

## § 1235.1

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### § 1235.1 Definitions.

As used in this part and in section 224 of the Domestic Volunteer Service Act of 1973, as amended, the following definitions shall apply:

(a) *Director* means the Director of ACTION.

(b) *Locally Generated Contributions* means all contributions generated by the grantee in support of the grant, including non-ACTION Federal, State, local government and privately raised contributions.

(c) *Amount Required by the Director* means the proportion of the non-Federal contribution (including in-kind contributions) for a grant or contract made under the Domestic Volunteer Service Act of 1973, as amended, required by the Director in order to receive ACTION funds. This proportion is generally 10% for the Foster Grandparent Program/Senior Companion Program (FGP/SCP) and generally 10%, 20% and 30% for the Retired Senior Volunteer Program (RSVP) in the first, second, and subsequent years respectively. The “amount required by the Director” is also called the “local match.”

(d) *In Excess of the Amount Required by the Director* means of the total locally generated contributions, the amount over and above the percentage match (generally 10% for FGP/SCP and 10%, 20% and 30% for RSVP in the first, second, and subsequent years respectively) required by the Director of ACTION to be raised from non-ACTION sources to support the grant.

(e) *Inconsistent with the Provisions of This Act* means expenditures not in support of ACTION programs, as defined by the Domestic Volunteer Service Act of 1973, as amended. For example:

(1) Inconsistency with the age threshold for volunteers for all Older American Volunteer Programs (OAVP);

(2) Inconsistency with the low income test for the FGP and SCP programs;

(3) Variations from the approved stipend levels for the FGP and SCP programs;

(4) Inconsistency with the prohibition against political activity under all the OAVP programs; and/or

(5) Unreasonable cost for a low-cost volunteer program.

### § 1235.2 Implementation guidance.

ACTION’s implementation of section 224 of the DVSA is based on fundamental principles regarding the Congressional intent of the Section as well as the Executive Branch’s policy on Federal financial assistance to grantees. These principles include:

(a) That ACTION may not restrict grantees’ use of excess contributions as long as those expenditures are “not inconsistent” with the Domestic Volunteer Service Act of 1973, as amended;

(b) That grantees are to fully account for and document expenditures of non-Federal contributions, regardless of whether they are used to meet ACTION’s local match requirement or are in excess of the requirement; and

[56 FR 4732, Feb. 6, 1991, as amended at 79 FR 76077, Dec. 19, 2014]

### § 1235.3 Statement of policy.

(a) Expenditures of locally generated non-Federal contributions required by the Director as matching funds must meet the requirements specified in ACTION’s Grant Management and Program Operations Handbook, ACTION Order 2650.2, as amended, and the Domestic Volunteer Service Act of 1973, as amended. Copies of ACTION’s Grants Management and Program Operations Handbook, ACTION Order 2650.2, as amended, are available at ACTION, 1100 Vermont Avenue, NW., Room 9200, Washington, DC 20525.

(b) All expenditures by the grantee of Federal and non-Federal funds (including expenditures from excess locally generated contributions) in support of the grant are subject to ACTION authorized audits.

(c) ACTION will not restrict the manner in which locally generated contributions in excess of the required match are expended if these expenditures are not inconsistent with the Domestic Volunteer Service Act of 1973, as amended.

## PARTS 1236–1299 [RESERVED]

# CHAPTER XIII—ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

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

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

**PART 1301—PROGRAM  
GOVERNANCE**

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

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

**§ 1301.1 Purpose.**

An agency, as defined in part 1305 of this chapter, must establish and maintain a formal structure for program governance that includes a governing body, a policy council at the agency level and policy committee at the delegate level, and a parent committee. Governing bodies have a legal and fiscal responsibility to administer and oversee the agency's Head Start programs. Policy councils are responsible for the direction of the agency's Head Start programs.

[89 FR 67805, Aug. 21, 2024]

**§ 1301.2 Governing body.**

(a) *Composition.* The composition of a governing body must be in accordance with the requirements specified at section 642(c)(1)(B) of the Act, except where specific exceptions are authorized in the case of public entities at section 642(c)(1)(D) of the Act. Agencies must ensure members of the governing body do not have a conflict of interest, pursuant to section 642(c)(1)(C) of the Act.

(b) *Duties and responsibilities.* (1) The governing body is responsible for activities specified at section 642(c)(1)(E) of the Act.

(2) The governing body must use ongoing monitoring results, data on school readiness goals, other information described in §1302.102, and information

described at section 642(d)(2) of the Act to conduct its responsibilities.

(c) *Advisory committees.* (1) A governing body may establish advisory committees as it deems necessary for effective governance and improvement of the program.

(2) If a governing body establishes an advisory committee to oversee key responsibilities related to program governance, it must:

(i) Establish the structure, communication, and oversight in such a way that the governing body continues to maintain its legal and fiscal responsibility for the Head Start agency; and,

(ii) Notify the responsible HHS official of its intent to establish such an advisory committee.

**§ 1301.3 Policy council and policy committee.**

(a) *Establishing policy councils and policy committees.* Each agency must establish and maintain a policy council responsible for the direction of the Head Start program at the agency level, and a policy committee at the delegate level. If an agency delegates operational responsibility for the entire Head Start program to one delegate agency, the policy council and policy committee may be the same body.

(b) *Composition.* (1) A program must establish a policy council in accordance with section 642(c)(2)(B) of the Act, or a policy committee at the delegate level in accordance with section 642(c)(3) of the Act, as early in the program year as possible. Parents of children currently enrolled in each program option must be proportionately represented on the policy council and on the policy committee at the delegate level.

(2) The program must ensure members of the policy council, and of the policy committee at the delegate level, do not have a conflict of interest pursuant to sections 642(c)(2)(C) and 642(c)(3)(B) of the Act. Staff may not serve on the policy council or policy

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committee at the delegate level except parents who occasionally substitute as staff. In the case of tribal grant recipients, this exclusion applies only to tribal staff who work in areas directly related to or which directly impact administrative, fiscal, or programmatic issues.

(c) *Duties and responsibilities.* (1) A policy council is responsible for activities specified at section 642(c)(2)(D) of the Act. A policy committee must approve and submit to the delegate agency its decisions in each of the following areas referenced at section 642(c)(2)(D)(i) through (vii) of the Act.

(2) A policy council, and a policy committee at the delegate level, must use ongoing monitoring results, data on school readiness goals, other information described in §1302.102, and information described in section 642(d)(2) of the Act to conduct its responsibilities.

(d) *Term.* (1) A member will serve for one year.

(2) If the member intends to serve for another year, s/he must stand for reelection.

(3) The policy council, and policy committee at the delegate level, must include in its bylaws how many one-year terms, not to exceed five terms, a person may serve.

(4) A program must seat a successor policy council, or policy committee at the delegate level, before an existing policy council, or policy committee at the delegate level, may be dissolved.

(e) *Reimbursement.* A program must enable low-income members to participate fully in their policy council or policy committee responsibilities by providing, if necessary, reimbursements for reasonable expenses incurred by the low-income members.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67805, Aug. 21, 2024]

#### § 1301.4 Parent committees.

(a) *Establishing parent committees.* A program must establish a parent committee comprised exclusively of parents of currently enrolled children as early in the program year as possible. This committee must be established at the center level for center-based programs and at the local program level for other program options. When a pro-

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gram operates more than one option, parents may choose to have a separate committee for each option or combine membership. A program must ensure that parents of currently enrolled children understand the process for elections to the policy council or policy committee and other leadership opportunities.

(b) *Requirements of parent committees.* Within the parent committee structure, a program may determine the best methods to engage families using strategies that are most effective in their community, as long as the program ensures the parent committee carries out the following minimum responsibilities:

(1) Advise staff in developing and implementing local program policies, activities, and services to ensure they meet the needs of children and families;

(2) Have a process for communication with the policy council and policy committee; and

(3) Within the guidelines established by the governing body, policy council, or policy committee, participate in the recruitment and screening of Head Start employees.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67806, Aug. 21, 2024]

#### § 1301.5 Training.

An agency must provide appropriate training and technical assistance or orientation to the governing body, any advisory committee members, and the policy council, including training on program performance standards and training indicated in §1302.12(m) to ensure the members understand the information they receive and can effectively oversee and participate in the programs in the Head Start agency.

#### § 1301.6 Impasse procedures.

(a) To facilitate meaningful consultation and collaboration about decisions of the governing body and the policy council, each agency's governing body and policy council jointly must establish written procedures for resolving internal disputes between the governing board and policy council in a timely manner that include impasse procedures. These procedures must:

(1) Demonstrate that the governing body considers proposed decisions from the policy council and that the policy council considers proposed decisions from the governing body;

(2) If there is a disagreement, require the governing body and the policy council to notify the other in writing why it does not accept a decision; and,

(3) Describe a decision-making process and a timeline to resolve disputes and reach decisions that are not arbitrary, capricious, or illegal.

(b) If the agency's decision-making process does not result in a resolution and an impasse continues, the governing body and policy council must select a mutually agreeable third party mediator and participate in a formal process of mediation that leads to a resolution of the dispute.

(c) For all programs except American Indian and Alaska Native programs, if no resolution is reached with a mediator, the governing body and policy council must select a mutually agreeable arbitrator whose decision is final.

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

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

#### § 1302.1 Overview.

This part implements the statutory requirements in sections 641A, 645, 645A, and 648A of the Act by describing all of the program performance standards that are required to operate Head Start Preschool, Early Head Start, American Indian and Alaska Native and Migrant or Seasonal Head Start programs. This part covers the full range of operations from enrolling eligible children and providing program services to those children and their families, to managing programs to ensure staff are qualified and supported to effectively provide services. This part also focuses on using data through ongoing program improvement to ensure high-quality service. As required in the Act, the provisions in this part do not narrow the scope or quality of services covered in previous regulations. Instead, the regulations in this part raise the quality standard to reflect science and best practices, and streamline and simplify requirements so programs can better understand what is required for quality services.

[89 FR 67806, Aug. 21, 2024]

### Subpart A—Eligibility, Recruitment, Selection, Enrollment, and Attendance

#### § 1302.10 Purpose.

This subpart describes requirements of grant recipients for determining community strengths, needs and resources as well as recruitment areas. It contains requirements and procedures for the eligibility determination, re-

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cruitment, selection, enrollment and attendance of children and explains the policy concerning the charging of fees.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67806, Aug. 21, 2024]

#### § 1302.11 Determining community strengths, needs, and resources.

(a) *Service area.* (1) A program must propose a service area in the grant application and define the area by county or sub-county area, such as a municipality, town or census tract or jurisdiction of a federally recognized Indian reservation.

(i) A tribal program may propose a service area that includes areas where members of Indian tribes or those eligible for such membership reside, including but not limited to Indian reservation land, areas designated as near-reservation by the Bureau of Indian Affairs (BIA) provided that the service area is approved by the tribe's governing council, Alaska Native Villages, Alaska Native Regional Corporations with land-based authorities, Oklahoma Tribal Statistical Areas, and Tribal Designated Statistical Areas where federally recognized Indian tribes do not have a federally established reservation.

(ii) If the tribe's service area includes any area specified in paragraph (a)(1)(i) of this section, and that area is also served by another program, the tribe may serve children from families who are members of or eligible to be members of such tribe and who reside in such areas as well as children from families who are not members of the tribe, but who reside within the tribe's established service area.

(2) If a program decides to change the service area after ACF has approved its grant application, the program must submit to ACF a new service area proposal for approval.

(b) *Community wide strategic planning and needs assessment (community assessment).* (1) A program must conduct a comprehensive community assessment at least once over the five-year grant period and annually review and update if any significant changes are needed as described in paragraph (b)(5) of this section to:

(i) Identify populations most in need of services including prevalent social

or economic factors, challenges, and barriers experienced by families and children;

(ii) Inform the program's design and to ensure equitable, inclusive, and accessible service delivery that reflect needs and diversity of the community;

(iii) Inform the enrollment, recruitment, and selection process to prioritize the enrollment of those populations with relevant circumstances identified under paragraph (b)(1)(i) of this section;

(iv) Identify strengths and resources in the community that can be leveraged for service delivery, coordination, and partnership efforts for education, health, nutrition, and referrals to social services to eligible children and families; and,

(v) Identify the communication methods and modalities available to the program that best engage with prospective and enrolled families in accessible ways.

(2) In conducting the community assessment, a program must collect and utilize data that describes community strengths, needs, and resources and include, at a minimum:

(i) Relevant demographic data about eligible children and expectant mothers, including:

(A) Race and ethnicity;

(B) Children living in poverty;

(C) Children experiencing homelessness in collaboration with, to the extent possible, McKinney-Vento Local Education Agency Liaisons (42 U.S.C. 11432 (6)(A));

(D) Children in foster care;

(E) Children with disabilities, including types of disabilities and relevant services and resources provided to these children by community agencies; and

(F) Geographic location and languages they speak;

(ii) The education, health, nutrition and social service needs of eligible children and their families, including prevalent social or economic factors, challenges, and barriers to program participation such as transportation needs;

(iii) Typical work, school, and training schedules of parents with eligible children;

(iv) Other child development, child care centers, and family child care pro-

grams that serve eligible children, including home visiting, publicly funded State and local preschools, and the approximate number of eligible children served and their ages;

(v) Resources that are available in the community to address the needs of eligible children and their families, especially transportation resources, and culturally appropriate and responsive supports;

(vi) Strengths of the community; and,

(vii) Gaps in community resources in areas relevant to addressing the needs of eligible children and their families such as gaps in health and human services, housing assistance, food assistance, employment assistance, early childhood development, and social services.

(3) Programs should have a strategic approach:

(i) To determine what data to acquire to reach goals in paragraph (b)(1) of this section prior to conducting the community assessment; and

(ii) For how to use the data acquired to reach goals in paragraph (b)(1) of this section after conducting the community assessment.

(4) When determining what data to acquire under paragraph (b)(2) of this section programs should consider what information is most relevant to inform services for families most in need. Data gathering should be informed by the program's understanding of the community and be intentionally designed to help the program identify community strengths, needs and resources, and plan the program accordingly. Programs are not required to collect all information themselves; rather programs should utilize community partners and utilize existing available data sources relevant to the local community.

(5) A program must annually review and, where needed, update the community assessment to identify any significant shifts in community demographics, needs, and resources that may impact program design and service delivery. As described in paragraph (b)(4) of this section, programs should consider results from their self-assessment as required in subpart J of this part (§§1302.101 through 1302.103) and



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their annual funding application to inform this process. The annual update review must consider at a minimum: changes related to children and families experiencing homelessness; how the program addresses equity, accessibility, and inclusiveness in its provision of services; and changes to the availability of publicly funded pre-kindergarten and whether it meets needs of families. Programs must consider how the annual review and update can inform and support management approaches for continuous quality improvement, program goals, and ongoing oversight.

(6) A program must consider whether the characteristics of the community allow it to include children from diverse economic backgrounds that would be supported by other funding sources, including private pay, in addition to the program's eligible funded enrollment. A program must not enroll children from diverse economic backgrounds if it would result in a program serving less than its eligible funded enrollment.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67806, Aug. 21, 2024]

### § 1302.12 Determining, verifying, and documenting eligibility.

(a) *Process overview.* (1) Program staff must:

(i) Conduct an in-person interview with each family, unless paragraph (a)(2) of this section applies;

(ii) Verify information as required in paragraphs (h) and (i) of this section; and,

(iii) Create an eligibility determination record for enrolled participants according to paragraph (k) of this section.

(2) Program staff may interview the family over the telephone if an in-person interview is not possible or convenient for the family.

(3) If a program has an alternate method to reasonably determine eligibility based on its community assessment, geographic and administrative data, or from other reliable data sources, it may petition the responsible HHS official to waive requirements in paragraphs (a)(1)(i) and (ii) of this section.

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(b) *Age requirements.* (1) For Early Head Start, except when the child is transitioning to Head Start Preschool, a child must be an infant or a toddler younger than three years old.

(2) For Head Start Preschool, a child must:

(i) Be at least three years old or, turn three years old by the date used to determine eligibility for public school in the community in which the Head Start Preschool program is located; and,

(ii) Be no older than the age required to attend school.

(3) For Migrant or Seasonal Head Start, a child must be younger than compulsory school age by the date used to determine public school eligibility for the community in which the program is located.

(c) *Eligibility requirements.* (1) A pregnant woman or a child is eligible if:

(i) The family's income is equal to or below the poverty line; or,

(ii) The family is eligible for or, in the absence of child care, would be potentially eligible for public assistance; including TANF child-only payments; or,

(iii) The child is homeless, as defined in part 1305; or,

(iv) The child is in foster care.

(2) If the family does not meet a criterion under paragraph (c)(1) of this section, a program may enroll a child who would benefit from services, provided that these participants only make up to 10 percent of a program's enrollment in accordance with paragraph (d) of this section.

(d) *Additional allowances for programs.* (1) A program may enroll an additional 35 percent of participants whose families do not meet a criterion described in paragraph (c) of this section and whose incomes are below 130 percent of the poverty line, if the program:

(i) Establishes and implements outreach, and enrollment policies and procedures to ensure it is meeting the needs of eligible pregnant women, children, and children with disabilities, before serving pregnant women or children who do not meet the criteria in paragraph (c) of this section; and,

(ii) Establishes criteria that ensure pregnant women and children eligible

under the criteria listed in paragraph (c) of this section are served first.

(2) If a program chooses to enroll participants who do not meet a criterion in paragraph (c) of this section, and whose family incomes are between 100 and 130 percent of the poverty line, it must be able to report to the Head Start regional program office:

(i) How it is meeting the needs of low-income families or families potentially eligible for public assistance, homeless children, and children in foster care, and include local demographic data on these populations;

(ii) Outreach and enrollment policies and procedures that ensure it is meeting the needs of eligible children or pregnant women, before serving over-income children or pregnant women;

(iii) Efforts, including outreach, to be fully enrolled with eligible pregnant women or children;

(iv) Policies, procedures, and selection criteria it uses to serve eligible children;

(v) Its current enrollment and its enrollment for the previous year;

(vi) The number of pregnant women and children served, disaggregated by the eligibility criteria in paragraphs (c) and (d)(1) of this section; and,

(vii) The eligibility criteria category of each child on the program's waiting list.

(e) *Additional allowances for Indian tribes.* (1) Notwithstanding paragraph (c) of this section, a Tribal program may determine any pregnant women or children in the approved service area to be eligible for services regardless of income, if they meet the requirements of paragraph (b) of this section.

(2) An Indian Tribe or Tribes that operates both an Early Head Start program and a Head Start Preschool program may, at its discretion, at any time during the grant period involved, reallocate funds between the Early Head Start program and the Head Start Preschool program in order to address fluctuations in client populations, including pregnant women and children from birth to compulsory school age. The reallocation of such funds between programs by an Indian Tribe or Tribes during a year may not serve as a basis for any reduction of

the base grant for either program in succeeding years.

(f) *Migrant or Seasonal eligibility requirements.* Notwithstanding paragraph (c) of this section, pregnant women and children are eligible for Migrant or Seasonal Head Start if they have at least one family member whose income comes primarily from agricultural employment as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802), and if they meet the requirements of paragraph (b) of this section.

(g) *Eligibility requirements for communities with 1,000 or fewer individuals.* (1) A program may establish its own criteria for eligibility provided that it meets the criteria outlined in section 645(a)(2) of the Act.

(2) No child residing in such community whose family is eligible under criteria described in paragraphs (c) through (f) of this section, may be denied an opportunity to participate in the program under the eligibility criteria established under this paragraph (g).

(h) *Verifying age.* Program staff must verify a child's age according to program policies and procedures. A program's policies and procedures cannot require families to provide documents that confirm a child's age, if doing so creates a barrier for the family to enroll the child.

(i) *Verifying eligibility.* (1) To verify eligibility based on income, program staff must use tax forms, pay stubs, or other proof of income to determine the family income for the relevant time period.

(i) The program must calculate total gross income using applicable sources of income.

(ii) A program may make an adjustment to a family's gross income calculation for the purposes of determining eligibility to account for excessive housing costs. A program may use available bills, bank statements, and other relevant documentation provided by the family to calculate total annual housing costs with appropriate multipliers to:

(A) Determine if a family spends more than 30 percent of their total gross income on housing costs, as defined in part 1305 of this chapter; and

(B) If applicable, reduce the total gross income by the amount spent on housing costs that exceed more than 30 percent.

(iii) If the family cannot provide tax forms, pay stubs, or other proof of income for the relevant time period, program staff may accept written statements from employers, including individuals who are self-employed, for the relevant time period and use information provided to calculate total annual income with appropriate multipliers.

(iv) If the family reports no income for the relevant time period, a program may accept the family's signed declaration to that effect, if program staff describes efforts made to verify the family's income, and explains how the family's total income was calculated or seeks information from third parties about the family's eligibility, if the family gives written consent. If a family gives consent to contact third parties, program staff must adhere to program safety and privacy policies and procedures and ensure the eligibility determination record adheres to paragraph (k)(2) of this section.

(v) If the family can demonstrate a significant change in income for the relevant time period, program staff may consider current income circumstances.

(2) To verify whether a family is eligible for, or in the absence of child care, would be potentially eligible for public assistance, the program must have documentation from either the state, local, or tribal public assistance agency that shows the family either receives public assistance or that shows the family is potentially eligible to receive public assistance.

(3) To verify whether a family is homeless, a program may accept a written statement from a homeless services provider, school personnel, or other service agency attesting that the child is homeless or any other documentation that indicates homelessness, including documentation from a public or private agency, a declaration, information gathered on enrollment or application forms, or notes from an interview with staff to establish the child is homeless; or any other document that establishes homelessness.

(i) If a family can provide one of the documents described in this paragraph (i)(3), program staff must describe efforts made to verify the accuracy of the information provided and state whether the family is eligible because they are homeless.

(ii) If a family cannot provide one of the documents described in this paragraph (i)(3) to prove the child is homeless, a program may accept the family's signed declaration to that effect, if, in a written statement, program staff describe the child's living situation that meets the definition of homeless in part 1305 of this chapter.

(iii) Program staff may seek information from third parties who have firsthand knowledge about a family's living situation, if the family gives written consent. If the family gives consent to contact third parties, program staff must adhere to program privacy policies and procedures and ensure the eligibility determination record adheres to paragraph (k) of this section.

(4) To verify whether a child is in foster care, program staff must accept either a court order or other legal or government-issued document, a written statement from a government child welfare official that demonstrates the child is in foster care, or proof of a foster care payment.

(j) *Eligibility duration.* (1) If a child is determined eligible under this section and is participating in a Head Start program, he or she will remain eligible through the end of the succeeding program year except that the Head Start program may choose not to enroll a child when there are compelling reasons for the child not to remain in Head Start, such as when there is a change in the child's family income and there is a child with a greater need for Head Start services.

(2) Children who are enrolled in a program receiving funds under the authority of section 645A of the Act remain eligible while they participate in the program.

(3) If a child moves from an Early Head Start program to a Head Start Preschool program, program staff must verify the family's eligibility again.

(4) If a program operates both an Early Head Start and a Head Start Preschool program, and the parents wish

to enroll their child who has been enrolled in the program's Early Head Start, the program must ensure, whenever possible, the child receives Head Start Preschool services until enrolled in school, provided the child is eligible.

(5) If a program operates a Migrant and Seasonal Head Start program, children younger than age three participating in the program remain eligible until they turn three years old consistent with paragraph (j)(2) of this section.

(k) *Records.* (1) A program must keep eligibility determination records for each participant and ongoing records of the eligibility training for staff required by paragraph (m) of this section. A program may keep these records electronically.

(2) Each eligibility determination record must include:

(i) Copies of any documents or statements, including declarations, that are deemed necessary to verify eligibility under paragraphs (h) and (i) of this section;

(ii) A statement that program staff has made reasonable efforts to verify information by:

(A) Conducting either an in-person, or a telephone interview with the family as described under paragraph (a)(1)(i) or (a)(2) of this section; and,

(B) Describing efforts made to verify eligibility, as required under paragraphs (h) through (i) of this section; and, collecting documents required for third party verification that includes the family's written consent to contact each third party, the third parties' names, titles, and affiliations, and information from third parties regarding the family's eligibility.

(iii) A statement that identifies whether:

(A) The family's income is below income guidelines for its size, and lists the family's size;

(B) The family is eligible for or, in the absence of child care, potentially eligible for public assistance;

(C) The child is a homeless child or the child is in foster care;

(D) The family was determined to be eligible under the criterion in paragraph (c)(2) of this section; or,

(E) The family was determined to be eligible under the criterion in paragraph (d)(1) of this section.

(3) A program must keep eligibility determination records for those currently enrolled, as long as they are enrolled, and, for one year after they have either stopped receiving services; or are no longer enrolled.

(1) *Program policies and procedures on violating eligibility determination regulations.* A program must establish written policies and procedures that describe all actions taken against staff who intentionally violate Federal and program eligibility determination regulations and who enroll pregnant women and children that are not eligible to receive Head Start services.

(m) *Training on eligibility.* (1) A program must train all governing body, policy council, management, and staff who determine eligibility on applicable federal regulations and program policies and procedures. Training must, at a minimum:

(i) Include methods on how to collect complete and accurate eligibility information from families and third party sources;

(ii) Incorporate strategies for treating families with dignity and respect and for dealing with possible issues of domestic violence, stigma, and privacy; and,

(iii) Explain program policies and procedures that describe actions taken against staff, families, or participants who attempt to provide or intentionally provide false information.

(2) A program must train management and staff members who make eligibility determinations within 90 days of hiring new staff.

(3) A program must train all governing body and policy council members within 180 days of the beginning of the term of a new governing body or policy council.

(4) A program must develop policies on how often training will be provided after the initial training.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67807, Aug. 21, 2024]

#### § 1302.13 Recruitment of children.

In order to reach those most in need of services, a program must develop and implement a recruitment process

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designed to actively inform all families with eligible children within the recruitment area of the availability of program services. A program must include modern technologies to encourage and assist families in applying for admission to the program, and to reduce the family's administrative and paperwork burden in the application and enrollment process. A program must include specific efforts to actively locate and recruit children with disabilities and other children in need, including children experiencing homelessness and children in foster care.

[89 FR 67807, Aug. 21, 2024]

##### § 1302.14 Selection process.

(a) *Selection criteria.* (1) A program must annually establish selection criteria that weigh the prioritization of selection of participants, based on community needs identified in the community needs assessment as described in §1302.11(b), and including family income, whether the child is homeless, whether the child is in foster care, the child's age, whether the child is eligible for special education and related services, or early intervention services, as appropriate, as determined under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*) and, other relevant family or child risk factors.

(2) An Indian Tribe that operates a Head Start program must annually establish selection criteria that weigh the prioritization of selection of participants, based on community needs identified in the community needs assessment as described in §1302.11(b), and may, at its discretion, give priority to children in families for which a child, a family member, or a member of the same household, is a member of an Indian Tribe, and would benefit from the Head Start program.

