualifications.* A program, with the exception of transportation services to children served under a home-based option, must ensure drivers, at a minimum:

(1) In states where such licenses are granted, have a valid Commercial Driver's License (CDL) for vehicles in the same class as the vehicle the driver will operating; and,

(2) Meet any physical, mental, and other requirements as necessary to perform job-related functions with any necessary reasonable accommodations.

(c) *Driver application review.* In addition to the applicant review process prescribed §1302.90(b) of this chapter, a program, with the exception of transportation services to children served under a home-based option, must ensure the applicant review process for drivers includes, at minimum:

(1) Disclosure by the applicant of all moving traffic violations, regardless of penalty;

(2) A check of the applicant's driving record through the appropriate state agency, including a check of the applicant's record through the National Driver Register, if available;

(3) A check that drivers qualify under the applicable driver training requirements in the state or tribal jurisdiction; and,

(4) After a conditional employment offer to the applicant and before the applicant begins work as a driver, a medical examination, performed by a licensed doctor of medicine or osteopathy, establishing that the individual

### § 1303.73

possesses the physical ability to perform any job-related functions with any necessary accommodations.

(d) *Driver training.* (1) A program must ensure any person employed as a driver receives training prior to transporting any enrolled child and receives refresher training each year.

(2) Training must include:

(i) Classroom instruction and behind-the-wheel instruction sufficient to enable the driver to operate the vehicle in a safe and efficient manner, to safely run a fixed route, to administer basic first aid in case of injury, and to handle emergency situations, including vehicle evacuation, operate any special equipment, such as wheelchair lifts, assistance devices or special occupant restraints, conduct routine maintenance and safety checks of the vehicle, and maintain accurate records as necessary; and,

(ii) Instruction on the topics listed in § 1303.75 related to transportation services for children with disabilities.

(3) A program must ensure the annual evaluation of each driver of a vehicle used to provide such services includes an on-board observation of road performance.

(e) *Bus monitor training.* A program must train each bus monitor before the monitor begins work, on child boarding and exiting procedures, how to use child restraint systems, completing any required paperwork, how to respond to emergencies and emergency evacuation procedures, how to use special equipment, child pick-up and release procedures, how to conduct and pre- and post-trip vehicle checks. Bus monitors are also subject to staff safety training requirements in § 1302.47(b)(4) of this chapter including Cardio Pulmonary Resuscitation (CPR) and first aid.

### § 1303.73 Trip routing.

(a) A program must consider safety of the children it transports when it plans fixed routes.

(b) A program must also ensure:

(1) The time a child is in transit to and from the program must not exceed one hour unless there is no shorter route available or any alternative shorter route is either unsafe or impractical;

### 45 CFR Ch. XIII (10–1–24 Edition)

(2) Vehicles are not loaded beyond maximum passenger capacity at any time;

(3) Drivers do not back up or make U-turns, except when necessary for safety reasons or because of physical barriers;

(4) Stops are located to minimize traffic disruptions and to afford the driver a good field of view in front of and behind the vehicle;

(5) When possible, stops are located to eliminate the need for children to cross the street or highway to board or leave the vehicle;

(6) Either a bus monitor or another adult escorts children across the street to board or leave the vehicle if curbside pick-up or drop off is impossible; and,

(7) Drivers use alternate routes in the case of hazardous conditions that could affect the safety of the children who are being transported, such as ice or water build up, natural gas line breaks, or emergency road closing.

### § 1303.74 Safety procedures.

(a) A program must ensure children who receive transportation services are taught safe riding practices, safety procedures for boarding and leaving the vehicle and for crossing the street to and from the vehicle at stops, recognition of the danger zones around the vehicle, and emergency evacuation procedures, including participating in an emergency evacuation drill conducted on the vehicle the child will be riding.

(b) A program that provides transportation services must ensure at least two bus evacuation drills in addition to the one required under paragraph (a) of this section are conducted during the program year.

### § 1303.75 Children with disabilities.

(a) A program must ensure there are school buses or allowable alternate vehicles adapted or designed for transportation of children with disabilities available as necessary to transport such children enrolled in the program. This requirement does not apply to the transportation of children receiving home-based services unless school buses or allowable alternate vehicles are used to transport the other children served under the home-based option by the grant recipient. Whenever possible, children with disabilities

must be transported in the same vehicles used to transport other children enrolled in the Head Start program.

(b) A program must ensure special transportation requirements in a child's IEP or IFSP are followed, including special pick-up and drop-off requirements, seating requirements, equipment needs, any assistance that may be required, and any necessary training for bus drivers and monitors.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67817, Aug. 21, 2024]

## PART 1304—FEDERAL ADMINISTRATIVE PROCEDURES

### Subpart A—Monitoring, Suspension, Termination, Denial of Refunding, Reduction in Funding, and Their Appeals

Sec.

- 1304.1 Purpose.
- 1304.2 Monitoring.
- 1304.3 Suspension with notice.
- 1304.4 Emergency suspension without advance notice.
- 1304.5 Termination and denial of refunding.
- 1304.6 Appeal for prospective delegate agencies.
- 1304.7 Legal fees.

### Subpart B—Designation Renewal

- 1304.10 Purpose and scope.
- 1304.11 Basis for determining whether a Head Start agency will be subject to an open competition.
- 1304.12 Grant recipient reporting requirements concerning certain conditions.
- 1304.13 Requirements to be considered for designation for a five-year period when the existing grant recipient in a community is not determined to be delivering a high-quality and comprehensive Head Start program and is not automatically renewed.
- 1304.14 Tribal government consultation under the Designation Renewal System for when an Indian Head Start grant is being considered for competition.
- 1304.15 Designation request, review and notification process.
- 1304.16 Use of CLASS: Pre-K instrument in the Designation Renewal System.
- 1304.17 Flexibility for Head Start Designation Renewal Determinations in Certain Emergencies.

### Subpart C—Selection of Grant Recipients Through Competition

- 1304.20 Selection among applicants.

### Subpart D—Replacement of American Indian and Alaska Native Grant Recipients

- 1304.30 Procedure for identification of alternative agency.
- 1304.31 Requirements of alternative agency.
- 1304.32 Alternative agency—prohibition.

### Subpart E—Head Start Fellows Program

- 1304.40 Purpose.
- 1304.41 Fellows Program.

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

SOURCE: 81 FR 61412, Sept. 6, 2016, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1304 appear at 89 FR 67817, Aug. 21, 2024.

### Subpart A—Monitoring, Suspension, Termination, Denial of Refunding, Reduction in Funding, and Their Appeals

#### § 1304.1 Purpose.

(a) Section 641A(c) of the Act requires the Secretary to monitor whether a grant recipient meets program governance, program operations, and financial and administrative standards described in this regulation and to identify areas for improvements and areas of strength as part of the grant recipient's ongoing self-assessment process. This subpart focuses on the monitoring process. It discusses areas of noncompliance, deficiencies, and corrective action through quality improvement plans.

(b) Section 646(a) of the Act requires the Secretary to prescribe procedures for notice and appeal for certain adverse actions. This subpart establishes rules and procedures to suspend financial assistance to a grant recipient, deny a grant recipient's application for refunding, terminate, or reduce a grant recipient's assistance under the Act when the grant recipient improperly uses federal funds or fails to comply with applicable laws, regulations, policies, instructions, assurances, terms and conditions or, if the grant recipient loses its legal status or financial viability. This subpart does not apply to reductions to a grant recipient's financial assistance based on chronic under-enrollment procedures at section 641A(h) of the Act or to matters described in subpart B. This subpart does