(3) If a program serves migrant or seasonal families, it must annually establish selection criteria that weigh the prioritization of selection of participants, based on community needs identified in the community needs assessment as described in §1302.11(b), and give priority to children whose families can demonstrate they have relocated frequently within the past two years to pursue agricultural work.

(4) If a program operates in a service area where Head Start Preschool eligible children can enroll in high-quality publicly funded pre-kindergarten for a full school day, the program must prioritize younger children as part of the selection criteria in paragraph (a)(1) of this section. If this priority would disrupt partnerships with local education agencies, then it is not required. An American Indian and Alaska Native or Migrant or Seasonal Head Start program must consider whether such prioritization is appropriate in their community.

(5) A program must not deny enrollment based on a disability or chronic health condition or its severity.

(6) A program may consider the enrollment of children of staff members as part of the selection criteria in paragraph (a)(1) of this section.

(b) *Children eligible for services under IDEA.* (1) A program must ensure at least 10 percent of its total actual enrollment is filled by children eligible for services under IDEA, unless the responsible HHS official grants a waiver.

(2) If the requirement in paragraph (b)(1) of this section has been met, children eligible for services under IDEA should be prioritized for the available slots in accordance with the program's selection criteria described in paragraph (a) of this section.

(c) *Waiting lists.* A program must develop at the beginning of each enrollment year and maintain during the year a waiting list that ranks children according to the program's selection criteria.

(d) *Understanding barriers to enrollment.* A program is required to use data from the community assessment to identify the population of eligible children and families and potential barriers to enrollment and attendance, including using data to understand access to transportation for the highest need families. A program must use this data to inform ongoing program improvement efforts as described in §1302.102(c) to promote enrolling the children most in need of program services.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67807, Aug. 21, 2024]

**§ 1302.15 Enrollment.**

(a) *Funded enrollment.* A program must maintain its funded enrollment level and fill any vacancy as soon as possible. A program must fill any vacancy within 30 days.

(b) *Continuity of enrollment.* (1) A program must make efforts to maintain enrollment of eligible children for the following year.

(2) Under exceptional circumstances, a program may maintain a child's enrollment in Head Start Preschool for a third year, provided that family income is verified again. A program may maintain a child's enrollment in Early Head Start as described in § 1302.12(j)(2).

(3) If a program serves homeless children or children in foster care, it must make efforts to maintain the child's enrollment regardless of whether the family or child moves to a different service area, or transition the child to a program in a different service area, as required in § 1302.72(a), according to the family's needs.

(c) *Reserved slots.* If a program determines from the community assessment there are families experiencing homelessness in the area, or children in foster care that could benefit from services, the program may reserve one or more enrollment slots for pregnant women and children experiencing homelessness and children in foster care, when a vacancy occurs. No more than three percent of a program's funded enrollment slots may be reserved. If the reserved enrollment slot is not filled within 30 days, the enrollment slot becomes vacant and then must be filled in accordance with paragraph (a) of this section.

(d) *Other enrollment.* Children from diverse economic backgrounds who are funded with other sources, including private pay, are not considered part of a program's eligible funded enrollment.

(e) *State immunization enrollment requirements.* A program must comply with state immunization enrollment and attendance requirements, with the exception of homeless children as described in § 1302.16(c)(1).

(f) *Voluntary parent participation.* Parent participation in any program activity is voluntary, including consent for data sharing, and is not required as a condition of the child's enrollment.

(g) *User-friendly enrollment process.* A program must regularly examine their enrollment processes and implement any identified improvements to streamline the enrollment experience for families.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67808, Aug. 21, 2024]

**§ 1302.16 Attendance.**

(a) *Promoting regular attendance.* A program must track attendance for each child.

(1) A program must implement a process to ensure children are safe when they do not arrive at school. If a child is unexpectedly absent and a parent has not contacted the program within one hour of program start time, the program must attempt to contact the parent to ensure the child's well-being.

(2) A program must implement strategies to promote attendance. At a minimum, a program must:

(i) Provide information about the benefits of regular attendance;

(ii) Support families to promote the child's regular attendance;

(iii) Conduct a home visit or make other direct contact with a child's parents if a child has multiple unexplained absences (such as two consecutive unexplained absences);

(iv) Within the first 60 days of program operation, and on an ongoing basis thereafter, use individual child attendance data to identify children with patterns of absence that put them at risk of missing ten percent of program days per year and develop appropriate strategies to improve individual attendance among identified children, such as direct contact with parents or intensive case management, as necessary; and

(v) Examine barriers to regular attendance, such as access to safe and reliable transportation, and where possible, provide or facilitate transportation for the child if needed.

(3) If a child ceases to attend, the program must make appropriate efforts to reengage the family to resume attendance, including as described in paragraph (a)(2) of this section. If the child's attendance does not resume, then the program must consider that

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slot vacant. This action is not considered expulsion as described in §1302.17.

(b) *Managing systematic program attendance issues.* If a program's monthly average daily attendance rate falls below 85 percent, the program must analyze the causes of absenteeism to identify any systematic issues that contribute to the program's absentee rate. The program must use this data to make necessary changes in a timely manner as part of ongoing oversight and correction as described in §1302.102(b) and inform its continuous improvement efforts as described in §1302.102(c).

(c) *Supporting attendance of homeless children.* (1) If a program determines a child is eligible under §1302.12(c)(1)(iii), it must allow the child to attend for up to 90 days or as long as allowed under state licensing requirements, without immunization and other records, to give the family reasonable time to present these documents. A program must work with families to get children immunized as soon as possible in order to comply with state licensing requirements.

(2) If a child experiencing homelessness is unable to attend classes regularly because the family does not have transportation to and from the program facility, the program must utilize community resources, where possible, to provide transportation for the child.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67808, Aug. 21, 2024]

### § 1302.17 Suspension and expulsion.

(a) *Limitations on suspension.* (1) A program must prohibit or severely limit the use of suspension due to a child's behavior. Such suspensions may only be temporary in nature.

(2) A temporary suspension must be used only as a last resort in extraordinary circumstances where there is a serious safety threat that has not been reduced or eliminated by the provision of interventions and supports recommended by the mental health consultant and the program needs time to put additional appropriate services in place.

(3) Before a program determines whether a temporary suspension is necessary, a program must engage with a mental health consultant, collaborate

with the parents, and utilize appropriate community resources—such as behavior coaches, psychologists, other appropriate specialists, or other resources—as needed, to determine no other reasonable option is appropriate.

(4) If a temporary suspension is deemed necessary, a program must help the child return to full participation in all program activities as quickly as possible while ensuring child safety. A program must explore all possible steps and document all steps taken to address the behavior(s) and supports needed to facilitate the child's safe re-entry and continued participation in the program. Such steps must include, at a minimum:

(i) Continuing to engage with the parents, mental health consultant, and other appropriate staff, and continuing to utilize appropriate community resources;

(ii) Providing additional program supports and services, including home visits; and,

(iii) Determining whether a referral to a local agency responsible for implementing IDEA is appropriate, or if the child has an individualized family service plan (IFSP) or individualized education program (IEP), consulting with the responsible agency to ensure the child receives the needed support services.

(b) *Prohibition on expulsion.* (1) A program cannot expel or unenroll a child from Head Start because of a child's behavior.

(2) When a child exhibits persistent and serious behavioral concerns, a program must explore all possible steps and document all steps taken to address such problems, and facilitate the child's safe participation in the program. Such steps must include, at a minimum, engaging a mental health consultant, considering the appropriateness of providing appropriate services and supports under section 504 of the Rehabilitation Act of 1973 to ensure that the child who satisfies the definition of disability in 29 U.S.C. 705(9)(b) of the Rehabilitation Act is not excluded from the program on the basis of disability, and consulting with the parents and the child's teacher, and:

(i) If the child has an individualized family service plan (IFSP) or individualized education program (IEP), the program must consult with the agency responsible for the IFSP or IEP to ensure the child receives the needed support services; or,

(ii) If the child does not have an IFSP or IEP, the program must collaborate, with parental consent, with the local agency responsible for implementing IDEA to determine the child's eligibility for services.

(3) If, after a program has explored all possible steps and documented all steps taken as described in paragraph (b)(2) of this section, a program, in consultation with the parents, the child's teacher, the agency responsible for implementing IDEA (if applicable), and the mental health consultant, determines that the child's continued enrollment presents a continued serious safety threat to the child or other enrolled children and determines the program is not the most appropriate placement for the child, the program must work with such entities to directly facilitate the transition of the child to a more appropriate placement.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67808, Aug. 21, 2024]

#### § 1302.18 Fees.

(a) *Policy on fees.* A program must not charge eligible families a fee to participate in Head Start, including special events such as field trips, and cannot in any way condition an eligible child's enrollment or participation in the program upon the payment of a fee.

(b) *Allowable fees.* (1) A program must only accept a fee from families of enrolled children for services that are in addition to services funded by Head Start, such as child care before or after funded Head Start hours. A program may not condition a Head Start child's enrollment on the ability to pay a fee for additional hours.

(2) In order to support programs serving children from diverse economic backgrounds or using multiple funding sources, a program may charge fees to private pay families and other non-Head Start enrolled families to the extent allowed by any other applicable federal, state or local funding sources.

### Subpart B—Program Structure

#### § 1302.20 Determining program structure.

(a) *Choose a program option.* (1) A program must choose to operate one or more of the following program options: center-based, home-based, family child care, or an approved locally designed variation as described in § 1302.24. The program option(s) chosen must meet the needs of children and families based on the community assessment described in § 1302.11(b). A Head Start Preschool program may not provide only the option described in § 1302.22(a) and (c)(2).

(2) To choose a program option and develop a program calendar, a program must consider in conjunction with the annual review of the community assessment described in § 1302.11(b)(2), whether it would better meet child and family needs through conversion of existing slots to full school day or full working day slots, extending the program year, conversion of existing Head Start Preschool slots to Early Head Start slots as described in paragraph (c) of this section, and ways to promote continuity of care and services. A program must work to identify alternate sources to support full working day services. If no additional funding is available, program resources may be used.

(b) *Comprehensive services.* All program options must deliver the full range of services, as described in subparts C, D, E, F, and G of this part, except that §§ 1302.30 through 1302.32 and § 1302.34 do not apply to home-based options.

(c) *Conversion.* (1) Consistent with section 645(a)(5) of the Head Start Act, grant recipients may request to convert Head Start Preschool slots to Early Head Start slots through the re-funding application process or as a separate grant amendment.

(2) Any grant recipient proposing a conversion of Head Start Preschool services to Early Head Start services must obtain policy council and governing body approval and submit the request to their regional office.

(3) With the exception of American Indian and Alaska Native grant recipients as described in paragraph (c)(4) of



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this section, the request to the regional office must include:

(i) A grant application budget and a budget narrative that clearly identifies the funding amount for the Head Start Preschool and Early Head Start programs before and after the proposed conversion;

(ii) The results of the community assessment demonstrating how the proposed use of funds would best meet the needs of the community, including a description of how the needs of eligible Head Start children will be met in the community when the conversion takes place;

(iii) A revised program schedule that describes the program option(s) and the number of funded enrollment slots for Head Start Preschool and Early Head Start programs before and after the proposed conversion;

(iv) A description of how the needs of pregnant women, infants, and toddlers will be addressed;

(v) A discussion of the agency's capacity to carry out an effective Early Head Start program in accordance with the requirements of section 645A(b) of the Head Start Act and all applicable regulations;

(vi) Assurances that the agency will participate in training and technical assistance activities required of all Early Head Start grant recipients;

(vii) A discussion of the qualifications and competencies of the child development staff proposed for the Early Head Start program, as well as a description of the facilities and program infrastructure that will be used to support the new or expanded Early Head Start program;

(viii) A discussion of any one-time funding necessary to implement the proposed conversion and how the agency intends to secure such funding; and,

(ix) The proposed timetable for implementing this conversion, including updating school readiness goals as described in subpart J of this part.

(4) Consistent with section 645(d)(3) of the Act, any American Indian and Alaska Native grant recipient that operates both an Early Head Start program and a Head Start Preschool program may reallocate funds between the programs at its discretion and at any time during the grant period involved,

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in order to address fluctuations in client populations. An American Indian and Alaska Native program that exercises this discretion must notify the regional office.

(d) *Source of funding.* A program may consider hours of service that meet the Head Start Program Performance Standards, regardless of the source of funding, as hours of planned class operations for the purposes of meeting the Head Start Preschool and Early Head Start service duration requirements in this subpart.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67808, Aug. 21, 2024]

### § 1302.21 Center-based option.

(a) *Setting.* The center-based option delivers the full range of services, consistent with § 1302.20(b). Education and child development services are delivered primarily in classroom settings.

(b) *Ratios and group size.* (1) Staff-child ratios and group size maximums must be determined by the age of the majority of children and the needs of children present. A program must determine the age of the majority of children in a class at the start of the year and may adjust this determination during the program year, if necessary. Where state or local licensing requirements are more stringent than the teacher-child ratios and group size specifications in this section, a program must meet the stricter requirements. A program must maintain appropriate ratios during all hours of program operation, except:

(i) For brief absences of a teaching staff member for no more than five minutes; and,

(ii) During nap time, one teaching staff member may be replaced by one staff member or trained volunteer who does not meet the teaching qualifications required for the age.

(2) An Early Head Start or Migrant or Seasonal Head Start class that serves children under 36 months old must have two teachers with no more than eight children, or three teachers with no more than nine children. Each teacher must be assigned consistent, primary responsibility for no more than four children to promote continuity of care for individual children. A program must minimize teacher

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changes throughout a child's enrollment, whenever possible, and consider mixed age group classes to support continuity of care.

(3) A class that serves a majority of children who are three years old must have no more than 17 children with a teacher and teaching assistant or two teachers. A double session class that serves a majority of children who are three years old must have no more

than 15 children with a teacher and teaching assistant or two teachers.

(4) A class that serves a majority of children who are four and five years old must have no more than 20 children with a teacher and a teaching assistant or two teachers. A double session class that serves a majority of children who are four and five years old must have no more than 17 children with a teacher and a teaching assistant or two teachers.

TABLE TO § 1302.21(b)—CENTER-BASED GROUP SIZE

4 and 5 year olds .....	No more than 20 children enrolled in any class. No more than 17 children enrolled in any double session class.
3 year olds .....	No more than 17 children enrolled in any class. No more than 15 children enrolled in any double session class.
Under 3 years old .....	No more than 8 or 9 children enrolled in any class, depending on the number of teachers.

(c) *Service duration*—(1) *Early Head Start*. (i) A program must provide 1,380 annual hours of planned class operations for all enrolled children.

(ii) A program that is designed to meet the needs of young parents enrolled in school settings may meet the service duration requirements in paragraph (c)(1)(i) of this section if it operates a center-based program schedule during the school year aligned with its local education agency requirements and provides regular home-based services during the summer break.

(2) *Head Start Preschool*—(i) *Service duration for at least 45 percent*. A program must provide 1,020 annual hours of planned class operation over the course of at least eight months per year for at least 45 percent of its Head Start Preschool center-based funded enrollment.

(ii) *Service duration for remaining slots*. A program must provide, at a minimum, at least 160 days per year of planned class operations if it operates for five days per week, or at least 128 days per year if it operates four days per week. Classes must operate for a minimum of 3.5 hours per day.

(iii) *Double session*. Double session variation must provide classes for four days per week for a minimum of 128

days per year and 3.5 hours per day. Each double session class staff member must be provided adequate break time during the course of the day. In addition, teachers, assistants, and volunteers must have appropriate time to prepare for each session together, to set up the classroom environment, and to give individual attention to children entering and leaving the center.

(iv) *Special provision for alignment with local education agency*. A Head Start Preschool program providing fewer than 1,020 annual hours of planned class operations or fewer than eight months of service is considered to meet the requirements described in paragraph (c)(2)(i) of this section if its program schedule aligns with the annual hours required by its local education agency for grade one and such alignment is necessary to support partnerships for service delivery.

(3) *Exemption for Migrant or Seasonal Head Start programs*. A Migrant or Seasonal program is not subject to the requirements described in paragraph (c)(1) or (2) of this section, but must make every effort to provide as many days and hours of service as possible to each child and family.

(4) *Calendar planning*. A program must:

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(i) Plan its year using a reasonable estimate of the number of days during a year that classes may be closed due to problems such as inclement weather; and,

(ii) Make every effort to schedule makeup days using existing resources if hours of planned class operations fall below the number required per year.

(d) *Licensing and square footage requirements.* (1) The facilities used by a program must meet state, tribal, or local licensing requirements, even if exempted by the licensing entity. When state, tribal, or local requirements vary from Head Start requirements, the most stringent provision takes precedence.

(2) A center-based program must have at least 35 square feet of usable indoor space per child available for the care and use of children (exclusive of bathrooms, halls, kitchen, staff rooms, and storage places) and at least 75 square feet of usable outdoor play space per child.

(3) A program that operates two or more groups within an area must ensure clearly defined, safe divisions to separate groups. A program must ensure such spaces are learning environments that facilitate the implementation of the requirements in subpart C of this part. The divisions must limit noise transfer from one group to another to prevent disruption of an effective learning environment.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67809, Aug. 21, 2024]

### § 1302.22 Home-based option.

(a) *Setting.* The home-based option delivers the full range of services, consistent with § 1302.20(b), through visits with the child's parents, primarily in the child's home and through group socialization opportunities in a Head Start classroom, community facility, home, or on field trips. For Early Head Start programs, the home-based option may be used to deliver services to some or all of a program's enrolled children. For Head Start Preschool programs, the home-based option may only be used to deliver services to a portion of a program's enrolled children.

(b) *Caseload.* A program that implements a home-based option must maintain an average caseload of 10 to 12

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families per home visitor with a maximum of 12 families for any individual home visitor.

(c) *Service duration*—(1) *Early Head Start.* By August 1, 2017, an Early Head Start home-based program must:

(i) Provide one home visit per week per family that lasts at least an hour and a half and provide a minimum of 46 visits per year; and,

(ii) Provide, at a minimum, 22 group socialization activities distributed over the course of the program year.

(2) *Head Start Preschool.* A Head Start Preschool home-based program must:

(i) Provide one home visit per week per family that lasts at least an hour and a half and provide a minimum of 32 visits per year; and,

(ii) Provide, at a minimum, 16 group socialization activities distributed over the course of the program year.

(3) *Meeting minimum requirements.* A program that implements a home-based option must:

(i) Make up planned home visits or scheduled group socialization activities that were canceled by the program, and to the extent possible attempt to make up planned home visits canceled by the family, when this is necessary to meet the minimums described in paragraphs (c)(1) and (2) of this section; and,

(ii) Not replace home visits or scheduled group socialization activities for medical or social service appointments for the purposes of meeting the minimum requirements described in paragraphs (c)(1) and (2) of this section.

(d) *Safety requirements.* The areas for learning, playing, sleeping, toileting, preparing food, and eating in facilities used for group socializations in the home-based option must meet the safety standards described in § 1302.47(1)(ii) through (viii).

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67809, Aug. 21, 2024]

### § 1302.23 Family child care option.

(a) *Setting.* The family child care program option delivers the full range of services, consistent with § 1302.20(b). Education and child development services are primarily delivered by a family child care provider in their home or other family-like setting. A program may choose to offer the family child care option if:

(1) The program has a legally binding agreement with one or more family child care provider(s) that clearly defines the roles, rights, and responsibilities of each party, or the program is the employer of the family child care provider, and ensures children and families enrolled in this option receive the full range of services described in subparts C, D, E, F, and G of this part; and,

(2) The program ensures family child care homes are available that can accommodate children and families with disabilities.

(b) *Ratios and group size*—(1) *Group size*. A program that operates the family child care option where Head Start children are enrolled must ensure group size does not exceed the limits specified in this section. If the family child care provider's own children under the age of six are present, they must be included in the group size.

(2) *Mixed age with preschoolers*. When there is one family child care provider, with a mixed-age group of children that includes children over 36 months of age, the maximum group size is six children and no more than two of the six may be under 24 months of age. When there are two providers, the maximum group size is twelve children with no more than four of the twelve children under 24 months of age.

(3) *Infants and toddlers only*. When there is one family child care provider with a group of children that are all under 36 months of age, the maximum group size is four children, and no more than two of the four children may be under 18 months of age.

(4) *Maintaining ratios*. A program must maintain appropriate ratios during all hours of program operation. A program must ensure providers have systems to ensure the safety of any child not within view for any period. A program must make substitute staff available with the necessary training and experience to ensure quality services to children are not interrupted.

(c) *Service duration*. Whether family child care option services are provided directly or via contractual arrangement, a program must ensure family child care providers operate sufficient hours to meet the child care needs of

families and not less than 1,380 hours per year.

(d) *Licensing requirements*. A family child-care provider must be licensed by the state, tribal, or local entity to provide services in their home or family-like setting. When state, tribal, or local requirements vary from Head Start requirements, the most stringent provision applies.

(e) *Child development specialist*. A program that offers the family child care option must provide a child development specialist to support family child care providers and ensure the provision of quality services at each family child care home. Child development specialists must:

(1) Conduct regular visits to each home, some of which are unannounced, not less than once every two weeks;

(2) Periodically verify compliance with either contract requirements or agency policy;

(3) Facilitate ongoing communication between program staff, family child care providers, and enrolled families; and,

(4) Provide recommendations for technical assistance and support the family child care provider in developing relationships with other child care professionals.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67809, Aug. 21, 2024]

#### **§ 1302.24 Locally-designed program option variations.**

(a) *Waiver option*. Programs may request to operate a locally-designed program option, including a combination of program options, to better meet the unique needs of their communities or to demonstrate or test alternative approaches for providing program services. In order to operate a locally-designed program option, programs must seek a waiver as described in this section and must deliver the full range of services, consistent with § 1302.20(b), and demonstrate how any change to their program design is consistent with achieving program goals in subpart J of this part.

(b) *Request for approval*. A program's request to operate a locally-designed variation may be approved by the responsible HHS official through the end of a program's current grant or, if the

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request is submitted through a grant application for an upcoming project period, for the project period of the new award. Such approval may be revoked based on progress toward program goals as described in § 1302.102 and monitoring as described in § 1304.2.

(c) *Waiver requirements.* (1) The responsible HHS official may waive one or more of the requirements contained in §§ 1302.21(b), (c)(1)(i), and (c)(2)(i); 1302.22(a) through (c); and 1302.23(b) and (c) but may not waive ratios or group size for children under 24 months. Center-based locally designed options must meet the minimums described in section 640(k)(1) of the Act for center-based programs.

(2) If the responsible HHS official determines a waiver of group size for center-based services would better meet the needs of children and families in a community, the group size may not exceed the limits below:

(i) A group that serves children 24 to 36 months of age must have no more than ten children; and,

(ii) A group that serves predominantly three-year-old children must have no more than twenty children; and,

(iii) A group that serves predominantly four-year-old children must have no more than twenty-four children.

(3) If the responsible HHS official approves a waiver to allow a program to operate below the minimums described in § 1302.21(c)(2)(i), a program must meet the requirements described in § 1302.21(c)(2)(ii), or in the case of a double session variation, a program must meet the requirements described in § 1302.21(c)(2)(iii).

(4) In order to receive a waiver under this section, a program must provide supporting evidence that demonstrates the locally-designed variation effectively supports appropriate development and progress in children's early learning outcomes.

(5) In order to receive a waiver of service duration, a program must meet the requirement in paragraph (c)(4) of this section, provide supporting evidence that it better meets the needs of parents than the applicable service duration minimums described in § 1302.21(c)(1) and (c)(2)(i), § 1302.22(c), or

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§ 1302.23(c), and assess the effectiveness of the variation in supporting appropriate development and progress in children's early learning outcomes.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67810, Aug. 21, 2024]

### Subpart C—Education and Child Development Program Services

#### § 1302.30 Purpose.

All programs must provide high-quality early education and child development services, including for children with disabilities, that promote children's cognitive, social, and emotional growth for later success in school. A center-based or family child care program must embed responsive and effective teacher-child interactions. A home-based program must promote secure parent-child relationships and help parents provide high-quality early learning experiences. All programs must implement a research-based curriculum, and screening and assessment procedures that support individualization and growth in the areas of development described in the *Head Start Early Learning Outcomes Framework: Ages Birth to Five* and support family engagement in children's learning and development. A program must deliver developmentally, culturally, and linguistically appropriate learning experiences in language, literacy, mathematics, social and emotional functioning, approaches to learning, science, physical skills, and creative arts. To deliver such high-quality early education and child development services, a center-based or family child care program must implement, at a minimum, the elements contained in §§ 1302.31 through 1302.34, and a home-based program must implement, at a minimum, the elements in §§ 1302.33 and 1302.35.

#### § 1302.31 Teaching and the learning environment.

(a) *Teaching and the learning environment.* A center-based and family child care program must ensure teachers and other relevant staff provide responsive

care, effective teaching, and an organized learning environment that promotes healthy development and children's skill growth aligned with the *Head Start Early Learning Outcomes Framework: Ages Birth to Five*, including for children with disabilities. A program must also support implementation of such environment with integration of regular and ongoing supervision and a system of individualized and ongoing professional development, as appropriate. This includes, at a minimum, the practices described in paragraphs (b) through (e) of this section.

(b) *Effective teaching practices.* (1) Teaching practices must:

(i) Emphasize nurturing and responsive practices, interactions, and environments that foster trust and emotional security; are communication and language rich; promote critical thinking and problem-solving; social, emotional, behavioral, and language development; provide supportive feedback for learning; motivate continued effort; and support all children's engagement in learning experiences and activities;

(ii) Focus on promoting growth in the developmental progressions described in the *Head Start Early Learning Outcomes Framework: Ages Birth to Five* by aligning with and using the Framework and the curricula as described in §1302.32 to direct planning of organized activities, schedules, lesson plans, and the implementation of high-quality early learning experiences that are responsive to and build upon each child's individual pattern of development and learning;

(iii) Integrate child assessment data in individual and group planning; and,

(iv) Include developmentally appropriate learning experiences in language, literacy, social and emotional development, math, science, social studies, creative arts, and physical development that are focused toward achieving progress outlined in the *Head Start Early Learning Outcomes Framework: Ages Birth to Five*.

(2) For dual language learners, a program must recognize bilingualism and biliteracy as strengths and implement research-based teaching practices that support their development. These practices must:

(i) For an infant or toddler dual language learner, include teaching practices that focus on the development of the home language, when there is a teacher with appropriate language competency, and experiences that expose the child to English;

(ii) For a preschool age dual language learner, include teaching practices that focus on both English language acquisition and the continued development of the home language; or,

(iii) If staff do not speak the home language of all children in the learning environment, include steps to support the development of the home language for dual language learners such as having culturally and linguistically appropriate materials available and other evidence-based strategies. Programs must work to identify volunteers who speak children's home language/s who could be trained to work in the classroom to support children's continued development of the home language.

(c) *Learning environment.* A program must ensure teachers implement well-organized learning environments with developmentally appropriate schedules, lesson plans, and indoor and outdoor learning experiences that provide adequate opportunities for choice, play, exploration, and experimentation among a variety of learning, sensory, and motor experiences and:

(1) For infants and toddlers, promote relational learning and include individualized and small group activities that integrate appropriate daily routines into a flexible schedule of learning experiences; and,

(2) For preschool age children, include teacher-directed and child-initiated activities, active and quiet learning activities, and opportunities for individual, small group, and large group learning activities.

(d) *Materials and space for learning.* To support implementation of the curriculum and the requirements described in paragraphs (a), (b), (c), and (e) of this section a program must provide age-appropriate equipment, materials, supplies and physical space for indoor and outdoor learning environments, including functional space. The equipment, materials and supplies

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must include any necessary accommodations and the space must be accessible to children with disabilities. Programs must change materials intentionally and periodically to support children's interests, development, and learning.

(e) *Promoting learning through approaches to rest, meals, routines, and physical activity.* (1) A program must implement an intentional, age appropriate approach to accommodate children's need to nap or rest, and that, for preschool age children in a program that operates for 6 hours or longer per day provides a regular time every day at which preschool age children are encouraged but not forced to rest or nap. A program must provide alternative quiet learning activities for children who do not need or want to rest or nap.

(2) A program must implement snack and meal times in ways that support development and learning. For bottle-fed infants, this approach must include holding infants during feeding to support socialization. Snack and meal times must be structured and used as learning opportunities that support teaching staff-child interactions and foster communication and conversations that contribute to a child's learning, development, and socialization. Programs are encouraged to meet this requirement with family style meals when developmentally appropriate. A program must also provide sufficient time for children to eat, not use food as reward or punishment, and not force children to finish their food.

(3) A program must approach routines, such as hand washing and diapering, and transitions between activities, as opportunities for strengthening development, learning, and skill growth.

(4) A program must recognize physical activity as important to learning and integrate intentional movement and physical activity into curricular activities and daily routines in ways that support health and learning. A program must not use physical activity as reward or punishment.

## § 1302.32 Curricula.

(a) *Curricula.* (1) Center-based and family child care programs must implement developmentally appropriate

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research-based early childhood curricula, including additional curricular enhancements, as appropriate that:

(i) Are based on scientifically valid research and have standardized training procedures and curriculum materials to support implementation;

(ii) Are aligned with the *Head Start Early Learning Outcomes Framework: Ages Birth to Five* and, as appropriate, state early learning and development standards; and are sufficiently content-rich to promote measurable progress toward development and learning outlined in the Framework; and,

(iii) Have an organized developmental scope and sequence that include plans and materials for learning experiences based on developmental progressions and how children learn.

(2) A program must support staff to effectively implement curricula and at a minimum monitor curriculum implementation and fidelity, and provide support, feedback, and supervision for continuous improvement of its implementation through the system of training and professional development.

(b) *Adaptation.* A program that chooses to make significant adaptations to a curriculum or a curriculum enhancement described in paragraph (a)(1) of this section to better meet the needs of one or more specific populations must use an external early childhood education curriculum or content area expert to develop such significant adaptations. A program must assess whether the adaptation adequately facilitates progress toward meeting school readiness goals, consistent with the process described in §1302.102(b) and (c). Programs are encouraged to partner with outside evaluators in assessing such adaptations.

## § 1302.33 Child screenings and assessments.

(a) *Screening.* (1) In collaboration with each child's parent and with parental consent, a program must complete or obtain a current developmental screening to identify concerns regarding a child's developmental, behavioral, motor, language, social, cognitive, and emotional skills within 45 calendar days of when the child first attends the program or, for the home-based program option, receives a home

visit. A program that operates for 90 days or less must complete or obtain a current developmental screening within 30 calendar days of when the child first attends the program.

(2) A program must use one or more research-based developmental standardized screening tools to complete the screening. A program must use as part of the screening additional information from family members, teachers, and relevant staff familiar with the child's typical behavior.

(3) If warranted through screening and additional relevant information and with direct guidance from a mental health or child development professional a program must, with the parent's consent, promptly and appropriately address any needs identified through:

(i) Referral to the local agency responsible for implementing IDEA for a formal evaluation to assess the child's eligibility for services under IDEA as soon as possible, and not to exceed timelines required under IDEA; and,

(ii) Partnership with the child's parents and the relevant local agency to support families through the formal evaluation process.

(4) If a child is determined to be eligible for services under IDEA, the program must partner with parents and the local agency responsible for implementing IDEA, as appropriate, and deliver the services in subpart F of this part.

(5) If, after the formal evaluation described in paragraph (a)(3)(i) of this section, the local agency responsible for implementing IDEA determines the child is not eligible for early intervention or special education and related services under IDEA, the program must:

(i) Seek guidance from a mental health or child development professional to determine if the formal evaluation shows the child has a significant delay in one or more areas of development that is likely to interfere with the child's development and school readiness; and,

(ii) If the child has a significant delay, partner with parents to help the family access services and supports to help address the child's identified needs.

(A) Such additional services and supports may be available through a child's health insurance or it may be appropriate for the program to provide needed services and supports under section 504 of the Rehabilitation Act if the child satisfies the definition of disability in 29 U.S.C. 705(9)(b) of the Rehabilitation Act, to ensure that the child who satisfies the definition of disability in 29 U.S.C. 705(9)(b) of the Rehabilitation Act is not excluded from the program on the basis of disability.

(B) A program may use program funds for such services and supports when no other sources of funding are available.

(b) *Assessment for individualization.* (1) A program must conduct standardized and structured assessments, which may be observation-based or direct, for each child that provide ongoing information to evaluate the child's developmental level and progress in outcomes aligned to the goals described in the *Head Start Early Learning Child Outcomes Framework: Ages Birth to Five*. Such assessments must result in usable information for teachers, home visitors, and parents and be conducted with sufficient frequency to allow for individualization within the program year.

(2) A program must regularly use information from paragraph (b)(1) of this section along with informal teacher observations and additional information from family and staff, as relevant, to determine a child's strengths and needs, inform and adjust strategies to better support individualized learning and improve teaching practices in center-based and family child care settings, and improve home visit strategies in home-based models.

(3) If warranted from the information gathered from paragraphs (b)(1) and (2) of this section and with direct guidance from a mental health or child development professional and a parent's consent, a program must refer the child to the local agency responsible for implementing IDEA for a formal evaluation to assess a child's eligibility for services under IDEA.

(c) *Characteristics of screenings and assessments.* (1) Screenings and assessments must be valid and reliable for the population and purpose for which they will be used, including by being



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conducted by qualified and trained personnel, and being age, developmentally, culturally and linguistically appropriate, and appropriate for children with disabilities, as needed.

(2) If a program serves a child who speaks a language other than English, a program must use qualified bilingual staff, contractor, or consultant to:

(i) Assess language skills in English and in the child's home language, to assess both the child's progress in the home language and in English language acquisition;

(ii) Conduct screenings and assessments for domains other than language skills in the language or languages that best capture the child's development and skills in the specific domain; and,

(iii) Ensure those conducting the screening or assessment know and understand the child's language and culture and have sufficient skill level in the child's home language to accurately administer the screening or assessment and to record and understand the child's responses, interactions, and communications.

(3) If a program serves a child who speaks a language other than English and qualified bilingual staff, contractors, or consultants are not able to conduct screenings and assessments, a program must use an interpreter in conjunction with a qualified staff person to conduct screenings and assessments as described in paragraphs (c)(2)(i) through (iii) of this section.

(4) If a program serves a child who speaks a language other than English and can demonstrate that there is not a qualified bilingual staff person or interpreter, then screenings and assessments may be conducted in English. In such a case, a program must also gather and use other information, including structured observations over time and information gathered in a child's home language from the family, for use in evaluating the child's development and progress.

(d) *Prohibitions on use of screening and assessment data.* The use of screening and assessment items and data on any screening or assessment authorized under this subchapter by any agent of the federal government is prohibited for the purposes of ranking, comparing,

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or otherwise evaluating individual children for purposes other than research, training, or technical assistance, and is prohibited for the purposes of providing rewards or sanctions for individual children or staff. A program must not use screening or assessments to exclude children from enrollment or participation.

#### § 1302.34 Parent and family engagement in education and child development services.

(a) *Purpose.* Center-based and family child care programs must structure education and child development services to recognize parents' roles as children's lifelong educators, and to encourage parents to engage in their child's education.

(b) *Engaging parents and family members.* A program must offer opportunities for parents and family members to be involved in the program's education services and implement policies to ensure:

(1) The program's settings are open to parents during all program hours;

(2) Teachers regularly communicate with parents to ensure they are well-informed about their child's routines, activities, and behavior;

(3) Teachers hold parent conferences, as needed, but no less than two times per program year, to enhance the knowledge and understanding of both staff and parents of the child's education and developmental progress and activities in the program;

(4) Parents have the opportunity to learn about and to provide feedback on selected curricula and instructional materials used in the program;

(5) Parents and family members have opportunities to volunteer in the class and during group activities;

(6) Teachers inform parents, about the purposes of and the results from screenings and assessments and discuss their child's progress;

(7) Teachers, except those described in paragraph (b)(8) of this section, conduct at least two home visits per program year for each family, including one before the program year begins, if feasible, to engage the parents in the child's learning and development, except that such visits may take place at a program site or another safe location

that affords privacy at the parent's request, or if a visit to the home presents significant safety hazards for staff;

(8) Teachers that serve migrant or seasonal families make every effort to conduct home visits to engage the family in the child's learning and development; and

(9) The program utilizes accessible communication methods and modalities that meet the needs of the community when engaging with prospective and enrolled families.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67810, Aug. 21, 2024]

**§ 1302.35 Education in home-based programs.**

(a) *Purpose.* A home-based program must provide home visits and group socialization activities that promote secure parent-child relationships and help parents provide high-quality early learning experiences in language, literacy, mathematics, social and emotional functioning, approaches to learning, science, physical skills, and creative arts. A program must implement a research-based curriculum that delivers developmentally, linguistically, and culturally appropriate home visits and group socialization activities that support children's cognitive, social, and emotional growth for later success in school.

(b) *Home-based program design.* A home-based program must ensure all home visits are:

(1) Planned jointly by the home visitor and parents, and reflect the critical role of parents in the early learning and development of their children, including that the home visitor is able to effectively communicate with the parent, directly or through an interpreter;

(2) Planned using information from ongoing assessments that individualize learning experiences;

(3) Scheduled with sufficient time to serve all enrolled children in the home and conducted with parents and are not conducted when only babysitters or other temporary caregivers are present;

(4) Scheduled with sufficient time and appropriate staff to ensure effective delivery of services described in subparts D, E, F, and G of this part

through home visiting, to the extent possible.

(c) *Home visit experiences.* A program that operates the home-based option must ensure all home visits focus on promoting high-quality early learning experiences in the home and growth towards the goals described in the *Head Start Early Learning Outcomes Framework: Ages Birth to Five* and must use such goals and the curriculum to plan home visit activities that implement:

(1) Age and developmentally appropriate, structured child-focused learning experiences;

(2) Strategies and activities that promote parents' ability to support the child's cognitive, social, emotional, language, literacy, and physical development;

(3) Strategies and activities that promote the home as a learning environment that is safe, nurturing, responsive, and language- and communication- rich;

(4) Research-based strategies and activities for children who are dual language learners that recognize bilingualism and biliteracy as strengths, and:

(i) For infants and toddlers, focus on the development of the home language, while providing experiences that expose both parents and children to English; and,

(ii) For preschoolers, focus on both English language acquisition and the continued development of the home language; and,

(5) Follow-up with the families to discuss learning experiences provided in the home between each visit, address concerns, and inform strategies to promote progress toward school readiness goals.

(d) *Home-based curriculum.* A program that operates the home-based option must:

(1) Ensure home-visiting and group socializations implement a developmentally appropriate research-based early childhood home-based curriculum that:

(i) Promotes the parent's role as the child's teacher through experiences focused on the parent-child relationship and, as appropriate, the family's traditions, culture, values, and beliefs;

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(ii) Aligns with the *Head Start Early Learning Outcomes Framework: Ages Birth to Five* and, as appropriate, state early learning standards, and, is sufficiently content-rich within the Framework to promote measurable progress toward goals outlined in the Framework; and,

(iii) Has an organized developmental scope and sequence that includes plans and materials for learning experiences based on developmental progressions and how children learn.

(2) Support staff in the effective implementation of the curriculum and at a minimum monitor curriculum implementation and fidelity, and provide support, feedback, and supervision for continuous improvement of its implementation through the system of training and professional development.

(3) If a program chooses to make significant adaptations to a curriculum or curriculum enhancement to better meet the needs of one or more specific populations, a program must:

(i) Partner with early childhood education curriculum or content experts; and,

(ii) Assess whether the adaptation adequately facilitates progress toward meeting school readiness goals consistent with the process described in §1302.102(b) and (c).

(4) Provide parents with an opportunity to review selected curricula and instructional materials used in the program.

(e) *Group socialization.* (1) A program that operates the home-based option must ensure group socializations are planned jointly with families, conducted with both child and parent participation, occur in a classroom, community facility, home or field trip setting, as appropriate.

(2) Group socializations must be structured to:

(i) Provide age appropriate activities for participating children that are intentionally aligned to school readiness goals, the *Head Start Early Learning Outcomes Framework: Ages Birth to Five* and the home-based curriculum; and,

(ii) Encourage parents to share experiences related to their children's development with other parents in order to strengthen parent-child relation-

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ships and to help promote parents understanding of child development;

(3) For parents with preschoolers, group socializations also must provide opportunities for parents to participate in activities that support parenting skill development or family partnership goals identified in §1302.52(c), as appropriate and must emphasize peer group interactions designed to promote children's social, emotional and language development, and progress towards school readiness goals, while encouraging parents to observe and actively participate in activities, as appropriate.

(f) *Screening and assessments.* A program that operates the home-based option must implement provisions in §1302.33 and inform parents about the purposes of and the results from screenings and assessments and discuss their child's progress.

#### § 1302.36 Tribal language preservation and revitalization.

A program that serves American Indian and Alaska Native children may integrate efforts to preserve, revitalize, restore, or maintain the tribal language for these children into program services. Such language preservation and revitalization efforts may include full immersion in the tribal language for the majority of the hours of planned class operations. If children's home language is English, exposure to English as described in §1302.31(b)(2)(i) and (ii) is not required.

### Subpart D—Health and Mental Health Program Services

#### § 1302.40 Purpose.

(a) A program must provide high-quality health, oral health, mental health, and nutrition services that are developmentally, culturally, and linguistically appropriate and that will support each child's growth and school readiness.

(b) A program must establish and maintain a Health and Mental Health

Services Advisory Committee that includes Head Start parents, professionals, and other volunteers from the community.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67810, Aug. 21, 2024]

**§ 1302.41 Collaboration and communication with parents.**

(a) For all activities described in this part, programs must collaborate with parents as partners in the health, mental health, and well-being of their children in a linguistically and culturally appropriate manner and communicate with parents about their child's health and mental health needs and development concerns in a timely and effective manner.

(b) At a minimum, a program must:

(1) Obtain advance authorization from the parent or other person with legal authority for all health, mental health, and developmental procedures administered through the program or by contract or agreement, and, maintain written documentation if they refuse to give authorization for health and mental health services; and,

(2) Share with parents the policies for health or mental health emergencies that require rapid response on the part of staff or immediate medical attention.

[89 FR 67810, Aug. 21, 2024]

**§ 1302.42 Child health status and care.**

(a) *Source of health care.* (1) A program, within 30 calendar days after the child first attends the program or, for the home-based program option, receives a home visit, must consult with parents to determine whether each child has ongoing sources of continuous, accessible health care—provided by a health care professional that maintains the child's ongoing health record and is not primarily a source of emergency or urgent care—and health insurance coverage.

(2) If the child does not have such a source of ongoing care and health insurance coverage or access to care through the Indian Health Service, the program must assist families in accessing a source of care and health insurance that will meet these criteria, as quickly as possible.

(b) *Ensuring up-to-date child health status.* (1) Within 90 calendar days after the child first attends the program or, for the home-based program option, receives a home visit, with the exceptions noted in paragraph (b)(3) of this section, a program must:

(i) Obtain determinations from health care and oral health care professionals as to whether or not the child is up-to-date on a schedule of age appropriate preventive and primary medical, mental health, and oral health care, based on: the well-child visits and dental periodicity schedules as prescribed by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program of the Medicaid agency of the State in which they operate, immunization recommendations issued by the Centers for Disease Control and Prevention, and any additional recommendations from the local Health and Mental Health Services Advisory Committee that are based on prevalent community health problems; and

(ii) Assist parents with making arrangements to bring the child up-to-date as quickly as possible; and, if necessary, directly facilitate provision of health services to bring the child up-to-date with parent consent as described in §1302.41(b)(1).

(2) Within 45 calendar days after the child first attends the program or, for the home-based program option, receives a home visit, a program must either obtain or perform evidence-based vision and hearing screenings.

(3) If a program operates for 90 days or less, it has 30 days from the date the child first attends the program to satisfy paragraphs (b)(1) and (2) of this section.

(4) A program must identify each child's nutritional health needs, taking into account available health information, including the child's health records, relevant developmental or mental health concerns, and family and staff concerns, including special dietary requirements, food allergies, and community nutrition issues as identified through the community assessment or by the Health and Mental Health Services Advisory Committee.

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(c) *Ongoing care.* (1) A program must help parents continue to follow recommended schedules of well-child and oral health care.

(2) A program must implement periodic observations or other appropriate strategies for program staff and parents to identify any new or recurring developmental, medical, oral, or mental health concerns.

(3) A program must facilitate and monitor necessary oral health preventive care, treatment and follow-up, including topical fluoride treatments. In communities where there is a lack of adequate fluoride available through the water supply and for every child with moderate to severe tooth decay, a program must also facilitate fluoride supplements, and other necessary preventive measures, and further oral health treatment as recommended by the oral health professional.

(d) *Extended follow-up care.* (1) A program must facilitate further diagnostic testing, evaluation, treatment, and follow-up plan, as appropriate, by a licensed or certified professional for each child with a health problem or developmental delay, such as elevated lead levels or abnormal hearing or vision results that may affect child's development, learning, or behavior.

(2) A program must develop a system to track referrals and services provided and monitor the implementation of a follow-up plan to meet any treatment needs associated with a health, oral health, social and emotional, or developmental problem.

(3) A program must assist parents, as needed, in obtaining any prescribed medications, aids or equipment for medical and oral health conditions.

(e) *Use of funds.* (1) A program must use program funds for the provision of diapers and formula for enrolled children during the program day.

(2) A program may use program funds for professional medical and oral health services when no other source of funding is available. When program funds are used for such services, grant recipient and delegate agencies must have written documentation of their efforts to access other available sources of funding.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67810, Aug. 21, 2024]

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#### § 1302.43 Oral health practices.

A program must promote effective oral health hygiene by ensuring all children with teeth are assisted by appropriate staff, or volunteers, if available, in brushing their teeth with toothpaste containing fluoride once daily.

#### § 1302.44 Child nutrition.

(a) *Nutrition service requirements.* (1) A program must design and implement nutrition services that are culturally and developmentally appropriate, meet the nutritional needs of and accommodate the feeding requirements of each child, including children with special dietary needs and children with disabilities. Family style meals are encouraged as described in § 1302.31(e)(2).

(2) Specifically, a program must:

(i) Ensure each child in a program that operates for fewer than six hours per day receives meals and snacks that provide one third to one half of the child's daily nutritional needs;

(ii) Ensure each child in a program that operates for six hours or more per day receives meals and snacks that provide one half to two thirds of the child's daily nutritional needs, depending upon the length of the program day;

(iii) Serve three- to five-year-olds meals and snacks that conform to USDA requirements in 7 CFR parts 210, 220, and 226, and are high in nutrients and low in fat, sugar, and salt;

(iv) Feed infants and toddlers according to their individual developmental readiness and feeding skills as recommended in USDA requirements outlined in 7 CFR parts 210, 220, and 226, and ensure infants and young toddlers are fed on demand to the extent possible;

(v) Ensure bottle-fed infants are never laid down to sleep with a bottle;

(vi) Serve all children in morning center-based settings who have not received breakfast upon arrival at the program a nourishing breakfast;

(vii) Provide appropriate healthy snacks and meals to each child during group socialization activities in the home-based option;

(viii) Promote breastfeeding, including providing facilities to properly store and handle breast milk and make

accommodations, as necessary, for mothers who wish to breastfeed during program hours, and if necessary, provide referrals to lactation consultants or counselors; and,

(ix) Make safe drinking water available to children during the program day.

(b) *Payment sources.* A program must use funds from USDA Food, Nutrition, and Consumer Services Child Nutrition programs as the primary source of payment for meal services. Head Start funds may be used to cover those allowable costs not covered by the USDA.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67810, Aug. 21, 2024]

#### **§ 1302.45 Supports for mental health and well-being.**

(a) *Program-wide wellness supports.* To support a program-wide culture that promotes mental health, social and emotional well-being, and overall health and safety, a program must use a multidisciplinary approach that:

(1) Coordinates supports for adult mental health and well-being, including engaging in nurturing and responsive relationships with families, engaging families in home visiting services, and promoting staff health and wellness, as described in § 1302.93.

(2) Coordinates supports for positive learning environments for all children; supportive teacher practices; and strategies for supporting children with social, emotional, behavioral, or mental health concerns.

(3) Secures ongoing mental health consultation services and examines the approach to mental health consultation on an annual basis to determine if it meets the needs of the program.

(4) Ensures mental health consultation services are available at a frequency of at least once a month.

(i) If a mental health consultant is not available to provide services at least once a month, programs must use other licensed mental health professionals or behavioral health support specialists certified and trained in their profession or recognized by their Tribal governments, such as peer specialists, community health workers, promotores, traditional practitioners, or behavioral health aides, to ensure

mental health supports are available on at least a monthly basis.

(ii) If the program uses other licensed mental health professionals or behavioral health support specialists, the program must ensure their regular coordination and consultation with mental health consultants.

(5) Ensures that all children receive adequate screening and appropriate follow up and the parent receives referrals about how to access services for potential social, emotional, behavioral, or other mental health concerns, as described in § 1302.33.

(6) Facilitates multidisciplinary coordination and collaboration between mental health and other relevant program services, including education, disability, family engagement, and health services.

(7) Builds community partnerships to facilitate access to additional mental health resources and services, as needed, including through the Health and Mental Health Services Advisory Committee in § 1302.40.

(b) *Mental health consultants.* A program must ensure that mental health consultants provide consultation services that build the capacity of adults in an infant or young child's life to strengthen and support the mental health and social and emotional development of children, including consultation with any of the following:

(1) The program to implement strategies that promote a program-wide culture of mental health, prevent mental health challenges from developing, and identify and support children with mental health and social and emotional concerns;

(2) Child and family services staff to implement strategies that build nurturing and responsive relationships and create positive learning environments that promote the mental health and social and emotional development of all children;

(3) Staff who have contact with children to understand and appropriately respond to prevalent child mental health concerns, including internalizing problems such as appearing withdrawn; externalizing problems such as behavioral concerns; and how exposure to trauma and substance use can influence risk;

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(4) Families and staff to understand mental health and access mental health interventions or supports, if needed, including in the event of a natural disaster or crisis;

(5) The program to implement policies to limit suspension and prohibit expulsion as described in § 1302.17; and

(6) The program to support the well-being of children and families involved in any significant child health, mental health, or safety incident described in § 1302.102(d)(1)(ii).

[89 FR 67810, Aug. 21, 2024]

### **§ 1302.46 Family support services for health, nutrition, and mental health.**

(a) *Parent collaboration.* Programs must collaborate with parents to promote children's health and well-being by providing medical, oral, nutrition and mental health education support services that are understandable to individuals, including individuals with low health literacy.

(b) *Opportunities.* (1) Such collaboration must include opportunities for parents to:

(i) Learn about preventive medical and oral health care, emergency first aid, environmental hazards, and health and safety practices for the home including health and developmental consequences of tobacco products use and exposure to lead, and safe sleep;

(ii) Discuss their child's nutritional status with staff, including the importance of physical activity, healthy eating, and the negative health consequences of sugar-sweetened beverages, and how to select and prepare nutritious foods that meet the family's nutrition and food budget needs;

(iii) Learn about healthy pregnancy and postpartum care, as appropriate, including breastfeeding support and treatment options for parental mental health, including depression, anxiety, and substance use concerns;

(iv) Discuss information related to their child's mental health with staff, including typical and atypical behavior and development, and how to appropriately respond to their child and promote their child's social and emotional development; and,

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(v) Learn about appropriate vehicle and pedestrian safety for keeping children safe.

(2) A program must provide ongoing support to assist parents' navigation through health and mental health systems to meet the general health and specifically identified needs of their children and must assist parents:

(i) In understanding how to access health insurance for themselves and their families, including information about private and public health insurance and designated enrollment periods;

(ii) In understanding the results of diagnostic and treatment procedures as well as plans for ongoing care;

(iii) In familiarizing their children with services they will receive while enrolled in the program and to enroll and participate in a system of ongoing family health care; and

(iv) In providing information about how to access mental health services for young children and their families, including referrals if appropriate.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67811, Aug. 21, 2024]

### **§ 1302.47 Safety practices.**

(a) A program must establish, train staff on, implement, and enforce a system of health and safety practices that ensure children are kept safe at all times. A program should consult *Caring for our Children Basics*, available at [http://www.acf.hhs.gov/sites/default/files/ecd/caring\\_for\\_our\\_children\\_basics.pdf](http://www.acf.hhs.gov/sites/default/files/ecd/caring_for_our_children_basics.pdf), for additional information to develop and implement adequate safety policies and practices described in this part.

(b) A program must develop and implement a system of management, including ongoing training, oversight, correction and continuous improvement in accordance with § 1302.102, that includes policies and practices to ensure all facilities, equipment and materials, background checks, safety training, safety and hygiene practices and administrative safety procedures are adequate to ensure child safety. This system must ensure:

(1) *Facilities.* All facilities where children are served, including areas for learning, playing, sleeping, toileting, and eating are, at a minimum:

(i) Meet licensing requirements in accordance with §§ 1302.21(d)(1) and 1302.23(d);

(ii) Clean and free from pests;

(iii) Free from pollutants, hazards and toxins that are accessible to children and could endanger children's safety;

(iv) Designed to prevent child injury and free from hazards, including choking, strangulation, electrical, and drowning hazards, hazards posed by appliances and all other safety hazards;

(v) Well lit, including emergency lighting;

(vi) Equipped with safety supplies that are readily accessible to staff, including, at a minimum, fully-equipped and up-to-date first aid kits and appropriate fire safety supplies;

(vii) Free from firearms or other weapons that are accessible to children;

(viii) Designed to separate toileting and diapering areas from areas for preparing food, cooking, eating, or children's activities; and,

(ix) Kept safe through an ongoing system of preventative maintenance.

(2) *Equipment and materials.* Indoor and outdoor play equipment, cribs, cots, feeding chairs, strollers, and other equipment used in the care of enrolled children, and as applicable, other equipment and materials meet standards set by the Consumer Product Safety Commission (CPSC) or the American Society for Testing and Materials, International (ASTM). All equipment and materials must at a minimum:

(i) Be clean and safe for children's use and are appropriately disinfected;

(ii) Be accessible only to children for whom they are age appropriate;

(iii) Be designed to ensure appropriate supervision of children at all times;

(iv) Allow for the separation of infants and toddlers from preschoolers during play in center-based programs; and,

(v) Be kept safe through an ongoing system of preventative maintenance.

(3) *Background checks.* All staff have complete background checks in accordance with § 1302.90(b).

(4) *Safety training*—(i) *Staff with regular child contact.* All staff with regular

child contact have initial orientation training within three months of hire and ongoing training in all state, local, tribal, federal and program-developed health, safety and child care requirements to ensure the safety of children in their care; including, at a minimum, and as appropriate based on staff roles and ages of children they work with, training in:

(A) The prevention and control of infectious diseases;

(B) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(C) Administration of medication, consistent with standards for parental consent;

(D) Prevention and response to emergencies due to food and allergic reactions;

(E) Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

(F) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;

(G) Emergency preparedness and response planning for emergencies;

(H) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(I) Appropriate precautions in transporting children, if applicable;

(J) First aid and cardiopulmonary resuscitation; and,

(K) Recognition and reporting of child abuse and neglect, in accordance with the requirement at paragraph (b)(5) of this section.

(ii) *Staff without regular child contact.* All staff with no regular responsibility for or contact with children have initial orientation training within three months of hire; ongoing training in all state, local, tribal, federal and program-developed health and safety requirements applicable to their work; and training in the program's emergency and disaster preparedness procedures.

(5) *Safety practices.* All staff, consultants, contractors, and volunteers follow appropriate practices to keep children safe during all activities, including, at a minimum:

(i) Reporting of suspected or known child abuse and neglect, as defined by



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the Federal Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5101 note), including that staff comply with applicable Federal, State, local, and Tribal laws;

(ii) Safe sleep practices, including ensuring that all sleeping arrangements for children under 18 months of age use firm mattresses or cots, as appropriate, and for children under 12 months, soft bedding materials or toys must not be used;

(iii) Appropriate supervision of children at all times;

(iv) Only releasing children to an authorized adult; and

(v) All standards of conduct described in § 1302.90(c)(1)(ii).

(6) *Hygiene practices.* All staff systematically and routinely implement hygiene practices that at a minimum ensure:

(i) Appropriate toileting, hand washing, and diapering procedures are followed;

(ii) Safe food preparation; and,

(iii) Exposure to blood and body fluids are handled consistent with standards of the Occupational Safety Health Administration.

(7) *Administrative safety procedures.* Programs establish, follow, and practice, as appropriate, procedures for, at a minimum:

(i) Emergencies;

(ii) Fire prevention and response;

(iii) Protection from contagious disease, including appropriate inclusion and exclusion policies for when a child is ill, and from an infectious disease outbreak, including appropriate notifications of any reportable illness;

(iv) The handling, storage, administration, and record of administration of medication;

(v) Maintaining procedures and systems to ensure children are only released to an authorized adult; and,

(vi) Child specific health care needs and food allergies that include accessible plans of action for emergencies. For food allergies, a program must also post individual child food allergies prominently where staff can view wherever food is served.

(8) *Disaster preparedness plan.* The program has all-hazards emergency management/disaster preparedness and response plans for more and less likely

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events including natural and manmade disasters and emergencies, and violence in or near programs.

(9) *COVID-19 mitigation policy.* The program has an evidence-based COVID-19 mitigation policy developed in consultation with their Health Services Advisory Committee (HSAC) that can be scaled up or down based on the impact of COVID-19 in the community to protect staff, children, and families from COVID-19 infection.

(10) *Exposure to lead in water and paint prevention practices.* A program must develop a plan to prevent children from being exposed to lead in water and paint in Head Start facilities. In facilities where lead may exist, a program must implement ongoing practices, including testing and inspection at least every two years, with support from trained professionals. As needed, a program must pursue remediation or abatement to prevent lead exposure.

(c) A program must report any safety incidents in accordance with § 1302.102(d)(1)(ii).

[81 FR 61412, Sept. 6, 2016, as amended at 86 FR 68101, Nov. 30, 2021; 88 FR 1008, Jan. 6, 2023; 89 FR 67811, Aug. 21, 2024]

## Subpart E—Family and Community Engagement Program Services

### § 1302.50 Family engagement.

(a) *Purpose.* A program must integrate parent and family engagement strategies into all systems and program services to support family well-being and promote children's learning and development. Programs are encouraged to develop innovative multi-generation approaches that address prevalent needs of families across their program that may leverage community partnerships or other funding sources. This includes communicating with families in a format that meets the needs of each individual family.

(b) *Family engagement approach.* A program must:

(1) Recognize parents as their children's primary teachers and nurturers and implement intentional strategies to engage parents in their children's learning and development and support parent-child relationships, including

specific strategies for father engagement;

(2) Develop relationships with parents and structure services to encourage trust and respectful, ongoing two-way communication between staff and parents to create welcoming program environments that incorporate the unique cultural, ethnic, and linguistic backgrounds of families in the program and community;

(3) Collaborate with families in a family partnership process that identifies needs, interests, strengths, goals, and services and resources that support family well-being, including family safety, health, and economic stability;

(4) Provide parents with opportunities to participate in the program as employees or volunteers;

(5) Conduct family engagement services in the family's preferred language, or through an interpreter, to the extent possible, and ensure families have the opportunity to share personal information in an environment in which they feel safe; and,

(6) Implement procedures for teachers, home visitors, and family support staff to share information with each other, as appropriate and consistent with the requirements in part 1303, subpart C, of this chapter; FERPA; or IDEA, to ensure coordinated family engagement strategies with children and families in the classroom, home, and community.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67811, Aug. 21, 2024]

#### **§ 1302.51 Parent activities to promote child learning and development.**

(a) A program must promote shared responsibility with parents for children's early learning and development, and implement family engagement strategies that are designed to foster parental confidence and skills in promoting children's learning and development. These strategies must include:

(1) Offering activities that support parent-child relationships and child development including language, dual language, literacy, and bi-literacy development as appropriate;

(2) Providing parents with information about the importance of their child's regular attendance, and partner

with them, as necessary, to promote consistent attendance; and,

(3) For dual language learners, information and resources for parents about the benefits of bilingualism and biliteracy.

(b) A program must, at a minimum, offer opportunities for parents to participate in a research-based parenting curriculum that builds on parents' knowledge and offers parents the opportunity to practice parenting skills to promote children's learning and development. A program that chooses to make significant adaptations to the parenting curriculum to better meet the needs of one or more specific populations must work with an expert or experts to develop such adaptations.

#### **§ 1302.52 Family partnership services.**

(a) *Family partnership process.* A program must implement a family partnership process that includes a family partnership agreement and the activities described in this section to support family well-being, including family safety, health, and economic stability, to support child learning and development, to provide, if applicable, services and supports for children with disabilities, and to foster parental confidence and skills that promote the early learning and development of their children. The process must be initiated as early in the program year as possible and continue for as long as the family participates in the program, based on parent interest and need.

(b) *Identification of family strengths and needs.* A program must implement intake and family assessment procedures to identify family strengths and needs related to the family engagement outcomes as described in the Head Start Parent Family and Community Engagement Framework, including family well-being, parent-child relationships, families as lifelong educators, families as learners, family engagement in transitions, family connections to peers and the local community, and families as advocates and leaders.

(c) *Individualized family partnership services.* A program must offer individualized family partnership services that:

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(1) Collaborate with families to identify interests, needs, and aspirations related to the family engagement outcomes described in paragraph (b) of this section;

(2) Help families achieve identified individualized family engagement outcomes; and

(3) Establish and implement a family partnership agreement process that is jointly developed and shared with parents in which staff and families review individual progress, revise goals, evaluate and track whether identified needs and goals are met, and adjust strategies on an ongoing basis, as necessary.

(d) *Approaches to family partnership services.* A program must:

(1) Ensure the family assignment process takes into account the varied interests, urgency, and intensity of identified family needs and goals.

(2) Ensure the planned number of families assigned to work with staff that conduct the family partnership process and work on family, health and community engagement services is no greater than 40:1. A program must maintain this ratio, except:

(i) When the responsible HHS official grants a waiver if the program can demonstrate staff competencies at §1302.92(b)(4); program outcomes at paragraph (b) of this section; and reasonable staff workload as described in paragraph (d)(3) of this section.

(ii) During temporary periods of staff absence or attrition; changes in daily operations related to start-up or transitional activities; or extenuating circumstances related to emergency response and recovery.

(3) Ensure meaningful employee engagement practices address family services workload experiences, in accordance with §1302.101(a)(2).

(e) *Existing plans and community resources.* In implementing this section, a program must take into consideration any existing plans for the family made with other community agencies and availability of other community resources to address family needs, strengths, and goals, in order to avoid duplication of effort.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67811, Aug. 21, 2024]

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**§ 1302.53 Community partnerships and coordination with other early childhood and education programs.**

(a) *Community partnerships.* (1) A program must establish ongoing collaborative relationships and partnerships with community organizations such as establishing joint agreements, procedures, or contracts and arranging for onsite delivery of services as appropriate, to facilitate access to community services that are responsive to children's and families' needs and family partnership goals, and community needs and resources, as determined by the community assessment.

(2) A program must establish necessary collaborative relationships and partnerships, with community organizations that may include:

(i) Health care providers, including child and adult mental health professionals, Medicaid managed care networks, dentists, other health professionals, nutritional service providers, providers of prenatal and postnatal support, and substance abuse treatment providers;

(ii) Individuals and agencies that provide services to children with disabilities and their families, elementary schools, state preschool providers, and providers of child care services;

(iii) Family preservation and support services and child protective services and any other agency to which child abuse must be reported under state or tribal law;

(iv) Educational and cultural institutions, such as libraries and museums, for both children and families;

(v) Temporary Assistance for Needy Families, nutrition assistance agencies, workforce development and training programs, adult or family literacy, adult education, and post-secondary education institutions, and agencies or financial institutions that provide asset-building education, products and services to enhance family financial stability and savings;

(vi) Housing assistance agencies and providers of support for children and families experiencing homelessness, including the local educational agency liaison designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*);

(vii) Domestic violence prevention and support providers; and,

(viii) Other organizations or businesses that may provide support and resources to families.

(b) *Coordination with other programs and systems.* A program must take an active role in promoting coordinated systems of comprehensive early childhood services to low-income children and families in their community through communication, cooperation, and the sharing of information among agencies and their community partners, while protecting the privacy of child records in accordance with subpart C of part 1303 of this chapter and applicable federal, state, local, and tribal laws.

(1) *Memorandum of understanding.* To support coordination between Head Start Preschool and publicly funded preschool programs, a program must enter into a memorandum of understanding with the appropriate local entity responsible for managing publicly funded preschool programs in the service area of the program, as described in section 642(e)(5) of the Act.

(2) *Quality Rating and Improvement Systems.* A program, with the exception of American Indian and Alaska Native programs, should participate in its State or local Quality Rating and Improvement System (QRIS), to the extent practicable, if a State or local QRIS has a strategy to support Head Start participation without requiring programs to duplicate existing documentation from Office of Head Start oversight.

(3) *Data systems.* A program, with the exception of American Indian and Alaska Native programs unless they would like to and to the extent practicable, should integrate and share relevant data with state education data systems, to the extent practicable, if the program can receive similar support and benefits as other participating early childhood programs.

(4) *American Indian and Alaska Native programs.* An American Indian and Alaska Native program should determine whether or not it will participate in the systems described in paragraphs (b)(2) and (3) of this section.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67812, Aug. 21, 2024]

## Subpart F—Additional Services for Children With Disabilities

### § 1302.60 Full participation in program services and activities.

A program must ensure enrolled children with disabilities, including but not limited to those who are eligible for services under IDEA, and their families receive all applicable program services delivered in the least restrictive possible environment and that they fully participate in all program activities.

### § 1302.61 Additional services for children.

(a) *Additional services for children with disabilities.* Programs must ensure the individualized needs of children with disabilities, including but not limited to those eligible for services under IDEA, are being met and all children have access to and can fully participate in the full range of activities and services. Programs must provide any necessary modifications to the environment, multiple and varied formats for instruction, and individualized accommodations and supports as necessary to support the full participation of children with disabilities. Programs must ensure all individuals with disabilities are protected from discrimination under and provided with all services and program modifications required by section 504 of the Rehabilitation Act (29 U.S.C. 794), the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), and their implementing regulations.

(b) *Services during IDEA eligibility determination.* While the local agency responsible for implementing IDEA determines a child's eligibility, a program must provide individualized services and supports, to the maximum extent possible, to meet the child's needs. Such additional supports may be available through a child's health insurance or it may be appropriate or required to provide the needed services and supports under section 504 of the Rehabilitation Act if the child satisfies the definition of disability in section 705(9)(b) of the Rehabilitation Act. When such supports are not available through alternate means, pending the evaluation results and eligibility determination, a program must individualize program

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services based on available information such as parent input and child observation and assessment data and may use program funds for these purposes.

(c) *Additional services for children with an IFSP or IEP.* To ensure the individual needs of children eligible for services under IDEA are met, a program must:

(1) Work closely with the local agency responsible for implementing IDEA, the family, and other service partners, as appropriate, to ensure:

(i) Services for a child with disabilities will be planned and delivered as required by their IFSP or IEP, as appropriate;

(ii) Children are working towards the goals in their IFSP or IEP;

(iii) Elements of the IFSP or IEP that the program cannot implement are implemented by other appropriate agencies, related service providers and specialists;

(iv) IFSPs and IEPs are being reviewed and revised, as required by IDEA; and,

(v) Services are provided in a child's regular Head Start classroom or family child care home to the greatest extent possible.

(2) Plan and implement the transition services described in subpart G of this part, including at a minimum:

(i) For children with an IFSP who are transitioning out of Early Head Start, collaborate with the parents, and the local agency responsible for implementing IDEA, to ensure appropriate steps are undertaken in a timely and appropriate manner to determine the child's eligibility for services under Part B of IDEA; and,

(ii) For children with an IEP who are transitioning out of Head Start Preschool to kindergarten, collaborate with the parents, and the local agency responsible for implementing IDEA, to ensure steps are undertaken in a timely and appropriate manner to support the child and family as they transition to a new setting.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67812, Aug. 21, 2024]

## § 1302.62 Additional services for parents.

(a) *Parents of all children with disabilities.* (1) A program must collaborate

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with parents of children with disabilities, including but not limited to children eligible for services under IDEA, to ensure the needs of their children are being met, including support to help parents become advocates for services that meet their children's needs and information and skills to help parents understand their child's disability and how to best support the child's development;

(2) A program must assist parents to access services and resources for their family, including securing adaptive equipment and devices and supports available through a child's health insurance or other entities, creating linkages to family support programs, and helping parents establish eligibility for additional support programs, as needed and practicable.

(b) *Parents of children eligible for services under IDEA.* For parents of children eligible for services under IDEA, a program must also help parents:

(1) Understand the referral, evaluation, and service timelines required under IDEA;

(2) Actively participate in the eligibility process and IFSP or IEP development process with the local agency responsible for implementing IDEA, including by informing parents of their right to invite the program to participate in all meetings;

(3) Understand the purposes and results of evaluations and services provided under an IFSP or IEP; and,

(4) Ensure their children's needs are accurately identified in, and addressed through, the IFSP or IEP.

## § 1302.63 Coordination and collaboration with the local agency responsible for implementing IDEA.

(a) A program must coordinate with the local agency responsible for implementing IDEA to identify children enrolled or who intend to enroll in a program that may be eligible for services under IDEA, including through the process described in §1302.33(a)(3) and through participation in the local agency Child Find efforts.

(b) A program must work to develop interagency agreements with the local agency responsible for implementing IDEA to improve service delivery to children eligible for services under

IDEA, including the referral and evaluation process, service coordination, promotion of service provision in the least restrictive appropriate community-based setting and reduction in dual enrollment which causes reduced time in a less restrictive setting, and transition services as children move from services provided under Part C of IDEA to services provided under Part B of IDEA and from preschool to kindergarten.

(c) A program must participate in the development of the IFSP or IEP if requested by the child's parents, and the implementation of the IFSP or IEP. At a minimum, the program must offer:

(1) To provide relevant information from its screenings, assessments, and observations to the team developing a child's IFSP or IEP; and,

(2) To participate in meetings with the local agency responsible for implementing IDEA to develop or review an IEP or IFSP for a child being considered for Head Start enrollment, a currently enrolled child, or a child transitioning from a program.

(d) A program must retain a copy of the IEP or IFSP for any child enrolled in Head Start for the time the child is in the program, consistent with the IDEA requirements in 34 CFR parts 300 and 303.

### Subpart G—Transition Services

#### § 1302.70 Transitions from Early Head Start.

(a) *Implementing transition strategies and practices.* An Early Head Start program must implement strategies and practices to support successful transitions for children and their families transitioning out of Early Head Start.

(b) *Timing for transitions.* To ensure the most appropriate placement and service following participation in Early Head Start, such programs must, at least six months prior to each child's third birthday, implement transition planning for each child and family that:

(1) Takes into account the child's developmental level and health and disability status, progress made by the child and family while in Early Head Start, current and changing family circumstances and, the availability of

Head Start Preschool, other public pre-kindergarten, and other early education and child development services in the community that will meet the needs of the child and family; and

(2) Transitions the child into Head Start Preschool or another program as soon as possible after the child's third birthday but permits the child to remain in Early Head Start for a limited number of additional months following the child's third birthday if necessary for an appropriate transition.

(c) *Family collaborations.* A program must collaborate with parents of Early Head Start children to implement strategies and activities that support successful transitions from Early Head Start and, at a minimum, provide information about the child's progress during the program year and provide strategies for parents to continue their involvement in and advocacy for the education and development of their child.

(d) *Early Head Start and Head Start Preschool collaboration.* Early Head Start and Head Start Preschool programs must work together to maximize enrollment transitions from Early Head Start to Head Start Preschool, consistent with the eligibility provisions in subpart A of this part, and promote successful transitions through collaboration and communication.

(e) *Transition services for children with an IFSP.* A program must provide additional transition services for children with an IFSP, at a minimum, as described in subpart F of this part.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67812, Aug. 21, 2024]

#### § 1302.71 Transitions from Head Start Preschool to kindergarten.

(a) *Implementing transition strategies and practices.* A program that serves children who will enter kindergarten in the following year must implement transition strategies to support a successful transition to kindergarten.

(b) *Family collaborations for transitions.* (1) A program must collaborate with parents of enrolled children to implement strategies and activities that will help parents advocate for and promote successful transitions to kindergarten for their children, including their continued involvement in the

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education and development of their child.

(2) At a minimum, such strategies and activities must:

(i) Help parents understand their child's progress during Head Start;

(ii) Help parents understand practices they use to effectively provide academic and social support for their children during their transition to kindergarten and foster their continued involvement in the education of their child;

(iii) Prepare parents to exercise their rights and responsibilities concerning the education of their children in the elementary school setting, including services and supports available to children with disabilities and various options for their child to participate in language instruction educational programs; and,

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

(c) *Community collaborations for transitions.* (1) A program must collaborate with local education agencies to support family engagement under section 642(b)(13) of the Act and state departments of education, as appropriate, and kindergarten teachers to implement strategies and activities that promote successful transitions to kindergarten for children, their families, and the elementary school.

(2) At a minimum, such strategies and activities must include:

(i) Coordination with schools or other appropriate agencies to ensure children's relevant records are transferred to the school or next placement in which a child will enroll, consistent with privacy requirements in subpart C of part 1303 of this chapter;

(ii) Communication between appropriate staff and their counterparts in the schools to facilitate continuity of learning and development, consistent with privacy requirements in subpart C of part 1303 of this chapter; and,

(iii) Participation, as possible, for joint training and professional development activities for Head Start and kindergarten teachers and staff.

(3) A program that does not operate during the summer must collaborate

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with school districts to determine the availability of summer school programming for children who will be entering kindergarten and work with parents and school districts to enroll children in such programs, as appropriate.

(d) *Learning environment activities.* A program must implement strategies and activities in the learning environment that promote successful transitions to kindergarten for enrolled children, and at a minimum, include approaches that familiarize children with the transition to kindergarten and foster confidence about such transition.

(e) *Transition services for children with an IEP.* A program must provide additional transition services for children with an IEP, at a minimum, as described in subpart F of this part.

## § 1302.72 Transitions between programs.

(a) For families and children who move out of the community in which they are currently served, including families experiencing homelessness and children in foster care, a program must undertake efforts to support effective transitions to other Head Start programs. If Head Start is not available, the program should assist the family to identify another early childhood program that meets their needs.

(b) A program that serves children whose families have decided to transition them to other early education programs, including public pre-kindergarten, in the year prior to kindergarten entry must undertake strategies and activities described in § 1302.71(b) and (c)(1) and (2), as practicable and appropriate.

(c) A migrant or seasonal Head Start program must undertake efforts to support effective transitions to other migrant or seasonal Head Start or, if appropriate, Early Head Start or Head Start Preschool programs for families and children moving out of the community in which they are currently served.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67812, Aug. 21, 2024]

**Subpart H—Services to Enrolled Pregnant Women****§ 1302.80 Enrolled pregnant women.**

(a) Within 30 days of enrollment, a program must determine whether each enrolled pregnant woman has an ongoing source of continuous, accessible health care—provided by a health care professional that maintains her ongoing health record and is not primarily a source of emergency or urgent care—and, as appropriate, health insurance coverage.

(b) If an enrolled pregnant woman does not have a source of ongoing care as described in paragraph (a) of this section and, as appropriate, health insurance coverage, a program must, as quickly as possible, facilitate her access to such a source of care that will meet her needs.

(c) A program must facilitate the ability of all enrolled pregnant women to access comprehensive services through referrals that, at a minimum, include nutritional counseling, food assistance, oral health care, mental health services, substance abuse prevention and treatment, and emergency shelter or transitional housing in cases of domestic violence.

(d) A program must provide a newborn visit with each mother and baby to offer support and identify family needs. A program must schedule the newborn visit within two weeks after the infant's birth. At a minimum, the visit must include a discussion of the following: maternal mental and physical health, safe sleep, infant health, and support for basic needs.

(e) A program must track and record services an enrolled pregnant woman receives both from the program and through referrals, to help identify specific prenatal care services and resources the enrolled pregnant woman needs to support a healthy pregnancy.

(f) The program must provide services that help reduce barriers to healthy maternal and birthing outcomes for each family, including services that address disparities across racial and ethnic groups, and use data on

enrolled pregnant women to inform program services.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67812, Aug. 21, 2024]

**§ 1302.81 Prenatal and postpartum information, education, and services.**

(a) A program must provide enrolled pregnant women, mothers, fathers, and partners or other family members the prenatal and postpartum information, education and services that address, as appropriate, fetal development, the importance of nutrition in the prenatal and postpartum stage including breastfeeding, the risks of alcohol, drugs, and smoking and the benefits of substance use treatment, labor and delivery, postpartum recovery, and infant care and safe sleep practices.

(b) A program must support pregnant women, mothers, fathers, partners, or other family members to access mental health services, including referrals, as appropriate, to address concerns including prenatal and postpartum mental health concerns including but not limited to anxiety, depression, grief or loss, birth trauma, and substance use.

(c) A program must also address pregnant women's needs for appropriate supports for social and emotional well-being, nurturing and responsive caregiving, and father, partner, or other family member engagement during pregnancy and early childhood.

[89 FR 67813, Aug. 21, 2024]

**§ 1302.82 Family partnership services for enrolled pregnant women.**

(a) A program must engage enrolled pregnant women and other relevant family members, such as fathers, in the family partnership services as described in § 1302.52 and include a specific focus on factors that influence prenatal and postpartum maternal and infant health. If a program uses a curriculum in the provision of services to pregnant women, this should be a maternal health curriculum, to support prenatal and postpartum education needs.

(b) A program must engage enrolled pregnant women and other relevant family members, such as fathers, in discussions about program options,



plan for the infant's transition to program enrollment, and support the family during the transition process, where appropriate.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67813, Aug. 21, 2024]

## Subpart I—Human Resources Management

### § 1302.90 Personnel policies.

(a) *Establishing personnel policies and procedures.* A program must establish written personnel policies and procedures that are approved by the governing body and policy council or policy committee and that are available to all staff.

(b) *Background checks and selection procedures.* (1) Before a person is hired, directly or through contract, including transportation staff and contractors, a program must conduct an interview, verify references, conduct a sex offender registry check and obtain one of the following:

(i) State or tribal criminal history records, including fingerprint checks; or,

(ii) Federal Bureau of Investigation criminal history records, including fingerprint checks.

(2) A program has 90 days after an employee is hired to complete the background check process by obtaining:

(i) Whichever check listed in paragraph (b)(1) of this section was not obtained prior to the date of hire; and,

(ii) Child abuse and neglect state registry check, if available.

(3) A program must review the information found in each employment application and complete background check to assess the relevancy of any issue uncovered by the complete background check including any arrest, pending criminal charge, or conviction and must use Child Care and Development Fund (CCDF) disqualification factors described in 42 U.S.C. 9858f(c)(1)(D) and 42 U.S.C. 9858f(h)(1) or tribal disqualifications factors to determine whether the prospective employee can be hired or the current employee must be terminated.

(4) A program must ensure a newly hired employee, consultant, or con-

tractor does not have unsupervised access to children until the complete background check process described in paragraphs (b)(1) through (3) of this section is complete.

(5) A program must conduct the complete background check for each employee, consultant, or contractor at least once every five years which must include each of the four checks listed in paragraphs (b)(1) and (2) of this section, and review and make employment decisions based on the information as described in paragraph (b)(3) of this section, unless the program can demonstrate to the responsible HHS official that it has a more stringent system in place that will ensure child safety.

(6) A program must consider current and former program parents for employment vacancies for which such parents apply and are qualified.

(c) *Standards of conduct.* (1) A program must ensure all staff, consultants, contractors, and volunteers abide by the program's standards of conduct that:

(i) Ensure staff, consultants, contractors, and volunteers implement positive strategies to support children's well-being and prevent and address challenging behavior;

(ii) Ensure staff, consultants, contractors, and volunteers do not engage in behaviors that maltreat or endanger the health or safety of children, including at a minimum:

(A) Corporal punishment or physically abusive behavior, defined as intentional use of physical force that results in, or has the potential to result in, physical injury. Examples include, but are not limited to, hitting, kicking, shaking, biting, pushing, restraining, force feeding, or dragging;

(B) Sexually abusive behavior, defined as any completed or attempted sexual act, sexual contact, or exploitation. Examples include, but are not limited to, behaviors such as inappropriate touching, inappropriate filming, or exposing a child to other sexual activities;

(C) Emotionally harmful or abusive behavior, defined as behaviors that harm a child's self worth or emotional well-being. Examples include, but are not limited to, using seclusion, using

or exposing a child to public or private humiliation, or name calling, shaming, intimidating, or threatening a child; and

(D) Neglectful behavior, defined as the failure to meet a child's basic physical and emotional needs including access to food, education, medical care, appropriate supervision by an adequate caregiver, and safe physical and emotional environments. Examples include, but are not limited to, leaving a child unattended on a bus, withholding food as punishment or refusing to change soiled diapers as punishment;

(iii) Ensure staff, consultants, contractors, and volunteers report reasonably suspected or known incidents of child abuse and neglect, as defined by the Federal Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5101 note) and in compliance with Federal, State, local, and Tribal laws;

(iv) Ensure staff, consultants, contractors, and volunteers respect and promote the unique identity of each individual and do not stereotype on any basis, including gender, race, ethnicity, culture, religion, disability, sexual orientation, or family composition; and

(v) Require staff, consultants, contractors, and volunteers to comply with program confidentiality policies concerning personally identifiable information about children, families, and other staff members in accordance with subpart C of part 1303 of this chapter and applicable Federal, State, local, and Tribal laws; and,

(vi) Ensure no child is left alone or unsupervised.

(2) Personnel policies and procedures must include appropriate penalties for staff, consultants, and volunteers who violate the standards of conduct.

(d) *Communication with dual language learners and their families.* (1) A program must ensure staff and program consultants or contractors are familiar with the ethnic backgrounds and heritages of families in the program and are able to serve and effectively communicate, either directly or through interpretation and translation, with children who are dual language learners and to the extent feasible, with families with limited English proficiency.

(2) If a majority of children in a class or home-based program speak the same

language, at least one class staff member or home visitor must speak such language.

(e) *Wages—(1) Pay scale.* (i) By August 1, 2031, a program must implement a salary scale, salary schedule, wage ladder, or other similar pay structure for program staff salaries that incorporates the requirements in paragraphs (e)(2) through (4) of this section; reflects salaries or wages for all other staff in the program; promotes salaries that are comparable to similar services in relevant industries in their geographic area; and considers, at a minimum, responsibilities, qualifications, experience relevant to the position, and schedule or hours worked.

(ii) After August 1, 2031, a program must review its pay structure at least once every 5 years to assess whether it continues to meet the expectations described in paragraph (e)(1)(i) of this section.

(iii) A program must ensure that staff salaries are not in excess of level II of the Executive Schedule, as required in 42 U.S.C. 9848(b)(1).

(2) *Progress to pay parity for education staff with elementary school staff.* (i) By August 1, 2031, a program must demonstrate it has made progress to parity with kindergarten through third grade teachers by ensuring that each Head Start teacher receives an annual salary that is at least comparable to the annual salary paid to preschool teachers in public school settings in the program's local school district, adjusted for responsibilities, qualifications, experience, and schedule or hours worked. A program may provide annual salaries comparable to a neighboring school district if the salaries are higher than a program's local school district.

(ii) A program must make measurable progress towards pay parity for all other Head Start education staff who work directly with children as part of their daily job responsibilities. By August 1, 2031, a program must demonstrate it has made progress to parity by ensuring that each staff member described in this provision receives an annual salary that is at least comparable to the salaries described in paragraph (e)(2)(i) of this section, adjusted for role, responsibilities, qualifications,

experience, and schedule or hours worked.

(iii) For Head Start teachers and education staff described in paragraphs (e)(2)(i) and (ii) of this section, progress to parity must be demonstrated for those staff who are employees as well as those whose salary is funded by Head Start through a contract.

(iv) A program may use an alternative method to determine appropriate comparison salaries in order to implement the requirements in paragraphs (e)(2)(i) and (ii) of this section. The alternative method must use a comparison salary that is equivalent to at least 90 percent of the annual salary paid to kindergarten teachers in public school settings in the program's local school district, adjusted for role, responsibilities, qualifications, experience, and schedule or hours worked.

(v) To demonstrate measurable progress towards pay parity as described in paragraph (e)(2)(i) of this section, a program must regularly track data on how wages paid to their education staff compare to wages paid to preschool through third grade teachers in their local or neighboring school district.

(3) *Salary floor.* By August 1, 2031, a program must ensure, at a minimum, the wage or salary structure established or updated under paragraph (e)(1)(i) of this section provides all staff with a wage or salary that is generally sufficient to cover basic needs such as food, housing, utilities, medical costs, transportation, and taxes, or would be sufficient if the worker's hourly rate were paid according to a full-time, full-year schedule (or over 2,080 hours per year).

(4) *Wage comparability for all ages served.* A program must ensure the wage or salary structure established or updated under paragraph (e)(1)(i) of this section does not differ by age of children served for similar program staff positions with similar qualifications and experience.

(5) *Small agency exemption.* An agency with 200 or fewer funded slots is exempt from the requirements described in this paragraph (e), except that such an agency must still establish or update a pay scale or structure that promotes competitive wages for all staff. The

agency must also make measurable improvements in wages for Head Start staff over time and demonstrate progress towards meeting the requirements of paragraphs (e)(2) through (4) of this section.

(6) *Interim service providers.* The exemption described in paragraph (e)(5) of this section also applies to an interim service provider that is temporarily providing Head Start services in place of a Head Start agency that would otherwise qualify for the small agency exemption.

(7) *Secretarial determination of waiver authority.* Between January 1, 2028, and December 31, 2028, the Secretary may establish a waiver process for the requirements described in paragraphs (e)(2) through (4) of this section for eligible Head Start programs, if over the preceding four fiscal years, the average annual increase in Federal appropriations for the Head Start program was less than 1.3 percent.

(8) *Waiver conditions.* If the Secretary establishes the waiver process described in paragraph (e)(7) of this section, the responsible HHS official designated by the Secretary may grant a waiver if the program requests a waiver and meets the following conditions:

(i) The program can demonstrate that it would need to reduce enrolled Head Start slots in order to implement the requirements described in paragraphs (e)(2) through (4) of this section;

(ii) The program is meeting quality benchmarks including:

(A) Demonstrated improvements in staff wages during the preceding four years, to the greatest extent practicable;

(B) Has not been designated to compete under the Designation Renewal System after August 21, 2024; and

(C) The responsible HHS official determines the program does not have significant child health, safety, or quality concerns;

(iii) The program held the Head Start grant for the service area prior to August 21, 2024; and

(iv) The program continues to make improvements in wages for Head Start staff over time, to the greatest extent practicable.

(9) *Reassessing waiver eligibility.* For any program granted a waiver under

the process established in paragraph (e)(7) of this section, the responsible HHS official will reassess waiver eligibility for each successive grant period, in line with the process established and criteria described in paragraph (e)(8) of this section.

(10) *Ongoing waiver authority.* Waivers granted under the process established in paragraph (e)(7) of this section may only be granted if over the preceding four fiscal years, the average annual increase in Federal appropriations for the Head Start program was less than 1.3 percent.

(f) *Staff benefits.* (1) For each full-time staff member, defined as those working 30 or more hours per week with the Head Start program during the program year, a program must:

(i) Provide or facilitate access to high-quality affordable health care coverage;

(ii) Offer paid leave; and,

(iii) Offer access to short-term, free or minimal cost behavioral health services.

(2) For each part-time staff member, a program must facilitate access to high-quality, affordable health care coverage.

(3) For each staff member, a program must facilitate access to available resources and information on child care, including connections to child care resource and referral agencies or other child care consumer education organizations and, for staff who meet eligibility guidelines, facilitate access to the child care subsidy program.

(4) For each staff member who may be eligible, a program must facilitate access to the Public Service Loan Forgiveness (PSLF) program, or other applicable student loan debt relief programs, including timely certification of employment.

(5) To the extent practicable, a program must assess and determine if their benefits package for full-time staff is at least comparable to those provided to elementary school staff in the program's local or neighboring school district at least once every 5 years. Programs may offer additional benefits to staff, including more enhanced health benefits, retirement benefits, flexible savings accounts, or life,

disability, and long-term care insurance.

(6) An agency with 200 or fewer funded slots is exempt from the requirements described in this paragraph (f). Such an agency must make measurable improvements in benefits for Head Start staff over time and demonstrate progress towards meeting the requirements of paragraphs (f)(1) through (5) of this section.

(7) The exemption described in paragraph (f)(6) of this section also applies to an interim service provider that is temporarily providing Head Start services in place of a Head Start agency that would otherwise qualify for the small agency exemption.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67813, Aug. 21, 2024]

#### § 1302.91 Staff qualifications and competency requirements.

(a) *Purpose.* A program must ensure all staff, consultants, and contractors engaged in the delivery of program services have sufficient knowledge, training and experience, and competencies to fulfill the roles and responsibilities of their positions and to ensure high-quality service delivery in accordance with the program performance standards. A program must provide ongoing training and professional development to support staff in fulfilling their roles and responsibilities.

(b) *Head Start director.* A program must ensure a Head Start director hired after November 7, 2016, has, at a minimum, a baccalaureate degree and experience in supervision of staff, fiscal management, and administration.

(c) *Fiscal officer.* A program must assess staffing needs in consideration of the fiscal complexity of the organization and applicable financial management requirements and secure the regularly scheduled or ongoing services of a fiscal officer with sufficient education and experience to meet their needs. A program must ensure a fiscal officer hired after November 7, 2016, is a certified public accountant or has, at a minimum, a baccalaureate degree in accounting, business, fiscal management, or a related field.

(d) *Child and family services management staff qualification requirements—(1)*

*Family, health, and disabilities management.* A program must ensure staff responsible for management and oversight of family services, health services, and services to children with disabilities hired after November 7, 2016, have, at a minimum, a baccalaureate degree, preferably related to one or more of the disciplines they oversee.

(2) *Education management.* As prescribed in section 648A(a)(2)(B)(i) of the Act, a program must ensure staff and consultants that serve as education managers or coordinators, including those that serve as curriculum specialists, have a baccalaureate or advanced degree in early childhood education or a baccalaureate or advanced degree and equivalent coursework in early childhood education with early education teaching experience.

(e) *Child and family services staff—(1) Early Head Start center-based teacher qualification requirements.* As prescribed in section 645A(h) of the Act, a program must ensure center-based teachers that provide direct services to infants and toddlers in Early Head Start centers have a minimum of a Child Development Associate (CDA) credential or comparable credential, and have been trained or have equivalent coursework in early childhood development with a focus on infant and toddler development.

(2) *Head Start Preschool center-based teacher qualification requirements.* (i) The Secretary must ensure no less than fifty percent of all Head Start Preschool teachers, nationwide, have a baccalaureate degree in child development, early childhood education, or equivalent coursework.

(ii) As prescribed in section 648A(a)(3)(B) of the Act, a program must ensure all center-based teachers have at least an associate's or bachelor's degree in child development or early childhood education, equivalent coursework, or otherwise meet the requirements of section 648A(a)(3)(B) of the Act.

(3) *Head Start Preschool assistant teacher qualification requirements.* As prescribed in section 648A(a)(2)(B)(ii) of the Act, a program must ensure Head Start Preschool assistant teachers, at a minimum, have a CDA credential or a State-awarded certificate that meets

or exceeds the requirements for a CDA credential, are enrolled in a program that will lead to an associate or baccalaureate degree or, are enrolled in a CDA credential program to be completed within two years of the time of hire.

(4) *Family child care provider qualification requirements.* (i) A program must ensure family child care providers have previous early child care experience and, at a minimum, are enrolled in a Family Child Care CDA program or state equivalent, or an associate's or baccalaureate degree program in child development or early childhood education prior to beginning service provision, and for the credential acquire it within eighteen months of beginning to provide services.

(ii) By August 1, 2018, a child development specialist, as required for family child care in §1302.23(e), must have, at a minimum, a baccalaureate degree in child development, early childhood education, or a related field.

(5) *Center-based teachers, assistant teachers, and family child care provider competencies.* A program must ensure center-based teachers, assistant teachers, and family child care providers demonstrate competency to provide effective and nurturing teacher-child interactions, plan and implement learning experiences that ensure effective curriculum implementation and use of assessment and promote children's progress across the standards described in the *Head Start Early Learning Outcomes Framework: Ages Birth to Five* and applicable state early learning and development standards, including for children with disabilities and dual language learners, as appropriate.

(6) *Home visitors.* A program must ensure home visitors providing home-based education services:

(i) Have a minimum of a home-based CDA credential or comparable credential, or equivalent coursework as part of an associate's or bachelor's degree; and,

(ii) Demonstrate competency to plan and implement home-based learning experiences that ensure effective implementation of the home visiting curriculum and promote children's progress across the standards described

in the *Head Start Early Learning Outcomes Framework: Ages Birth to Five*, including for children with disabilities and dual language learners, as appropriate, and to build respectful, culturally responsive, and trusting relationships with families.

(7) *Family services staff qualification requirements.* A program must ensure staff who work directly with families on the family partnership process hired after November 7, 2016, have within eighteen months of hire, at a minimum, a credential or certification in social work, human services, family services, counseling or a related field.

(8) *Health professional qualification requirements.* (i) A program must ensure health procedures are performed only by a licensed or certified health professional.

(ii) A program must ensure all mental health consultants are licensed or under the supervision of a licensed mental health professional. A program must use mental health consultants with knowledge of and experience in serving young children and their families.

(iii) A program must use staff or consultants to support nutrition services who are registered dietitians or nutritionists with appropriate qualifications.

(f) *Coaches.* A program must ensure coaches providing the services described in §1302.92(c) have a minimum of a baccalaureate degree in early childhood education or a related field.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67814, Aug. 21, 2024]

#### **§ 1302.92 Training and professional development.**

(a) A program must provide to all new staff, consultants, and volunteers an orientation that focuses on, at a minimum, the goals and underlying philosophy of the program and on the ways they are implemented.

(b) A program must establish and implement a systematic approach to staff training and professional development designed to assist staff in acquiring or increasing the knowledge and skills needed to provide high-quality, comprehensive services within the scope of their job responsibilities, and attached to academic credit as appropriate, and

integrated with employee engagement practices in accordance with §1302.101(a)(2). At a minimum, the system must include:

(1) Staff completing a minimum of 15 clock hours of professional development per year. For teaching staff, such professional development must meet the requirements described in section 648A(a)(5) of the Act, and includes creating individual professional development plans as described in section 648A(f) of the Act;

(2) Annual training on mandatory reporting of suspected or known child abuse and neglect, that complies with applicable Federal, State, local, and Tribal laws;

(3) Annual training on positive strategies to understand and support children's social and emotional development, such as tools for managing children's behavior;

(4) Training for child and family services staff on best practices for implementing family engagement strategies in a systemic way, as described throughout this part;

(5) Training for child and family services staff, including staff that work on family services, health, and disabilities, that builds their knowledge, experience, and competencies to improve child and family outcomes; and,

(6) Research-based approaches to professional development for education staff, that are focused on effective curricula implementation, knowledge of the content in *Head Start Early Learning Outcomes Framework: Ages Birth to Five*, partnering with families, supporting children with disabilities and their families, providing effective and nurturing adult-child interactions, supporting dual language learners as appropriate, addressing challenging behaviors, preparing children and families for transitions (as described in subpart G of this part), and use of data to individualize learning experiences to improve outcomes for all children.

(c) A program must implement a research-based, coordinated coaching strategy for education staff that:

(1) Assesses all education staff to identify strengths, areas of needed support, and which staff would benefit most from intensive coaching;

(2) At a minimum, provides opportunities for intensive coaching to those education staff identified through the process in paragraph (c)(1) of this section, including opportunities to be observed and receive feedback and modeling of effective teacher practices directly related to program performance goals;

(3) At a minimum, provides opportunities for education staff not identified for intensive coaching through the process in paragraph (c)(1) of this section to receive other forms of research-based professional development aligned with program performance goals;

(4) Ensures intensive coaching opportunities for the staff identified through the process in paragraph (c)(1) of this section that:

(i) Align with the program's school readiness goals, curricula, and other approaches to professional development;

(ii) Utilize a coach with adequate training and experience in adult learning and in using assessment data to drive coaching strategies aligned with program performance goals;

(iii) Provide ongoing communication between the coach, program director, education director, and any other relevant staff; and,

(iv) Include clearly articulated goals informed by the program's goals, as described in §1302.102, and a process for achieving those goals; and,

(5) Establishes policies that ensure assessment results are not used to solely determine punitive actions for staff identified as needing support, without providing time and resources for staff to improve.

(d) If a program needs to develop or significantly adapt their approach to research-based professional development to better meet the training needs of education staff, such that it does not include the requirements in paragraph (c) of this section, the program must partner with external early childhood education professional development experts. A program must assess whether the adaptation adequately supports staff professional development, consistent with the process laid out in subpart J of this part.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67815, Aug. 21, 2024]

**§ 1302.93 Staff health and wellness.**

(a) A program must ensure each staff member has an initial health examination and a periodic re-examination as recommended by their health care provider in accordance with state, tribal, or local requirements, that include screeners or tests for communicable diseases, as appropriate. The program must ensure staff do not, because of communicable diseases, pose a significant risk to the health or safety of others in the program that cannot be eliminated or reduced by reasonable accommodation, in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

(b) A program must make mental health and wellness information available to staff regarding health issues that may affect their job performance, and must provide regularly scheduled opportunities to learn about mental health, wellness, and health education.

(c)(1) A program must provide, for each staff member, regular breaks of adequate length and frequency based on hours worked, including, but not limited to, time for meal breaks as appropriate.

(2) If applicable Federal, State, or local laws or regulations have more stringent requirements for breaks, a program should comply with the more stringent requirements.

(3) During break times for classroom staff described in paragraph (c)(1) of this section, one teaching staff member may be replaced by one staff member who does not meet the teaching qualifications required for the age, provided that this staff member has the necessary training and experience to ensure safety of children and minimal disruption to the quality of services. If providing a break during nap time, a program may comply with §1302.21(b)(1)(ii).

(d) A program should cultivate a program-wide culture of wellness that empowers staff as professionals and supports staff to effectively accomplish their job responsibilities in a high-quality manner, in line with the requirement at §1302.101(a)(2).

[81 FR 61412, Sept. 6, 2016, as amended at 86 FR 68101, Nov. 30, 2021; 88 FR 41334, June 26, 2023; 89 FR 67815, Aug. 21, 2024]

**§ 1302.94 Volunteers.**

(a) A program must ensure volunteers have been screened for appropriate communicable diseases in accordance with State, Tribal, or local laws. In the absence of State, Tribal, or local law, the Health and Mental Health Services Advisory Committee must be consulted regarding the need for such screenings.

(b) A program must ensure children are never left alone with volunteers.

[81 FR 61412, Sept. 6, 2016, as amended at 86 FR 68101, Nov. 30, 2021; 88 FR 41334, June 26, 2023; 89 FR 67815, Aug. 21, 2024]

**Subpart J—Program Management and Quality Improvement****§ 1302.100 Purpose.**

A program must provide management and a process of ongoing monitoring and continuous improvement for achieving program goals that ensures child safety and the delivery of effective, high-quality program services.

**§ 1302.101 Management system.**

(a) *Implementation.* A program must implement a management system that:

(1) Ensures a program, fiscal, and human resource management structure that provides effective management and oversight of all program areas and fiduciary responsibilities to enable delivery of high-quality services in all of the program services described in subparts C, D, E, F, G, and H of this part;

(2) Promotes clear and reasonable roles and responsibilities for all staff and provides regular and ongoing staff supervision with meaningful and effective employee engagement practices;

(3) Ensures budget and staffing patterns that promote continuity of care for all children enrolled, allow sufficient time for staff to participate in appropriate training and professional development, and allow for provision of the full range of services described in subparts C, D, E, F, G, and H of this part;

(4) Maintains an automated accounting and record keeping system adequate for effective oversight; and

(5) Ensures that all staff are trained to implement reporting procedures in § 1302.102(d)(1)(ii).

(b) *Coordinated approaches.* At the beginning of each program year, and on an ongoing basis throughout the year, a program must design and implement program-wide coordinated approaches that ensure:

(1) The training and professional development system, as described in § 1302.92, effectively supports the delivery and continuous improvement of high-quality services;

(2) The full and effective participation of children who are dual language learners and their families, by:

(i) Utilizing information from the program's community assessment about the languages spoken throughout the program service area to anticipate child and family needs;

(ii) Identifying community resources and establishing ongoing collaborative relationships and partnerships with community organizations consistent with the requirements in § 1302.53(a); and,

(iii) Systematically and comprehensively addressing child and family needs by facilitating meaningful access to program services, including, at a minimum, curriculum, instruction, staffing, supervision, and family partnerships with bilingual staff, oral language assistance and interpretation, or translation of essential program materials, as appropriate.

(3) The full and effective participation of all children with disabilities, including but not limited to children eligible for services under IDEA, by providing services with appropriate facilities, program materials, curriculum, instruction, staffing, supervision, and partnerships, at a minimum, consistent with section 504 of the Rehabilitation Act and the Americans with Disabilities Act; and,

(4) The management of program data to effectively support the availability, usability, integrity, and security of data. A program must establish procedures on data management, and have them approved by the governing body and policy council, in areas such as quality of data and effective use and sharing of data, while protecting the privacy of child records in accordance



## § 1302.102

with subpart C of part 1303 of this chapter and applicable federal, state, local, and tribal laws.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67815, Aug. 21, 2024]

### § 1302.102 Program goals, continuous improvement, and reporting.

(a) *Establishing program goals.* A program, in collaboration with the governing body and policy council, must establish goals and measurable objectives that include:

(1) Strategic long-term goals for ensuring programs are and remain responsive to community needs as identified in their community assessment as described in subpart A of this part;

(2) Goals for the provision of educational, health, nutritional, and family and community engagement program services as described in the program performance standards to further promote the school readiness of enrolled children;

(3) School readiness goals that are aligned with the *Head Start Early Learning Outcomes Framework: Ages Birth to Five*, state and tribal early learning standards, as appropriate, and requirements and expectations of schools Head Start children will attend, per the requirements of subpart B of part 1304 of this part; and,

(4) Effective health and safety practices to ensure children are safe at all times, per the requirements in §§ 1302.47, 1302.90(b) and (c), 1302.92(c)(1), and 1302.94 and part 1303, subpart F, of this chapter.

(b) *Monitoring program performance—*

(1) *Ongoing compliance oversight and correction.* In order to ensure effective ongoing oversight and correction, a program must establish and implement a system of ongoing oversight that ensures effective implementation of the program performance standards, including ensuring child safety, and other applicable federal regulations as described in this part, and must:

(i) Collect and use data to inform this process;

(ii) Correct quality and compliance issues immediately, or as quickly as possible;

(iii) Work with the governing body and the policy council to address issues during the ongoing oversight and cor-

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rection process and during federal oversight; and,

(iv) Implement procedures that prevent recurrence of previous quality and compliance issues, including previously identified deficiencies, safety incidents, and audit findings.

(2) *Ongoing assessment of program goals.* A program must effectively oversee progress towards program goals on an ongoing basis and annually must:

(i) Conduct a self-assessment that uses program data including aggregated child assessment data, and professional development and parent and family engagement data as appropriate, to evaluate the program's progress towards meeting goals established under paragraph (a) of this section, compliance with program performance standards throughout the program year, and the effectiveness of the professional development and family engagement systems in promoting school readiness;

(ii) Communicate and collaborate with the governing body and policy council, program staff, and parents of enrolled children when conducting the annual self-assessment; and,

(iii) Submit findings of the self-assessment, including information listed in paragraph (b)(2)(i) of this section to the responsible HHS official.

(c) *Using data for continuous improvement.* (1) A program must implement a process for using data to identify program strengths and needs, develop and implement plans that address program needs, and continually evaluate compliance with program performance standards and progress towards achieving program goals described in paragraph (a) of this section.

(2) This process must:

(i) Ensure data is aggregated, analyzed and compared in such a way to assist agencies in identifying risks and informing strategies for continuous improvement in all program service areas;

(ii) Ensure child-level assessment data is aggregated and analyzed at least three times a year, including for sub-groups, such as dual language learners and children with disabilities, as appropriate, except in programs operating fewer than 90 days, and used with other program data described in

paragraph (c)(2)(iv) of this section to direct continuous improvement related to curriculum choice and implementation, teaching practices, professional development, program design and other program decisions, including changing or targeting scope of services; and,

(iii) For programs operating fewer than 90 days, ensures child assessment data is aggregated and analyzed at least twice during the program operating period, including for subgroups, such as dual language learners and children with disabilities, as appropriate, and used with other program data described in paragraph (c)(2)(iv) of this section to direct continuous improvement related to curriculum choice and implementation, teaching practices, professional development, program design and other program decisions, including changing or targeting scope of services;

(iv) Use information from ongoing monitoring and the annual self-assessment, and program data on teaching practice, staffing and professional development, child-level assessments, family needs assessments, and comprehensive services, to identify program needs, and develop and implement plans for program improvement; and,

(v) Use program improvement plans as needed to either strengthen or adjust content and strategies for professional development, change program scope and services, refine school readiness and other program goals, and adapt strategies to better address the needs of sub-groups.

(d) *Reporting.* (1) A program must submit:

(i) Status reports, determined by ongoing oversight data, to the governing body and policy council, at least semi-annually;

(ii) Reports, as appropriate, to the responsible HHS official immediately but no later than 7 calendar days following the incident, related to:

(A) Any significant incident that affects the health or safety of a child that occurs in a setting where Head Start services are provided and that involves:

(I) A staff member, contractor, or volunteer that participates in either a Head Start program or a classroom at

least partially funded by Head Start, regardless of whether the child receives Head Start services; or

(2) A child that receives services fully or partially funded by Head Start or a child that participates in a classroom at least partially funded by Head Start; or

(B) Circumstances affecting the financial viability of the program; breaches of personally identifiable information, or program involvement in legal proceedings; any matter for which notification or a report to State, Tribal, or local authorities is required by applicable law; and

(iii) Reportable incidents under paragraph (d)(1)(ii) of this section include at a minimum:

(A) Any mandated reports regarding agency staff or volunteer compliance with Federal, State, Tribal, or local laws addressing child abuse and neglect or laws governing sex offenders;

(B) Incidents that require classrooms or centers to be closed;

(C) Legal proceedings by any party that are directly related to program operations;

(D) All conditions required to be reported under §1304.12 of this chapter, including disqualification from the Child and Adult Care Food Program (CACFP) and license revocation;

(E) Any suspected or known maltreatment or endangerment of a child by staff, consultants, contractors, and volunteers under §1302.90(c)(1)(ii);

(F) Serious harm or injury of a child resulting from lack of preventative maintenance;

(G) Serious harm, injury, or endangerment of a child resulting from lack of supervision; and,

(H) Any unauthorized release of a child.

(2) Annually, a program must publish and disseminate a report that complies with section 644(a)(2) of the Act and includes a summary of a program's most recent community assessment, as described in §1302.11(b), consistent with privacy protections in subpart C of part 1303 of this chapter.

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(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**

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

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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.

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## § 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

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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.

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### **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.

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(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-

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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:

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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.

(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



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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;

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(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

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- 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.
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### Subpart E—Head Start Fellows Program

- 1304.40 Purpose.
- 1304.41 Fellows Program.

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

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### 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

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not apply to any administrative action based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964. Except as otherwise provided for in this subpart, the appeals and processes in this subpart will be governed by the Departmental Appeals Board regulations at 45 CFR part 16.

### § 1304.2 Monitoring.

(a) *Areas of noncompliance.* If a responsible HHS official determines through monitoring, pursuant to section 641(A)(c)(1) and (2) of the Act, that a grant recipient fails to comply with any of the standards described in parts 1301, 1302, and 1303 of this chapter, the official will notify the grant recipient promptly in writing, identify the area of noncompliance, and specify when the grant recipient must correct the area of noncompliance.

(b) *Deficiencies.* If the Secretary determines that a grant recipient meets one of the criteria for a deficiency, as defined in section 637(2)(C) of the Act, the Secretary shall inform the grant recipient of the deficiency. The grant recipient must correct the deficiency pursuant to section 641A(e)(1)(B) of the Act, as the responsible HHS official determines.

(c) *Quality improvement plans.* If the responsible HHS official does not require the grant recipient to correct a deficiency immediately as prescribed under section 641A(e)(1)(B)(i) of the Act, the grant recipient must submit to the official, for approval, a quality improvement plan that adheres to section 641A(e)(2)(A) of the Act.

### § 1304.3 Suspension with notice.

(a) *Grounds to suspend financial assistance with notice.* If a grant recipient breaches or threatens to breach any requirement stated in §§1304.3 through 1304.5, the responsible HHS official may suspend the grant recipient's financial assistance, in whole or in part, after it has given the grant recipient notice and an opportunity to show cause why assistance should not be suspended.

(b) *Notice requirements.* (1) The responsible HHS official must notify the grant recipient in writing that ACF intends to suspend financial assistance, in whole or in part. The notice must:

(i) Specify grounds for the suspension;

(ii) Include the date suspension will become effective;

(iii) Inform the grant recipient that it has the opportunity to submit to the responsible HHS official, at least seven days before suspension becomes effective, any written material it would like the official to consider, and to inform the grant recipient that it may request, in writing, no later than seven days after the suspension notice was mailed, to have an informal meeting with the responsible HHS official;

(iv) Invite the grant recipient to voluntarily correct the deficiency; and,

(v) Include a copy of this subpart.

(2) The responsible HHS official must promptly transmit the suspension notice to the grant recipient. The notice becomes effective when the grant recipient receives the notice, when the grant recipient refuses delivery, or when the suspension notice is returned to sender unclaimed.

(3) The responsible HHS official must send a copy of the suspension notice to any delegate agency whose actions or whose failures to act substantially caused or contributed to the proposed suspension. The responsible HHS official will inform the delegate agency that it is entitled to submit written material to oppose the suspension and to participate in the informal meeting, if one is held. In addition, the responsible HHS official may give notice to the grant recipient's other delegate agencies.

(4) After the grant recipient receives the suspension notice, it has three days to send a copy of the notice to delegate agencies that would be financially affected by a suspension.

(c) *Opportunity to show cause.* The grant recipient may submit to the responsible HHS official any written material to show why financial assistance should not be suspended. The grant recipient may also request, in writing, to have an informal meeting with the responsible HHS official. If the grant recipient requests an informal meeting, the responsible HHS official must schedule the meeting within seven days after the grant recipient receives the suspension notice.

(d) *Extensions.* If the responsible HHS official extends the time or the date by which a grant recipient has to make requests or to submit material, it must notify the grant recipient in writing.

(e) *Decision.* (1) The responsible HHS official will consider any written material presented before or during the informal meeting, as well as any proof the grant recipient has adequately corrected what led to suspension, and will render a decision within five days after the informal meeting. If no informal meeting is held, the responsible HHS official will render a decision within five days after it receives written material from all concerned parties.

(2) If the responsible HHS official finds the grant recipient failed to show cause why ACF should not suspend financial assistance, the official may suspend financial assistance, in whole or in part, and under terms and conditions as he or she deems appropriate.

(3) A suspension must not exceed 30 days, unless the conditions under section 646(a)(5)(B) are applicable or the grant recipient requests the suspension continue for an additional period of time and the responsible HHS official agrees.

(4) The responsible HHS official may appoint an agency to serve as an interim grant recipient to operate the program until the grant recipient's suspension is lifted, or as otherwise provided under section 646(a)(5)(B) of the Act.

(f) *Obligations incurred during suspension.* New obligations the grant recipient incurs while under suspension are not allowed unless the responsible HHS official expressly authorizes them in the suspension notice or in an amendment to the suspension notice. Necessary and otherwise allowable costs which the grant recipient could not reasonably avoid during the suspension period will be allowed if they result from obligations the grant recipient properly incurred before suspension and not in anticipation of suspension or termination. The responsible HHS official may allow third-party in-kind contributions applicable to the suspension period to satisfy cost sharing or matching requirements.

(g) *Modify or rescind suspension.* The responsible HHS official may modify or

rescind suspension at any time, if the grant recipient can satisfactorily show that it has adequately corrected what led to suspension and that it will not repeat such actions or inactions. Nothing in this section precludes the HHS official from imposing suspension again for additional 30 day periods if the cause of the suspension has not been corrected.

#### **§ 1304.4 Emergency suspension without advance notice.**

(a) *Grounds to suspend financial assistance without advance notice.* The responsible HHS official may suspend financial assistance, in whole or in part, without prior notice and an opportunity to show cause if there is an emergency situation, such as a serious risk for substantial injury to property or loss of project funds, a federal, state, or local criminal statute violation, or harm to staff or participants' health and safety.

(b) *Emergency suspension notification requirements.* (1) The emergency suspension notification must:

(i) Specify the grounds for the suspension;

(ii) Include terms and conditions of any full or partial suspension;

(iii) Inform that grant recipient it cannot make or incur any new expenditures or obligations under suspended portion of the program; and,

(iv) Advise that within five days after the emergency suspension becomes effective, the grant recipient may request, in writing, an informal meeting with the responsible HHS official to show why the basis for the suspension was not valid and should be rescinded and that the grant recipient has corrected any deficiencies.

(2) The responsible HHS official must promptly transmit the emergency suspension notification to the grant recipient that shows the date of receipt. The emergency suspension becomes effective upon delivery of the notification or upon the date the grant recipient refuses delivery, or upon return of the notification unclaimed.

(3) Within two workdays after the grant recipient receives the emergency suspension notification, the grant recipient must send a copy of the notice

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to delegate agencies affected by the suspension.

(4) The responsible HHS official must inform affected delegate agencies that they have the right to participate in the informal meeting.

(c) *Opportunity to show cause.* If the grant recipient requests an informal meeting, the responsible HHS official must schedule a meeting within five workdays after it receives the grant recipient's request. The suspension will continue until the grant recipient has been afforded such opportunity and until the responsible HHS official renders a decision. Notwithstanding provisions in this section, the responsible HHS official may proceed to deny refunding or to initiate termination proceedings at any time even though the grant recipient's financial assistance has been suspended in whole or in part.

(d) *Decision.* (1) The responsible HHS official will consider any written material presented before or during the informal meeting, as well as any proof the grant recipient has adequately corrected what led to suspension, and render a decision within five work days after the informal meeting.

(2) If the responsible HHS official finds the grant recipient failed to show cause why suspension should be rescinded, the responsible HHS official may continue the suspension, in whole or in part, and under the terms and conditions specified in the emergency suspension notification.

(3) A suspension must not exceed 30 days, unless the conditions under section 646(a)(5)(B) are applicable or the grant recipient requests the suspension to continue for an additional period of time and the responsible HHS official agrees.

(4) The responsible HHS official may appoint an agency to serve as an interim grant recipient to operate the program until either the grant recipient's emergency suspension is lifted or a new grant recipient is selected.

(e) *Obligations incurred during suspension.* Any new obligations the grant recipient incurs during the suspension period will not be allowed unless the responsible HHS official expressly authorizes them in the suspension notice or in an amendment to the suspension notice. Necessary and otherwise allow-

able costs which the grant recipient could not reasonably avoid during the suspension period will be allowed if those costs result from obligations properly incurred before suspension and not in anticipation of suspension, denial of refunding or termination. The responsible HHS official may allow third-party in-kind contributions applicable to the suspension period to satisfy cost sharing or matching requirements.

(f) *Modify or rescind suspension.* The responsible HHS official may modify or rescind suspension at any time, if the grant recipient can satisfactorily show that it has adequately corrected what led to the suspension and that it will not repeat such actions or inactions. Nothing in this section precludes the HHS official from imposing suspension again for additional 30 day periods if the cause of the suspension has not been corrected.

### § 1304.5 Termination and denial of refunding.

(a) *Grounds to terminate financial assistance or deny a grant recipient's application for refunding.* (1) A responsible HHS official may terminate financial assistance in whole or in part to a grant recipient or deny a grant recipient's application for refunding.

(2) The responsible HHS official may terminate financial assistance in whole or in part, or deny refunding to a grant recipient for any one or for all of the following reasons:

(i) The grant recipient is no longer financially viable;

(ii) The grant recipient has lost the requisite legal status or permits;

(iii) The grant recipient has failed to timely correct one or more deficiencies as defined in the Act;

(iv) The grant recipient has failed to comply with eligibility requirements;

(v) The grant recipient has failed to comply with the Head Start grants administration or fiscal requirements set forth in 45 CFR part 1303;

(vi) The grant recipient has failed to comply with requirements in the Act;

(vii) The grant recipient is debarred from receiving federal grants or contracts; or

(viii) The grant recipient has failed to abide by any other terms and conditions of its award of financial assistance, or any other applicable laws, regulations, or other applicable federal or state requirements or policies.

(b) *Notice requirements.* (1) The responsible HHS official will notify the grant recipient and such notice will:

(i) Include the legal basis for termination or adverse action as described in paragraph (a) of this section;

(ii) Include factual findings on which the action is based or reference specific findings in another document that form the basis for termination or denial of refunding;

(iii) Cite to any statutory provisions, regulations, or policy issuances on which ACF relies for its determination;

(iv) Inform the grant recipient that it may appeal the denial or termination within 30 days to the Departmental Appeals Board, that the appeal will be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, that a copy of the appeal must be sent to the responsible HHS official, and that it has the right to request and receive a hearing, as mandated under section 646 of the Act;

(v) Inform the grant recipient that only its board of directors, or an official acting on the board's behalf can appeal the decision;

(vi) Name the delegate agency, if the actions of that delegate are the basis, in whole or in part, for the proposed action; and,

(vii) Inform the grant recipient that the appeal must meet requirements in paragraph (c) of this section; and, that if the responsible HHS official fails to meet requirements in this paragraph, the pending action may be dismissed without prejudice or remanded to re-issue it with corrections.

(2) The responsible HHS official must provide the grant recipient as much notice as possible, but must notify the grant recipient no later than 30 days after ACF receives the annual application for refunding, that it has the opportunity for a full and fair hearing on whether refunding should be denied.

(c) *Grant recipient's appeal.* (1) The grant recipient must adhere to procedures and requirements for appeals in 45 CFR part 16, file the appeal with the

Departmental Appeals Board, and serve a copy of the appeal on the responsible HHS official who issued the termination or denial of refunding notice. The grant recipients must also serve a copy of its appeal on any affected delegate.

(2) Unless funding has been suspended, funding will continue while a grant recipient appeals a termination decision, unless the responsible HHS official renders an adverse decision, or unless the current budget period is expired. If the responsible HHS official has not rendered a decision by the end of the current budget period, the official will award the grant recipient interim funding until a decision is made or the project period ends.

(d) *Funding during suspension.* If a grant recipient's funding is suspended, the grant recipient will not receive funding during the termination proceedings, or at any other time, unless the action is rescinded or the grant recipient's appeal is successful.

(e) *Interim and replacement grant recipients.* The responsible HHS official may appoint an interim or replacement grant recipient as soon as a termination action is affirmed by the Departmental Appeals Board.

(f) *Opportunity to show cause.* (1) If the Departmental Appeals Board sets a hearing for a proposed termination or denial of refunding action, the grant recipient has five workdays to send a copy of the notice it receives from the Departmental Appeals Board, to all delegate agencies that would be financially affected by termination and to each delegate agency identified in the notice.

(2) The grant recipient must send to the Departmental Appeals Board and to the responsible HHS official a list of the delegate agencies it notified and the dates when it notified them.

(3) If the responsible HHS official initiated proceedings because of a delegate agency's activities, the official must inform the delegate agency that it may participate in the hearing. If the delegate agency chooses to participate in the hearing, it must notify the responsible HHS official in writing within 30 days of the grant recipient's appeal. If any other delegate agency, person, agency or organization wishes

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to participate in the hearing, it may request permission to do so from the Departmental Appeals Board.

(4) If the grant recipient fails to appear at the hearing, without good cause, the grant recipient will be deemed to have waived its right to a hearing and consented to have the Departmental Appeals Board make a decision based on the parties' written information and argument.

(5) A grant recipient may waive the hearing and submit written information and argument for the record, within a reasonable period of time to be fixed by the Departmental Appeals Board.

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

(g) *Decision.* The Departmental Appeals Board's decision and any measure the responsible HHS official takes after the decision is fully binding upon the grant recipient and its delegate agencies, whether or not they actually participated in the hearing.

#### § 1304.6 Appeal for prospective delegate agencies.

(a) *Appeal.* If a grant recipient denies, or fails to act on, a prospective delegate agency's funding application, the prospective delegate may appeal the grant recipient's decision or inaction.

(b) *Process for prospective delegates.* To appeal, a prospective delegate must:

(1) Submits the appeal, including a copy of the funding application, to the responsible HHS official within 30 days after it receives the grant recipient's decision; or within 30 days after the grant recipient has had 120 days to review but has not notified the applicant of a decision; and,

(2) Provide the grant recipient with a copy of the appeal at the same time the appeal is filed with the responsible HHS official.

(c) *Process for grant recipients.* When an appeal is filed with the responsible HHS official, the grant recipient must respond to the appeal and submit a copy of its response to the responsible HHS official and to the prospective delegate agency within 30 work days.

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(d) *Decision.* (1) The responsible HHS official will sustain the grant recipient's decision, if the official determines the grant recipient did not act arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements.

(2) The responsible HHS official will render a written decision to each party within a reasonable timeframe. The official's decision is final and not subject to further appeal.

(3) If the responsible HHS official finds the grant recipient did act arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements, the grant recipient will be directed to reevaluate their applications.

#### § 1304.7 Legal fees.

(a) An agency is not authorized to charge to its grant legal fees or other costs incurred to appeal terminations, reductions of funding, or denials of applications of refunding decisions.

(b) If a program prevails in a termination, reduction, or denial of refunding decision, the responsible HHS official may reimburse the agency for reasonable and customary legal fees, incurred during the appeal, if:

(1) The Departmental Appeals Board overturns the responsible HHS official's decision;

(2) The agency can prove it incurred fees during the appeal; and,

(3) The agency can prove the fees incurred are reasonable and customary.

#### Subpart B—Designation Renewal

##### § 1304.10 Purpose and scope.

The purpose of this subpart is to set forth policies and procedures for the designation renewal of Head Start programs. It is intended that these programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start grant recipients be fully protected. The Designation Renewal System is established in this part to determine whether Head Start agencies deliver high-quality services to meet the educational, health, nutritional, and social needs of the children and families they

serve; meet the program and financial requirements and standards described in section 641A(a)(1) of the Head Start Act; and qualify to be designated for funding for five years without competing for such funding as required under section 641(c) or 645A(b)(12) and (d) of the Head Start Act. A competition to select a new Head Start agency to replace a Head Start agency that has been terminated voluntarily or involuntarily is not part of the Designation Renewal System established in this part, and is subject instead to the requirements of § 1304.20.

[89 FR 67817, Aug. 21, 2024]

**§ 1304.11 Basis for determining whether a Head Start agency will be subject to an open competition.**

A Head Start agency will be required to compete for its next five years of funding whenever the responsible HHS official determines that one or more of the following seven conditions existed during the relevant time period under § 1304.15:

(a) An agency has two or more deficiencies across reviews conducted under section 641A(c)(1)(A), (C), or (D) of the Act during the relevant time period under § 1304.15.

(b) An agency has not, based on a review conducted under section 641A(c)(1)(A), (C), or (D) of the Act during the relevant time period under § 1304.15:

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

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

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

velopment, and social and emotional development;

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

(2) Taken steps to achieve the school readiness goals described under paragraph (b)(1) of this section demonstrated by:

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

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

(c) An agency has been determined during the relevant time period covered by the responsible HHS official's review under § 1304.15:

(1) To have an average score across all classrooms observed that is below the following competitive thresholds on any of the three CLASS: Pre-K domains from the most recent CLASS: Pre-K observation:

(i) For the Emotional Support domain, the competitive threshold is 5;

(ii) For the Classroom Organization domain, the competitive threshold is 5;

(iii) For the Instructional Support domain, the competitive threshold is 2.3 through July 31, 2025, and 2.5 on and after August 1, 2025.

(2) If an agency is determined to have an average score across all classrooms



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observed below the quality threshold on any of the three CLASS: Pre-K domains, the Office of Head Start will support the program to strengthen its coordinated approach to training and professional development as required in §1302.92(b) and (c), to help promote improvement in teaching practices and teacher-child interactions. The quality threshold for each domain is as follows:

(i) For the Emotional Support domain, the quality threshold is 6;

(ii) For the Classroom Organization domain, the quality threshold is 6;

(iii) For the Instructional Support domain, the quality threshold is 3.

(d) An agency has had a revocation of its license to operate a Head Start center or program by a State or local licensing agency during the relevant time period under §1304.15, and the revocation has not been overturned or withdrawn before a competition for funding for the next five-year period is announced. A pending challenge to the license revocation or restoration of the license after correction of the violation will not affect application of this requirement after the competition for funding for the next five-year period has been announced.

(e) An agency has been suspended from the Head Start program by ACF during the relevant time period covered by the responsible HHS official's review under §1304.15 and the suspension has not been overturned or withdrawn. If the agency did not have an opportunity to show cause as to why the suspension should not have been imposed or why the suspension should have been lifted if it had already been imposed under this part, the agency will not be required to compete based on this condition. If an agency has received an opportunity to show cause and the suspension remains in place, the condition will be implemented.

(f) An agency has been debarred from receiving federal or state funds from any federal or state department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP) any time during the relevant time period covered by the responsible HHS official's review under §1304.15 but has not yet been terminated or denied refunding by ACF. (A debarred agency will only be eligible to

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compete for Head Start funding if it receives a waiver described in 2 CFR 180.135.)

(g) An agency meets one of two fiscal criteria, if the agency:

(1) Is at risk of failing to continue functioning as a going concern within the current project period. The final determination is made by the responsible HHS official based on a review of the findings and opinions of an audit conducted in accordance with section 647 of the Act; an audit, review or investigation by a state agency; a review by the National External Audit Review (NEAR) Center; or an audit, investigation or inspection by the Department of Health and Human Services Office of Inspector General; or

(2) Has a total of two or more audit findings of material weakness or questioned costs associated with its Head Start funds in audit reports submitted to the Federal Audit Clearinghouse (in accordance with section 647 of the Act) for a financial period within the current project period.

[85 FR 53207, Aug. 28, 2020, as amended at 89 FR 67817, Aug. 21, 2024]

### **§ 1304.12 Grant recipient reporting requirements concerning certain conditions.**

A Head Start agency must report in writing to the responsible HHS official within 10 working days of occurrence of any of the following events:

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

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

(c) The agency has been debarred from receiving federal or state funds from any federal or state department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP).

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

[85 FR 53208, Aug. 28, 2020]

**§ 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.**

In order to compete for the opportunity to be awarded a five-year grant, an agency must submit an application to the responsible HHS official that demonstrates that it is the most qualified entity to deliver a high-quality and comprehensive Head Start program. The application must address the criteria for selection listed at section 641(d)(2) of the Head Start Act. Any agency that has had its Head Start grant terminated for cause in the preceding five years is excluded from competing in such competition for the next five years. A Head Start agency that has had a denial of refunding, as defined in 45 CFR part 1305, in the preceding five years is also excluded from competing.

[89 FR 67817, Aug. 21, 2024]

**§ 1304.14 Tribal government consultation under the Designation Renewal System for when an Indian Head Start grant is being considered for competition.**

(a) In the case of an Indian Head Start agency determined not to be delivering a high-quality and comprehensive Head Start program, the responsible HHS official will engage in government-to-government consultation with the appropriate Tribal government or governments for the purpose of establishing a plan to improve the quality of the Head Start program operated by the Indian Head Start agency.

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

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

(3) If the Indian Head Start agency is still not delivering a high-quality and comprehensive Head Start program, the responsible HHS official will con-

duct an open competition to select a grant recipient to provide services for the community currently being served by the Indian Head Start agency.

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

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

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

**§ 1304.15 Designation request, review and notification process.**

(a) A grant recipient must apply to be considered for Designation Renewal. A Head Start agency wishing to be considered to have its designation as a Head Start agency renewed for another five-year period without competition must request that status from ACF at least 12 months before the end of their five-year grant period or by such time as required by the Secretary.

(b) ACF will review the relevant data to determine if one or more of the conditions under § 1304.11 were met by the Head Start agency during the current project period.

(c) ACF will give notice to grant recipients on Designation Renewal System status, except as provided in § 1304.14, at least 12 months before the expiration date of a Head Start agency's current grant, stating:

(1) The Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions under § 1304.11 were met by the agency's program during the relevant time period described in paragraph (b) of this section, identifying the conditions ACF found, and summarizing the basis for the finding; or

(2) That such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF finds that none of the conditions under

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§1304.11 have been met during the relevant time period described in paragraph (b) of this section. If prior to the award of that grant, ACF determines that the grant recipient has met one of the conditions under §1304.11 during the relevant time period described in paragraph (b) of this section, this determination will change and the grant recipient will receive notice under paragraph (c)(1) of this section that it will be required to compete for funding for an additional five-year period.

[85 FR 53208, Aug. 28, 2020, as amended at 89 FR 67818, Aug. 21, 2024]

### **§ 1304.16 Use of CLASS: Pre-K instrument in the Designation Renewal System.**

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

### **§ 1304.17 Flexibility for Head Start Designation Renewal Determinations in Certain Emergencies.**

(a) In reviewing the relevant data as described in §1304.15(b), if ACF determines that one or more data elements described in the conditions in section §1304.11 is not available due to an emergency described in paragraph (b) of this section, ACF may make a designation renewal determination based on the data elements that are available.

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(b) The emergencies are:

(1) A major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(2) An emergency declared by the President under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191).

(3) A public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d).

[85 FR 78792, Dec. 7, 2020]

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

#### **§ 1304.20 Selection among applicants.**

(a) In selecting an agency to be designated to provide Head Start Preschool, Early Head Start, Migrant or Seasonal Head Start or Tribal Head Start Preschool or Early Head Start services, the responsible HHS official will consider the applicable criteria at section 641(d) of the Head Start Act and any other criteria outlined in the funding opportunity announcement.

(b) In competitions to replace or potentially replace a grant recipient the responsible HHS official will also consider the extent to which the applicant supports continuity for participating children, the community and the continued employment of effective, well qualified personnel.

(c) In competitions to replace or potentially replace a current grant recipient, the responsible HHS official will give priority to applicants that have demonstrated capacity in providing effective, comprehensive, and well-coordinated early childhood education and development services and programs to children and their families.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67818, Aug. 21, 2024]

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

### §1304.30 Procedure for identification of alternative agency.

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

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

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

(b)(1) The responsible HHS official, when notifying a tribal grant recipient of the intent to terminate financial assistance or deny its application for refunding, or its designation for competition must notify the grant recipient that it may identify an agency and request that the agency serve as the alternative agency in the event that the grant is terminated or refunding denied, or the grant is not renewed without competition.

(2) The tribe must identify the alternate agency to the responsible HHS official in writing.

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

(4) If the tribe does not identify an eligible, suitable alternative agency, a

grant recipient will be designated under these regulations.

(c) If the tribe appeals a termination of financial assistance or a denial of refunding, it will, consistent with the terms of §1304.5, continue to be funded pending resolution of the appeal. However, the responsible HHS official and the grant recipient will proceed with the steps outlined in this regulation during the appeal process.

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

### § 1304.31 Requirements of alternative agency.

The agency identified by the Indian tribe must establish that it meets all requirements established by the Head Start Act and these requirements for designation as a Head Start grant recipient and that it is capable of conducting a Head Start program. The responsible HHS official, in deciding whether to designate the proposed agency, will analyze the capacity and experience of the agency according to the criteria found in section 641(d) of the Head Start Act and §1304.20.

### § 1304.32 Alternative agency—prohibition.

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

(1) Served on the administrative or program staff of the Indian tribal grant recipient described under section 646(e)(1)(A) of the Act; and

(2) Was responsible for a deficiency that:

(i) Relates to the performance standards or financial management standards described in section 641A(a)(1) of the Act; and,

(ii) Was the basis for the termination of assistance under section 646(e)(1)(A) of the Act or denial of refunding described in §1304.4.

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

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### Subpart E—Head Start Fellows Program

#### § 1304.40 Purpose.

As provided in section 648A(d) of the Act, the Head Start Fellows Program is designed to enhance the ability of Head Start Fellows to make significant contributions to Head Start and to other child development and family services programs.

#### § 1304.41 Fellows Program.

(a) *Selection.* An applicant must be working on the date of application in a local Head Start program or otherwise working in the field of child development and family services. The qualifications of the applicants for Head Start Fellowship positions will be competitively reviewed.

(b) *Placement.* Head Start Fellows may be placed in the Head Start national and regional offices; local Head Start agencies and programs; institutions of higher education; public or private entities and organizations concerned with services to children and families; and other appropriate settings.

(c) *Restrictions.* A Head Start Fellow who is not an employee of a local Head Start agency or program may only be placed in the national or regional offices within the Department of Health and Human Services that administer Head Start or local Head Start agencies. Head Start Fellows shall not be placed in any agency whose primary purpose, or one of whose major purposes is to influence federal, state or local legislation.

(d) *Duration.* Head Start Fellowships will be for terms of one year, and may be renewed for a term of one additional year.

(e) *Status.* For the purposes of compensation for injuries under chapter 81 of title 5, United States Code, Head Start Fellows shall be considered to be employees, or otherwise in the service or employment, of the federal government. Head Start Fellows assigned to the national or regional offices within the Department of Health and Human Services shall be considered employees in the Executive Branch of the federal government for the purposes of chapter 11 of title 18, United States Code, and

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for the purposes of any administrative standards of conduct applicable to the employees of the agency to which they are assigned.

### PART 1305—DEFINITIONS

Sec.

1305.1 Purpose.

1305.2 Terms.

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

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

#### § 1305.1 Purpose.

The purpose of this part is to define terms for the purposes of this subchapter.

#### § 1305.2 Terms.

For the purposes of this subchapter, the following definitions apply:

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

*Act* means the Head Start Act, Sec. 635 *et seq.*, Public Law 97–35, 95 Stat. 499–511 (codified as amended at 42 U.S.C. Section 9801, *et seq.*).

*Agency* means the body that receives the Head Start grant.

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

*Allowable alternate vehicle* means a vehicle designed for carrying eleven or more people, including the driver, that meets all the Federal Motor Vehicle Safety Standards applicable to school buses, except 49 CFR 571.108 and 571.131.

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

*Case plan* is defined as presented in 42 U.S.C. 675(1) which, in summary, is a written document that must include a number of specified items including, but is not limited to, a plan for safe and proper care of the child in foster

care placement, health records, and a plan for ensuring the educational stability of the child in foster care.

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

*Child records* means records that:

- (1) Are directly related to the child;
- (2) Are maintained by the program, or by a party acting for the program; and
- (3) Include information recorded in any way, such as print, electronic, or digital means, including media, video, image, or audio format.

*Child restraint system* means any device designed to restrain, seat, or position children that meets the current requirements of Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, 49 CFR 571.213, for children in the weight category established under the regulation, or any device designed to restrain, seat, or position children, other than a Type I seat belt as defined at 49 CFR 571.209, for children not in the weight category currently established by 49 CFR 571.213.

*Child with a disability* is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

*CLASS: Pre-K* means The Classroom Assessment Scoring System (CLASS). The CLASS is an observational instrument that assesses classroom quality in preschool through third grade classrooms. This tool meets the requirements described in 641(c)(1)(D) and 641A(c)(2)(F) of the Head Start Act (42 U.S.C. 9836(c)(1)(D) and 9836a(c)(2)(F)). The CLASS assesses three domains of classroom experience: Emotional Support, Classroom Organization, and Instructional Support.

(1) Emotional Support measures children's social and emotional functioning in the classroom, and includes four dimensions: Positive Climate, Negative Climate, Teacher Sensitivity and Regard for Student Perspectives. Positive Climate addresses the emotional connection, respect, and enjoyment demonstrated between teachers and chil-

dren and among children. Negative Climate addresses the level of expressed negativity such as anger, hostility, or aggression exhibited by teachers and/or children in the classroom. Teacher Sensitivity addresses teachers' awareness of and responsiveness to children's academic and emotional concerns. Regard for Student Perspectives addresses the degree to which teachers' interactions with children and classroom activities place an emphasis on children's interests, motivations, and points of view.

(2) Classroom Organization measures a broad array of classroom processes related to the organization and management of children's behavior, time, and attention in the classroom. It includes three dimensions: Behavior Management, Productivity, and Instructional Learning Formats. Behavior Management addresses how effectively teachers monitor, prevent, and redirect behavior. Productivity addresses how well the classroom runs with respect to routines and the degree to which teachers organize activities and directions so that maximum time can be spent on learning activities. Instructional Learning Formats addresses how teachers facilitate activities and provide interesting materials so that children are engaged and learning opportunities are maximized.

(3) Instructional Support measures the ways in which teachers implement curriculum to effectively support cognitive and language development. It includes three dimensions: Concept Development, Quality of Feedback, and Language Modeling. Concept Development addresses how teachers use instructional discussions and activities to promote children's higher order thinking skills in contrast to a focus on rote instruction. Quality of Feedback addresses how teachers extend children's learning through their responses to children's ideas, comments, and work. Language Modeling addresses the extent to which teachers facilitate and encourage children's language.

(4) Assessments with the CLASS involve observation-based measurement of each dimension on a seven point

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scale. A score ranging from 1 (minimally characteristic) to 7 (highly characteristic) is given for each dimension and represents the extent to which that dimension is characteristic of that classroom. Relevant dimension scores are used to calculate each domain score.

*Commercial Driver's License (CDL)* means a license issued by a state or other jurisdiction, in accordance with the standards contained in 49 CFR part 383, to an individual which authorizes the individual to operate a class of commercial motor vehicles.

*Construction* means new buildings, and excludes renovations, alterations, additions, or work of any kind to existing buildings.

*Continuity of care* means Head Start services provided to children in a manner that promotes primary caregiving and minimizes the number of transitions in teachers and teacher assistants that children experience over the course of the day, week, program year, and to the extent possible, during the course of their participation from birth to age three in Early Head Start and in Head Start Preschool.

*Deficiency* is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

*Delegate agency* is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

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

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

*Disclosure* means to permit access to or the release, transfer, or other communication of PII contained in child

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records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

*Double session variation* means a center-based option that employs a single teacher to work with one group of children in the morning and a different group of children in the afternoon.

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

*Dual language learner* means a child who is acquiring two or more languages at the same time, or a child who is learning a second language while continuing to develop their first language. The term “dual language learner” may encompass or overlap substantially with other terms frequently used, such as bilingual, English language learner (ELL), Limited English Proficient (LEP), English learner, and children who speak a Language Other Than English (LOTE).

*Early Head Start* means a program that serves pregnant women and children from birth to age three, pursuant to section 645A(e) of the Head Start Act. This includes Tribal and migrant or seasonal programs.

*Enrolled (or any variation of)* means a child has been accepted and attended at least one class for center-based or family child care option or at least one home visit for the home-based option.

*Enrollment year* means the period of time, not to exceed twelve months, during which a Head Start program provides center or home-based services to a group of children and their families.

*Facility* means a structure, such as a building or modular unit, appropriate for use in carrying out a Head Start program and used primarily to provide Head Start services, including services to children and their families, or for administrative purposes or other activities necessary to carry out a Head Start program.

*Family* means all persons living in the same household who are supported by the child's parent(s)' or guardian(s)' income; and are related to the child's parent(s) or guardian(s) by blood, marriage, or adoption; or are the child's authorized caregiver or legally responsible party.

*Federal interest* is a property right which secures the right of the Federal awarding agency to recover the current fair market value of its percentage of participation in the cost of the facility subject to part 1303, subpart E, of this chapter funding in the event the facility is no longer used for Head Start purposes by the grant recipient or upon the disposition of the property. When a grant recipient uses Head Start funds to purchase, construct or make major renovations to a facility, or make mortgage payments, it creates a Federal interest. The Federal interest includes any portion of the cost of purchase, construction, or major renovation contributed by or for the entity, or a related donor organization, to satisfy a matching requirement.

*Federal Motor Vehicle Safety Standards (FMVSS)* means the National Highway and Traffic Safety Administration's standards for motor vehicles and motor vehicle equipment (49 CFR part 571) established under section 30111 of Title 49, United States Code.

*Financial viability* means that an organization is able to meet its financial obligations, balance funding and expenses and maintain sufficient funding to achieve organizational goals and objectives.

*Fixed route* means the established routes to be traveled on a regular basis by vehicles that transport children to and from Head Start program activities, and which include specifically designated stops where children board or exit the vehicle.

*Foster care* means 24-hour substitute care for children placed away from their parents or guardians and for whom the state agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child-care institutions, and pre-adoptive homes. A child is in foster care in ac-

cordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is federal matching of any payments that are made.

*Full-working-day* means not less than 10 hours of Head Start services per day.

*Funded enrollment* means the number of participants which the Head Start grant recipient is to serve, as indicated on the grant award.

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

*Grant recipient* means the local public or private non-profit agency or for-profit agency which has been designated as a Head Start agency under 42 U.S.C. 9836 and which has been granted financial assistance by the responsible HHS official to operate a Head Start program.

*Head Start* means any program authorized under the Head Start Act.

*Head Start agency* means a local public or private non-profit or for-profit entity designated by ACF to operate a Head Start Preschool program, an Early Head Start program, or Migrant or Seasonal Head Start program pursuant to the Head Start Act.

*Head Start Early Learning Outcomes Framework: Ages Birth to Five* means the *Head Start Early Learning Outcomes Framework: Ages Birth to Five*, which describes the skills, behaviors, and knowledge that programs must foster in all children. It includes five central domains: Approaches to Learning; Social and Emotional Development; Language and Literacy; Cognition; and Perceptual, Motor, and Physical Development. These central domains are broken into five domains for infants and toddlers and seven domains for preschoolers. Infant and Toddler domains are Approaches to Learning; Social and Emotional Development; Language and Communication; Cognition; and Perceptual, Motor, and Physical Development. Preschool domains are Approaches to Learning; Social and Emotional Development; Language and



Communication; Literacy; Mathematics Development; Scientific Reasoning; and Perceptual, Motor, and Physical Development. Domains are divided into sub-domains with goals that describe broad skills, behaviors, and concepts that are important for school success. Developmental progressions describe the skills, behaviors and concepts that children may demonstrate as they progress. As described in the Head Start Act, the Framework is central to program operations that promote high-quality early learning environments (42 U.S.C. 9832(21)(G)(iv)(II)(aa), 42 U.S.C. 9835(o), 42 U.S.C. 9836(d)(2)(C), 42 U.S.C. 9836a(g)(2)(A), 42 U.S.C. 9837(f)(3)(E), 42 U.S.C. 9837a(a)(3), 42 U.S.C. 9837a(a)(14), 42 U.S.C. 9837b(a)(2)(B)(iii), 42 U.S.C. 9837b(a)(4)(A)(i), and 42 U.S.C. 9837b(a)(4)(B)(iii)).

*Head Start Preschool* means a program that serves children aged three to compulsory school age, pursuant to section 641(b) and (d) of the Head Start Act. This includes Tribal and migrant or seasonal programs.

*Homeless children* means the same as *homeless children and youths* in Section 725(2) of the McKinney-Vento Homeless Assistance Act at 42 U.S.C. 11434a(2).

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

*Hours of planned class operations* means hours when children are scheduled to attend. Professional development, training, orientation, teacher planning, data analysis, parent-teacher conferences, home visits, classroom sanitation, and transportation do not count toward the hours of planned class operations.

*Housing costs* means the total annual applicable expenses on housing which may include rent or mortgage payments, homeowner's or renter's insurance, utilities, interest, and taxes on the home. Utilities include electricity, gas, water, sewer, and trash.

*Income* means gross income and only includes wages, business income, unemployment compensation, pension or annuity payments, gifts that exceed the threshold for taxable income, and mili-

tary income (excluding special pay for a member subject to hostile fire or imminent danger under 37 U.S.C. 310 or any basic allowance for housing under 37 U.S.C. 403 including housing acquired under the alternative authority under 10 U.S.C. 169 or any related provision of law). Gross income only includes sources of income provided in this definition; it does not include refundable tax credits nor any forms of public assistance.

*Indian Head Start agency* means a program operated by an Indian tribe (as defined by the Act) or designated by an Indian tribe to operate on its behalf.

*Indian tribe* is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

*Individualized Education Program* is defined in the same manner as presented in the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*).

*Individualized Family Service Plan* is defined in the same manner as presented in the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*).

*Legal status* means the existence of an applicant or grant recipient as a public agency or organization under the law of the state in which it is located, or existence as a private nonprofit or for-profit agency or organization as a legal entity recognized under the law of the state in which it is located. Existence as a private non-profit agency or organization may be established under applicable state or federal law.

*Local agency responsible for implementing IDEA* means the early intervention service provider under Part C of IDEA and the local educational agency under Part B of IDEA.

*Major renovation* means any individual or collective group of renovation activities related to the same facility that has a cost equal to or exceeding \$350,000 in Head Start funds. Renovation activities that are intended to occur concurrently or consecutively, or altogether address a specific part or feature of a facility, are considered a collective group of renovation activities. Unless included in a purchase application, minor renovations and repairs are excluded from major renovations. To maintain alignment with the

National Defense Authorization Act (NDAA), the major renovation threshold will increase to account for any increases made to the simplified acquisition threshold beyond \$350,000. Tribes that jointly apply to use both Tribal Child Care and Development Fund (CCDF) and Head Start funds toward major renovations may comply with the CCDF threshold for major renovation if it is higher.

*Migrant family* means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who changed their residence by moving from one geographic location to another, either intrastate or interstate, within the preceding two years for the purpose of engaging in agricultural work.

*Migrant or Seasonal Head Start Program* means:

(1) With respect to services for migrant farm workers, a Head Start program that serves families who are engaged in agricultural labor and who have changed their residence from one geographic location to another in the preceding 2-year period; and,

(2) With respect to services for seasonal farmworkers, a Head Start program that serves families who are engaged primarily in seasonal agricultural labor and who have not changed their residence to another geographic location in the preceding 2-year period.

*Minor renovation* means improvements to facilities, which do not meet the definition of major renovation.

*Modular unit* means a portable prefabricated structure made at another location and moved to a site for use by a Head Start grant recipient to carry out a Head Start program, regardless of the manner or extent to which the modular unit is attached to underlying real property.

*National Driver Register* means the National Highway Traffic Safety Administration's automated system for assisting state driver license officials in obtaining information regarding the driving records of individuals who have been denied licenses for cause; had their licenses denied for cause, had their licenses canceled, revoked, or suspended for cause, or have been convicted of certain serious driving offenses.

*Parent* means a Head Start child's mother or father, other family member who is a primary caregiver, foster parent or authorized caregiver, guardian or the person with whom the child has been placed for purposes of adoption pending a final adoption decree.

*Participant* means a pregnant woman or child who is enrolled in and receives services from a Head Start Preschool, an Early Head Start, a Migrant or Seasonal Head Start, or an American Indian and Alaska Native Head Start program.

*Personally identifiable information (PII)* means any information that could identify a specific individual, including but not limited to a child's name, name of a child's family member, street address of the child, social security number, or other information that is linked or linkable to the child.

*Poverty line* is set by the poverty guidelines updated periodically in the FEDERAL REGISTER by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2). Poverty guidelines for the contiguous-states-and-DC apply to Puerto Rico and U.S. Territories.

*Program* means any funded Head Start Preschool, Early Head Start, Migrant or Seasonal Head Start, Tribal, or other program authorized under the Act and carried out by an agency, or delegate agency, to provide ongoing comprehensive child development services.

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

*Purchase* means to buy an existing facility, including outright purchase, down payment or through payments made in satisfaction of a mortgage or other loan agreement, whether principal, interest or an allocated portion principal and/or interest. The use of grant funds to make a payment under a finance lease agreement, as defined in the cost principles, is a purchase subject to these provisions. Purchase also refers to an approved use of Head Start funds to continue paying the cost

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of purchasing facilities or refinance an existing loan or mortgage beginning in 1987.

*Real property* means land, including land improvements, buildings, structures and all appurtenances thereto, excluding movable machinery and equipment.

*Recruitment area* means that geographic locality within which a Head Start program seeks to enroll Head Start children and families. The recruitment area can be the same as the service area or it can be a smaller area or areas within the service area.

*Relevant time period* means:

(1) The 12 months preceding the month in which the application is submitted; or

(2) During the calendar year preceding the calendar year in which the application is submitted, whichever more accurately reflects the needs of the family at the time of application.

*Repair* means maintenance that is necessary to keep a Head Start facility in working condition. Repairs do not add significant value to the property or extend its useful life.

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

*School readiness goals* mean the expectations of children's status and progress across domains of language and literacy development, cognition and general knowledge, approaches to learning, physical well-being and motor development, and social and emotional development that will improve their readiness for kindergarten.

*School bus* means a motor vehicle designed for carrying 11 or more persons (including the driver) and which complies with the Federal Motor Vehicle Safety Standards applicable to school buses.

*Service area* means the geographic area identified in an approved grant application within which a grant recipient may provide Head Start services.

*Staff* means paid adults who have responsibilities related to children and their families who are enrolled in programs.

*State* is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

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*Suspension* means the temporary removal of a child from the learning setting due to a child's behavior including requiring the child to cease attendance for a specified period of time, reducing the number of days or amount of time that a child may attend, removing the child from the regular group setting for an extended period of time, or requiring the parent or the parent's designee to pick up a child for reasons other than illness or injury.

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

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

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

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

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

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

*Transportation services* means the planned transporting of children to and from sites where an agency provides services funded under the Head Start Act. Transportation services can involve the pick-up and discharge of children at regularly scheduled times and pre-arranged sites, including trips between children's homes and program settings. The term includes services

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provided directly by the Head Start grant recipient or delegate agency and services which such agencies arrange to be provided by another organization or an individual. Incidental trips, such as transporting a sick child home before the end of the day, or such as might be required to transport small groups of children to and from nec-

essary services, are not included under the term.

*Verify* or any variance of the word means to check or determine the correctness or truth by investigation or by reference.

[81 FR 61412, Sept. 6, 2016, as amended at 85 FR 53209, Aug. 28, 2020; 89 FR 67818, Aug. 21, 2024]

## SUBCHAPTER C—THE ADMINISTRATION FOR COMMUNITY LIVING

### PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

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AUTHORITY: 42 U.S.C. 3001 *et seq.*

SOURCE: 89 FR 11656, Feb. 14, 2024, unless otherwise noted.

**Subpart A—Introduction****§ 1321.1 Basis and purpose of this part.**

(a) The purpose of this part is to implement Title III of the Older Americans Act, as amended (the Act) (42 U.S.C. 3001 *et seq.*). This part prescribes requirements State agencies shall meet to receive grants to develop comprehensive and coordinated systems for the delivery of the following services: supportive, nutrition, evidence-based disease prevention and health promotion, caregiver, legal, and, where appropriate, other services. These services are provided via State agencies, area agencies on aging, and local service providers under the Act. These requirements include:

- (1) Responsibilities of State agencies;
- (2) Responsibilities of area agencies on aging;
- (3) Service requirements; and
- (4) Emergency and disaster requirements.

(b) The requirements of this part are based on Title III of the Act. Title III provides for formula grants to State agencies on aging, under approved State plans described in §1321.27, to develop or enhance comprehensive and coordinated community-based systems resulting in a continuum of person-centered services to older persons and family caregivers, with special emphasis on older individuals with the greatest economic need and greatest social need, with particular attention to low-income minority older individuals. A responsive community-based system of services shall include collaboration in planning, resource allocation, and delivery of a comprehensive array of services and opportunities for all older adults in the community. Title III funds are intended to be used as a catalyst to bring together public and private resources in the community to assure the provision of a full range of efficient, well-coordinated, and accessible person-centered services for older persons and family caregivers.

(c) Each State designates one State agency to:

- (1) Develop and submit a State plan on aging, as set forth in §1321.33;
- (2) Administer Title III and VII funds under the State plan and the Act;

(3) Be responsible for planning, policy development, administration, coordination, priority setting, monitoring, and evaluation of all State activities related to the Act;

(4) Serve as an advocate for older individuals and family caregivers;

(5) Designate planning and service areas;

(6) Designate an area agency on aging to serve each planning and service area, except in single planning and service area States; and

(7) Provide funds as set forth in the Act to either:

(i) Area agencies on aging under approved area plans on aging, in States with multiple planning and service areas, for their use in fulfilling requirements under the Act and distribution to service providers to provide direct services,

(ii) Service providers, in single planning and service area States, to provide direct services, or

(iii) The Ombudsman program, as set forth in part 1324 of this chapter.

(d) Terms used, but not otherwise defined, in this part will have the meanings ascribed to them in the Act.

**§ 1321.3 Definitions.**

*Access to services or access services*, as used in this part and sections 306 and 307 of the Act (42 U.S.C. 3026 and 3027), means services which may facilitate connection to or receipt of other direct services, including transportation, outreach, information and assistance, options counseling, and case management services.

*Acquiring*, as used in the Act, means obtaining ownership of an existing facility.

*Act*, means the Older Americans Act of 1965, as amended.

*Altering or renovating*, as used in this part, means making modifications to or in connection with an existing facility which are necessary for its effective use. Such modifications may include alterations, improvements, replacements, rearrangements, installations, renovations, repairs, expansions, upgrades, or additions, which are not in excess of double the square footage of the original facility and all physical improvements.

*Area agency on aging*, as used in this part, means a single agency designated by the State agency to perform the functions specified in the Act for a planning and service area.

*Area plan administration*, as used in this part, means funds used to carry out activities as set forth in section 306 of the Act (42 U.S.C. 3026) and other activities to fulfill the mission of the area agency as set forth in §1321.55, including development of private pay programs or other contracts and commercial relationships.

*Best available data*, as used in section 305(a)(2)(C) of the Act (42 U.S.C. 3025(a)(2)(C)), with respect to the development of the intrastate funding formula, means the most current reliable data or population estimates available from the U.S. Decennial Census, American Community Survey, or other high-quality, representative data available to the State agency.

*Constructing*, as used in this part, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

*Conflicts of interest*, as used in this part, means:

(1) One or more conflicts between the private interests and the official responsibilities of a person in a position of trust;

(2) One or more conflicts between competing duties of an individual, or between the competing duties, services, or programs of an organization, and/or portion of an organization; and

(3) Other conflicts of interest identified in guidance issued by the Assistant Secretary for Aging and/or by State agency policies.

*Cost sharing*, as used in section 315(a) of the Act (42 U.S.C. 3030c–2(a)), means requesting payment using a sliding scale, based only on an individual's income and the cost of delivering the service, in a manner consistent with the exceptions, prohibitions, and other conditions laid out in the Act.

*Department*, means the U.S. Department of Health and Human Services.

*Direct services*, as used in this part, means any activity performed to provide services directly to an older person or family caregiver, groups of older persons or family caregivers, or to the general public by the staff or volunteers of a service provider, an area agency on aging, or a State agency whether provided in-person or virtually. Direct services exclude State or area plan administration and program development and coordination activities.

*Domestically produced foods*, as used in this part, means Agricultural foods, beverages and other food ingredients which are a product of the United States, its Territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands (hereinafter referred to as “the United States”), except as may otherwise be required by law, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to minor ingredients. Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise:

(1) Produced in the United States; and

(2) Commercially available in the United States at fair and reasonable prices from domestic sources.

*Family caregiver*, as used in this part, means an adult family member, or another individual, who is an informal provider of in-home and community care to an older individual; an adult family member, or another individual, who is an informal provider of in-home and community care to an individual of any age with Alzheimer's disease or a related disorder with neurological and organic brain dysfunction; or an older relative caregiver. For purposes of this part, family caregiver does not include individuals whose primary relationship with the older adult is based on a financial or professional agreement.

*Fiscal year*, as used in this part, means the Federal fiscal year.

*Governor*, as used in this part, means the chief elected officer of each State and the mayor of the District of Columbia.

*Greatest economic need*, as used in this part, means the need resulting from an income level at or below the Federal poverty level and as further defined by State and area plans based on local and individual factors, including geography and expenses.

*Greatest social need*, as used in this part, means the need caused by non-economic factors, which include:

- (1) Physical and mental disabilities;
- (2) Language barriers;
- (3) Cultural, social, or geographical isolation, including due to:
  - (i) Racial or ethnic status;
  - (ii) Native American identity;
  - (iii) Religious affiliation;
  - (iv) Sexual orientation, gender identity, or sex characteristics;
  - (v) HIV status;
  - (vi) Chronic conditions;
  - (vii) Housing instability, food insecurity, lack of access to reliable and clean water supply, lack of transportation, or utility assistance needs;
  - (viii) Interpersonal safety concerns;
  - (ix) Rural location; or
  - (x) Any other status that:
    - (A) Restricts the ability of an individual to perform normal or routine daily tasks; or
    - (B) Threatens the capacity of the individual to live independently; or
- (4) Other needs as further defined by State and area plans based on local and individual factors.

*Immediate family*, as used in this part pertaining to conflicts of interest, means a member of the household or a relative with whom there is a close personal or significant financial relationship.

*In-home supportive services*, as used in this part, references those supportive services provided in the home as set forth in the Act, to include:

- (1) Homemaker, personal care, home care, home health, and other aides;
- (2) Visiting and telephone or virtual reassurance;
- (3) Chore maintenance;
- (4) Respite care for families, including adult day care; and
- (5) Minor modification of homes that is necessary to facilitate the independence and health of older individuals and that is not readily available under another program.

*Local sources*, as used in the Act and *local public sources*, as used in section 309(b)(1) of the Act (42 U.S.C. 3029(b)(1)), means tax-levy money or any other non-Federal resource, such as State or local public funding, funds from fundraising activities, reserve funds, bequests, or cash or third-party in-kind contributions from non-client community members or organizations.

*Major disaster declaration*, as used in this part and section 310 of the Act (42 U.S.C. 3030), means a Presidentially declared disaster under the Robert T. Stafford Relief and Emergency Assistance Act (42 U.S.C. 5121-5207).

*Means test*, as used in the Act, means the use of the income, assets, or other resources of an older person, family caregiver, or the households thereof to deny or limit that person's eligibility to receive services under this part.

*Multipurpose senior center*, as used in the Act, means a community facility for the organization and provision of a broad spectrum of services, which shall include provision of health (including mental and behavioral health), social, nutritional, and educational services and the provision of facilities for recreational activities for older individuals, as practicable, including as provided via virtual facilities; as used in § 1321.85, facilitation of services in such a facility.

*Native American*, as used in the Act, means a person who is a member of any Indian Tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) who:

- (1) Is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or
- (2) Is located on, or in proximity to, a Federal or State reservation or rancheria; or is a person who is a Native Hawaiian, who is any individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

*Nutrition Services Incentive Program*, as used in the Act, means grant funding to State agencies, eligible Tribal organizations, and Native Hawaiian



grantees to support congregate and home-delivered nutrition programs by providing an incentive to serve more meals.

*Official duties*, as used in section 712 of the Act (42 U.S.C. 3058g) with respect to representatives of the Long-Term Care Ombudsman Program, means work pursuant to the Long-Term Care Ombudsman Program authorized by the Act, 45 CFR part 1324, subpart A, and/or State law and carried out under the auspices and general direction of, or by direct delegation from, the State Long-Term Care Ombudsman.

*Older relative caregiver*, as used in section 372(a)(4) of the Act (42 U.S.C. 3030s(a)(4)), means a caregiver who is age 55 or older and lives with, is the informal provider of in-home and community care to, and is the primary caregiver for, a child or an individual with a disability;

(1) In the case of a caregiver for a child is:

(i) The grandparent, step-grandparent, or other relative (other than the parent) by blood, marriage, or adoption, of the child;

(ii) Is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregivers of the child; and

(iii) Has a legal relationship to the child, such as legal custody, adoption, or guardianship, or is raising the child informally; and

(2) In the case of a caregiver for an individual with a disability, is the parent, grandparent, step-grandparent, or other relative by blood, marriage, or adoption of the individual with a disability.

*Periodic*, as used in this part to refer to the frequency of client assessment and data collection, means, at a minimum, once each fiscal year, and as used in section 307(a)(4) of the Act (42 U.S.C. 3027(a)(4)) to refer to the frequency of evaluations of, and public hearings on, activities and projects carried out under State and area plans, means, at a minimum once each State or area plan cycle.

*Planning and service area*, as used in section 305 of the Act (42 U.S.C. 3025), means an area designated by a State agency under section 305(a)(1)(E) (42

U.S.C. 3025(a)(1)(E)), for the purposes of local planning and coordination and awarding of funds under Title III of the Act, including a single planning and service area.

*Private pay programs*, as used in section 306(g) of the Act (42 U.S.C. 3026(g)), are a type of contract or commercial relationship and are programs, separate and apart from programs funded under the Act, for which the individual consumer agrees to pay to receive services under the programs.

*Program development and coordination activities*, as used in this part, means those actions to plan, develop, provide training, and coordinate at a systemic level those programs and activities which primarily benefit and target older adult and family caregiver populations who have the greatest social needs and greatest economic needs, including development of contracts, commercial relationships, or private pay programs.

*Program income*, means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as otherwise provided under Federal grantmaking authorities. Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. *See also* 35 U.S.C. 200–212 (which applies to inventions made under Federal awards).

*Reservation*, as used in section 305(b)(2) of the Act (42 U.S.C. 3025(b)(2)) with respect to the designation of planning and service areas, means any Federally or State recognized American Indian Tribe's reservation, pueblo, or colony, including former reservations

in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), and Indian allotments.

*Service provider*, means an entity that is awarded funds, including via a grant, subgrant, contract, or subcontract, to provide direct services under the State or area plan.

*Severe disability*, as used to carry out the provisions of the Act, means a severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that:

(1) Is likely to continue indefinitely; and

(2) Results in substantial functional limitation in three or more of the following major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, cognitive functioning, and emotional adjustment.

*Single planning and service area State*, means a State which was approved on or before October 1, 1980, as such and continues to operate as a single planning and service area.

*State*, as used in this part, means one or more of the 50 States, the District of Columbia, and the Territories of Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, unless otherwise specified.

*State agency*, as used in this part, means the designated State unit on aging for each of the 50 States, the District of Columbia, and the Territories of Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, unless otherwise specified.

*State plan administration*, as used in this part, means funds used to carry out activities as set forth in section 307 of the Act (42 U.S.C. 3027) and other activities to fulfill the mission of the State agency as set forth in § 1321.5.

*Supplemental foods*, as used in this part, means foods that assist with maintaining health, but do not alone constitute a meal. Supplemental foods include liquid nutrition supplements or enhancements to a meal, such as addi-

tional beverage or food items, and may be specified by State agency policies and procedures. Supplemental foods may be provided with a meal, or separately, to older adults who participate in either congregate or home-delivered meal services.

*Voluntary contributions*, as used in section 315(b) of the Act (42 U.S.C. 3030c-2(b)), means donations of money or other personal resources given freely, without pressure or coercion, by individuals receiving services under the Act.

## Subpart B—State Agency Responsibilities

### § 1321.5 Mission of the State agency.

(a) The Act intends that the State agency shall be a leader on all aging issues on behalf of all older individuals and family caregivers in the State. The State agency shall proactively carry out a wide range of functions, including advocacy, planning, coordination, inter-agency collaboration, information sharing, training, monitoring, and evaluation. The State agency shall lead the development or enhancement of comprehensive and coordinated community-based systems in, or serving, communities throughout the State. These systems shall be designed to assist older individuals and family caregivers in leading independent, meaningful, and dignified lives in their own homes and communities.

(b) In States with multiple planning and service areas, the State agency shall designate area agencies on aging to assist in carrying out the mission described above for the State agency at the sub-State level. The State agency shall designate as area agencies on aging only those non-State agencies having the capacity and making the commitment to fully carry out the mission described for area agencies in § 1321.55.

(c) The State agency shall assure that the resources made available to area agencies on aging under the Act are used to carry out the mission described for area agencies in § 1321.55.

**§ 1321.7 Organization and staffing of the State agency.**

(a) The State shall designate a sole State agency to develop and administer the State plan required under this part and part 1324 of this chapter and to serve as the effective and visible advocate for older adults within the State.

(b) The State agency shall have an adequate number of qualified staff to fulfill the functions prescribed in this part.

(c) The State agency shall establish, contract, or otherwise arrange with another agency or organization as permitted by section 307(a)(9)(A) of the Act (42 U.S.C. 3027(a)(9)(A)), an Office of the State Long-Term Care Ombudsman. Such Office must be headed by a full-time Ombudsman and consist of other staff as appropriate to fulfill responsibilities as set forth in part 1324, subpart A, of this chapter.

(d) If a State statute establishes an Ombudsman program which will perform the functions of section 307(a)(9)(A) of the Act (42 U.S.C. 3027(a)(9)(A)), the State agency continues to be responsible for assuring that the requirements of this program under the Act and as set forth in part 1324, subpart A, of this chapter, are met, notwithstanding any additional requirements or funding related to State law. In such cases where State law may conflict with the Act, the Governor shall confirm understanding of the State agency's continuing obligations under the Act through an assurance in the State plan.

(e) The State agency shall have as set forth in section 307(a)(13) (42 U.S.C. 3027(a)(13)) and section 731 of the Act (42 U.S.C. 3058j) and 45 CFR part 1324, subpart C, a Legal Assistance Developer, and such other personnel as appropriate to provide State leadership in developing legal assistance programs for older individuals throughout the State.

**§ 1321.9 State agency policies and procedures.**

(a) The State agency on aging shall develop policies and procedures governing all aspects of programs operated as set forth in this part and part 1324 of this chapter. These policies and procedures shall be developed in consulta-

tion with area agencies on aging, program participants, and other appropriate parties in the State. Except for the Ombudsman program as set forth in 45 CFR part 1324, subpart A and where otherwise indicated, the State agency policies may allow for such policies and procedures to be developed at the area agency on aging level. The State agency is responsible for implementing, monitoring, and enforcing policies and procedures, where:

(1) The policies and procedures developed by the State agency shall address how the State agency will monitor the programmatic and fiscal performance of all programs and activities initiated under this part for compliance with all requirements, and for quality and effectiveness. As set forth in sections 305(a)(2)(A) and 306(a) of the Act (42 U.S.C. 3025(a)(2)(A) and 3026(a)), and consistent with section 305(a)(1)(C) (42 U.S.C. 3025(a)(1)(C)), the State agency shall be responsible for monitoring the program and financial activities of subrecipients and subgrantees to ensure that grant awards are used for the authorized purposes and in compliance with Federal statutes, regulations, and the terms and conditions of the grant award, including:

(i) Evaluating each subrecipient's risk of noncompliance to ensure proper accountability and compliance with program requirements and achievement of performance goals;

(ii) Reviewing subrecipient policies and procedures; and

(iii) Ensuring that all subrecipients and subgrantees complete audits as required in 2 CFR part 200, subpart F and 45 CFR part 75, subpart F.

(2) The State agency may not delegate to another agency the authority to award or administer funds under this part.

(3) The State Long-Term Care Ombudsman shall be responsible for monitoring the files, records, and other information maintained by the Ombudsman program, as set forth in part 1324, subpart A. Such monitoring may be conducted by a designee of the Ombudsman. Neither the Ombudsman nor a designee shall disclose identifying information of any complainant or long-

term care facility resident to individuals outside of the Ombudsman program, except as otherwise specifically provided in §1324.11(e)(3) of this chapter.

(b) The State agency shall ensure policies and procedures are aligned with periodic data collection and reporting requirements, including ensuring service and unit definitions are consistent with definitions set forth in these regulations, policy guidance, and other information developed by the Assistant Secretary for Aging.

(c) Policies and procedures developed and implemented by the State agency shall address:

(1) Direct service provision for services as set forth in §§1321.85, 1321.87, 1321.89, 1321.9, and 1321.93, including:

(i) Requirements for client eligibility, periodic assessment, and person-centered planning, where appropriate;

(ii) A listing and definitions of services that may be provided in the State with funds received under the Act;

(iii) Limitations on the frequency, amount, or type of service provided;

(iv) Definition of those within the State in greatest social need and greatest economic need;

(v) Specific actions the State agency will use or require the area agency to use to target services to meet the needs of those in greatest social need and greatest economic need;

(vi) How area agencies on aging may request to provide direct services under provisions of §1321.65(b)(7), where appropriate;

(vii) Actions to be taken by area agencies and direct service providers to implement requirements as set forth in paragraphs (c)(2)(x) through (xi) of this section; and

(viii) The grievance process for older individuals and family caregivers who are dissatisfied with or denied services under the Act.

(2) Fiscal requirements including:

(i) *Intrastate funding formula (IFF)*. Distribution of Title III funds via the intrastate funding formula or funds distribution plan and of Nutrition Services Incentive Program funds as set forth in §1321.49 or §1321.51 shall be maintained by the State agency where funds must be promptly disbursed.

(ii) *Non-Federal share (match)*. As set forth in sections 301(d)(1) (42 U.S.C. 3021(d)(1)), 304(c) (42 U.S.C. 3024(c)), 304(d)(1)(A) (42 U.S.C. 3024(d)(1)(A)), 304(d)(1)(D) (42 U.S.C. 3024(d)(1)(D)), 304(d)(2) (42 U.S.C. 3024(d)(2)), 309(b) (42 U.S.C. 3029(b)), 316(b)(5) (42 U.S.C. 3030c-3(b)(5)), and 373(h)(2) (42 U.S.C. 3030s-2(h)(2)) of the Act, the State agency shall maintain statewide match requirements, where:

(A) The match may be made by State and/or local public sources except as set forth in paragraph (c)(2)(ii)(C) of this section.

(B) Non-Federal shared costs or match funds and all contributions, including cash and third-party in-kind contributions must be accepted if the funds meet the specified criteria for match. A State agency may not require only cash as a match requirement.

(C) State or local public resources used to fund a program which uses a means test shall not be used to meet the match.

(D) Proceeds from fundraising activities may be used to meet the match as long as no Federal funds were used in the fundraising activity. Fundraising activities are unallowable costs without prior written approval, as set forth in 2 CFR 200.442.

(E) A State agency may use State and local funds expended for a non-Title III funded program to meet the match requirement for Title III expenditures when the non-Title III funded program:

(1) Is directly administered by the State or area agency;

(2) Does not conflict with requirements of the Act;

(3) Is used to match only the Title III program and not any other Federal program; and

(4) Includes procedures to track and account expenditures used as match for a Title III program or service.

(F) Match requirements for area agencies are determined by the State agency.

(G) Match requirements for direct service providers are determined by the State and/or area agency.

(H) A State or area agency may determine a match in excess of required amounts.

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(I) Other Federal funds may not be used to meet required match unless there is specific statutory authority.

(J) The required statewide match for grants awarded under Title III of the Act is as follows:

(1) *Administration.* Federal funding for State, Territory, and area plan administration may not account for more than 75 percent of the total funding expended and requires a 25 percent match. As set forth in 2 CFR 200.306(c), prior written approval is hereby granted for unrecovered indirect costs to be used as match.

(2) *Supportive services and nutrition services.* (i) Federal funding for services funded under supportive services as set forth in § 1321.85, less the portion of funds used for the Ombudsman program, may not account for more than 85 percent of the total funding expended, and requires a 15 percent match;

(ii) Federal funding for services funded under nutrition services as set forth in § 1321.87, less funds provided under the Nutrition Services Incentive Program, may not account for more than 85 percent of the total funding expended, and requires a 15 percent match;

(iii) One-third ( $\frac{1}{3}$ ) of the 15 percent match must be met from State resources, and the remaining two-thirds ( $\frac{2}{3}$ ) match may be met by State or local resources;

(iv) The match for supportive services and nutrition services may be pooled.

(3) *Family caregiver support services.* The Federal funding for services funded under family caregiver support services as set forth in § 1321.91 may not account for more than 75 percent of the total dollars expended and requires a 25 percent match.

(4) *Services not requiring match.* Services for which no match is required include:

(i) Evidence-based disease prevention and health promotion services as set forth in § 1321.89;

(ii) The Nutrition Services Incentive Program; and

(iii) The portion of funds from supportive services used for the Ombudsman program.

(iii) *Transfers.* Transfer of service allotments elected by the State agency

which must meet the following requirements:

(A) A State agency must provide notification of the transfer amounts elected pursuant to guidance as set forth by the Assistant Secretary for Aging;

(B) A State agency shall not delegate to an area agency on aging or any other entity the authority to make a transfer;

(C) A State agency may only elect to transfer between the Title III, part B Supportive Services and Senior Centers, part C–1 Congregate Nutrition Services, and part C–2 Home-Delivered Nutrition Services grant awards;

(1) The State agency may elect to transfer up to 40 percent between the Title III, part C–1 and part C–2 grant awards, per section 308(b)(4)(A) of the Act (42 U.S.C. 3028(b)(4)(A));

(i) The State agency must request and receive approval of a waiver from the Assistant Secretary for Aging to exceed the 40 percent transfer limit.

(ii) The State agency may request a waiver up to an additional 10 percent between the Title III part C–1 and part C–2 grant awards, per section 308(b)(4)(B) of the Act (42 U.S.C. 3028(b)(4)(B)).

(2) The State agency may elect to transfer up to 30 percent between Title III, parts B and C, per section 308(b)(5)(A) of the Act (42 U.S.C. 3028(b)(5)(A)); and

(i) The State agency must request and receive approval of a waiver from the Assistant Secretary for Aging to exceed the 30 percent limitation between parts B and C, per section 316(b)(4) of the Act (42 U.S.C. 3030c–3(b)(4));

(D) Percentages subject to transfer are calculated based on the total original Title III award allotted;

(E) Transfer limitations apply to the State agency in aggregate;

(F) State agencies, in consultation with area agencies, shall:

(1) Ensure the process used by the State agencies in transferring funds under this section (including requirements relating to the authority and timing of such transfers) is simplified and clarified to reduce administrative barriers; and

(2) With respect to transfers between parts C-1 and C-2, direct limited resources to the greatest nutrition service needs at the community level; and

(G) State agencies do not have to apply equal limitations on transfers to each area agency on aging.

(iv) *State, Territory, and area plan administration.* State and Territory plan administration maximum allocation requirements must align with the approved intrastate funding formula or funds allocation plan as set forth in §1321.49 or §1321.51, as applicable. In addition:

(A) *State and Territory plan administration maximum allocation amounts.* State and Territory plan administration maximum allocation amounts may be taken from any part of the overall allotment to a State agency under Title III of the Act. Maximum allocation amounts are determined by the State agency's status as set forth in this paragraph (c)(2)(iv)(A) and paragraph (c)(2)(iv)(B) of this section:

(1) A State agency which serves a State with multiple planning and service areas may use the greater of \$750,000, per section 308(b)(2)(A) of the Act (42 U.S.C. 3028(b)(2)(A)), or five percent of the total Title III Award.

(2) A State agency which serves a single planning and service area State and is not listed in (3) below may elect to be subject to paragraph (c)(2)(iv)(A)(1) of this section or to the area plan administration limit of ten percent of the overall allotment to a State agency under Title III, as specified in section 308(a)(3) (42 U.S.C. 3028(a)(3)) of the Act.

(3) Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands shall have available the greater of \$100,000 or five percent of the total final Title III Award, as set forth in section 308(b)(2)(B) (42 U.S.C. 3028(b)(2)(B)) of the Act.

(B) *Area plan administration maximum allocation amounts.* Area plan administration maximum allocation amounts may be allocated to any part of the overall allotment to the State agency under Title III, with the exception of part D, for use by area agencies on aging for activities as set forth in sections 304(d)(1)(A) and 308 of the Act (42 U.S.C. 3024(d)(1)(A) and 3028) and in

§1321.57(b). Single planning and service area States may elect amounts for either State plan administration or area plan administration, as set forth in the Act and paragraph (c)(2)(iv)(A)(2) of this section.

(1) The State agency will determine the maximum amount of funding available for area plan administration from the total Title III allocation after deducting the amount of funding allocated for State plan administration and calculating a maximum of ten percent of this amount;

(2) The State agency may make no more than the amount calculated in paragraph (c)(2)(iv)(B)(1) of this section available to area agencies on aging for distribution in accordance with the intrastate funding formula as set forth in §1321.49; and

(3) Any amounts available to the State agency for State plan administration which the State agency determines are not needed for that purpose may be used to supplement the amount available for area plan administration (42 U.S.C. 3028(a)(2)).

(v) *Minimum adequate proportion.* The State agency will meet expectations for the minimum adequate proportion of funds expended by each area agency on aging and State agency to provide the categories of services of access services, in-home supportive services, and legal assistance, as identified in the approved State plan as set forth in §1321.27(i).

(vi) *Maintenance of effort.* The State agency will meet expectations regarding maintenance of effort, where:

(A) The State agency must expend for both services and administration at least the average amount of State funds reported and certified as expended under the State plan for these activities for the three previous fiscal years for Title III;

(B) The amount certified must at least meet minimum match requirements from State resources;

(C) Any amount of State resources included in the Title III maintenance of effort certification that exceeds the minimum amount mandated becomes part of the permanent maintenance of effort; and

(D) Excess State match reported on the Federal financial report does not

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become part of the maintenance of effort unless the State agency certifies the excess.

(vii) *The State Long-Term Care Ombudsman Program.* The State agency shall maintain State Long-Term Care Ombudsman Program funding requirements, where:

(A) *Minimum Certification of Expenditures.* The State agency must expend annually under Title III and Title VII of the Act, respectively, for the Ombudsman program no less than the minimum amounts that are required to be expended by section 307(a)(9) of the Act (42 U.S.C. 3027(a)(9));

(B) *Expenditure Information.* The State agency must provide the Ombudsman with verifiable expenditure information for the annual certification of minimum expenditures and for completion of annual reports; and

(C) *Fiscal management and determination of resources.* Fiscal management and determination of resources appropriated or otherwise available for the operation of the Office are in compliance as set forth at §1324.13(f) of this chapter.

(viii) *Rural minimum expenditures.* The State agency shall maintain minimum expenditures for services for older individuals residing in rural areas, where:

(A) The State agency shall establish a process and control for determining the definition of “rural areas” within their State;

(B) For each fiscal year, the State agency must spend on services for older individuals residing in rural areas the minimum annual amount that is not less than the amount expended for such services, as required by the Act; and

(C) The State agency must project the cost of providing such services for each fiscal year (including the cost of providing access to such services) and must specify a plan for meeting the needs for such services for each fiscal year.

(ix) *Reallotment.* The State agency shall maintain requirements for reallotment of funds, where:

(A) The State agency must annually review and notify the Assistant Secretary for Aging prior to the end of the fiscal year in which grant funds were awarded if there is funding that will not be expended within the grant pe-

riod for Title III or VII that the State agency will release to the Assistant Secretary for Aging.

(B) The State agency must annually review and notify the Assistant Secretary for Aging of the amount of any released Title III or VII funding from other State agencies that the State agency requests to receive and expend within the grant period from the Assistant Secretary for Aging.

(C) The State agency must use its intrastate funding formula or funds distribution plan, as set forth in §1321.49 or §1321.51, to distribute any Title III funds that the Assistant Secretary for Aging reallots pursuant to the State agency’s notification under paragraph (c)(2)(ix)(B) of this section.

(x) *Voluntary contributions.* Voluntary contributions shall be allowed and may be solicited for all services for which funds are received under this Act, consistent with section 315(b) (42 U.S.C. 3030c–2(b)). Policies and procedures related to voluntary contributions shall address these requirements:

(A) *Suggested contribution levels.* The suggested contribution levels shall be based on the actual cost of services;

(B) *Individuals encouraged to contribute.* Voluntary contributions shall be encouraged for individuals whose self-declared income is at or above 185 percent of the Federal poverty level. Assets, savings, or other property owned by an older individual or family caregiver may not be considered when seeking voluntary contributions from any older individual or family caregiver;

(C) *Solicitation.* The method of solicitation must be noncoercive, and the solicitation:

(1) Must meet all the requirements of this provision; and

(2) Be conducted in such a manner so as not to cause a service recipient to feel intimidated, or otherwise feel pressured into making a contribution.

(D) *Provisions to all service recipients.* All recipients of services shall be provided:

(1) An opportunity to voluntarily contribute to the cost of the service;

(2) Clear information, including information in alternative formats and in languages other than English in compliance with Federal civil rights

laws, explaining there is no obligation to contribute, and the contribution is voluntary;

(3) Protection of privacy and confidentiality of each recipient with respect to the recipient's income and contribution or lack of contribution.

(E) Prohibition on means testing. Means testing, as defined in §1321.3, is prohibited;

(F) Prohibition on denial of services. Services shall not be denied because the older individual or family caregiver will not or cannot make a voluntary contribution;

(G) Procedures to be established. Appropriate procedures to safeguard and account for all contributions are established; and

(H) Collection of program income. Amounts collected are considered program income and are subject to the requirements in 2 CFR 200.307 and in §1321.9(c)(2)(xii).

(xi) *Cost sharing.* A State agency is permitted under section 315(a) of the Act (42 U.S.C. 3030c-2(a)), to implement cost sharing for services funded by the Act by recipients of the services, except as provided for in paragraph (c)(2)(xi)(D) of this section. If the State agency allows for cost sharing, the State agency shall address these requirements:

(A) *Policies and procedures.* The State agency shall develop policies and procedures to be implemented statewide, including how an area agency on aging may request and receive a waiver of cost sharing policies, if the area agency on aging adequately demonstrates:

(1) A significant proportion of persons receiving services under the Act have incomes below the threshold established in State agency policies and procedures; or

(2) That cost sharing would be an unreasonable administrative or financial burden upon the area agency on aging.

(B) *Sliding contribution scale.* The State agency shall establish a sliding contribution scale and a description of the criteria to participate in cost sharing to be implemented statewide, which shall:

(1) Meet all the requirements of this provision;

(2) Be based solely on individual income and the cost of delivering services;

(3) Be communicated including in written materials and in alternative formats upon request;

(4) Explain there is no obligation to contribute, and the contribution is voluntary;

(5) Be conducted in such a manner so as not to cause a service recipient to feel intimidated, or otherwise feel pressured into making a contribution;

(6) Protect the privacy and confidentiality of each recipient with respect to the recipient's income and contribution or lack of contribution.

(C) Individuals eligible to cost share. Individuals shall be determined eligible to cost share based solely on a confidential declaration of income and with no requirement for verification;

(D) Prohibitions on cost sharing. Cost sharing is prohibited as follows:

(1) By a low-income older individual if the income of such individual is at or below the Federal poverty level;

(2) If State agency policies and procedures specify other low-income individuals within the State excluded from cost sharing;

(3) For the following services:

(i) Information and assistance, outreach, benefits counseling, or case management services;

(ii) Ombudsman, elder abuse prevention, legal assistance, or other consumer protection services;

(iii) Congregate and home-delivered meals; and

(iv) Any services delivered through Tribal organizations.

(E) Prohibition on means testing. Means testing, as defined in §1321.3, is prohibited;

(F) Prohibition on denial of services. Services shall not be denied because the older individual or family caregiver will not or cannot make a cost sharing contribution;

(G) Procedures to be established. Appropriate procedures to safeguard and account for all cost sharing contributions are established; and

(H) Collection of program income. All cost sharing contributions collected are considered program income and are subject to the requirements of 2 CFR



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200.307, 45 CFR 75.307, and in § 1321.9(c)(2)(xii).

(xii) *Use of program income.* Program income is subject to the requirements in 2 CFR 200.307 and 45 CFR 75.307 and as follows:

(A) Voluntary contributions and cost sharing payments are considered program income;

(B) Program income collected must be used to expand a service funded under the Title III grant award pursuant to which the income was originally collected;

(C) The State agency must use the addition alternative as set forth in 2 CFR 200.307(e)(2) and 45 CFR 75.307(e)(2) when reporting program income, and prior approval of the addition alternative from the Assistant Secretary for Aging is not required;

(D) Program income must be expended or disbursed prior to requesting additional Federal funds; and

(E) Program income may not be used to match grant awards funded by the Act without prior approval.

(xiii) *Private pay programs.* The State agency shall maintain requirements for private pay programs, where:

(A) State agencies, area agencies on aging, and service providers may provide private pay programs, subject to State and/or area agency policies and procedures;

(B) The State agency requires area agencies and service providers under the Act that establish private pay programs to develop policies and procedures to:

(1) Promote equity, fairness, inclusion, and adherence to the requirements of the Act, including:

(i) Meeting conflict of interest requirements;

(ii) Meeting financial accountability requirements;

(iii) Prohibiting use of funds for direct services under Title III to support provision of service via private pay programs, except as a part of routine information and assistance or case management referrals; and

(2) Require that persons who receive information about private pay programs and who are eligible for services provided with Title III funds in the planning and service area be made aware of Title III-funded and any simi-

lar voluntary contributions-based service options, even if there is a waiting list for those services, on an initial and periodic basis to allow individuals to determine whether they will select voluntary contributions-based services or private pay programs.

(xiv) *Contracts and commercial relationships.* The State agency shall maintain requirements for contracts and commercial relationships, where:

(A) State agencies, area agencies on aging, and service providers may enter into contracts and commercial relationships, subject to State and/or area agency policies and procedures and guidance as set forth by the Assistant Secretary for Aging, including through:

(1) Contracts with health care payers;

(2) Private pay programs; or

(3) Other arrangements with entities or individuals that increase the availability of home-and community-based services and supports.

(B) The State agency shall require area agencies and service providers under the Act that establish contracts and commercial relationships to develop policies and procedures to:

(1) Promote fairness, inclusion, and adherence to the requirements of the Act, including:

(i) Meeting conflict of interest requirements; and

(ii) Meeting financial accountability requirements.

(2) With the approval of the State and/or area agency, allow use of funds for direct services under Title III to support provision of service via contracts and commercial relationships when:

(i) All requirements for direct services provision are maintained, as set forth in this part and the Act, or

(ii) In compliance with the requirements of the Act, as set forth in section 212 (42 U.S.C. 3020c), and all other applicable Federal requirements.

(C) The State agency shall, through the area plan or other process, develop policies and procedures for area agencies on aging and service providers to receive approval to establish contracts and commercial relationships and participate in activities related to contracts and commercial relationships.

(xv) *Buildings, alterations or renovations, maintenance, and equipment.* Buildings and equipment, where costs incurred for altering or renovating, utilities, insurance, security, necessary maintenance, janitorial services, repair, and upkeep (including Federal property unless otherwise provided for) to keep buildings and equipment in an efficient operating condition, including acquisition and replacement of equipment, may be an allowable use of funds, and the following apply:

(A) Costs are only allowable to the extent not payable by third parties through rental or other agreements;

(B) Costs must be allocated proportionally to the benefiting grant program;

(C) Construction and acquisition activities are only allowable for multipurpose senior centers. In addition to complying with the requirements of the Act, as set forth in section 312 (42 U.S.C. 3030b), as well as with all other applicable Federal laws, the grantee or subrecipient as applicable must file a Notice of Federal Interest in the appropriate official records of the jurisdiction where the property is located at the time of acquisition or prior to commencement of construction, as applicable. The Notice of Federal Interest must indicate that the acquisition or construction, as applicable, has been funded with an award under Title III of the Act, that the requirements set forth in section 312 of the Act (42 U.S.C. 3030b) apply to the property, and that inquiries regarding the Federal Government's interest in the property should be directed in writing to the Assistant Secretary for Aging;

(D) Altering and renovating activities are allowable for facilities providing direct services with funds provided as set forth in §§1321.85, 1321.87, 1321.89, and 1321.91 subject to Federal grant requirements under 2 CFR part 200 and 45 CFR part 75;

(E) Altering and renovating activities are allowable for facilities used to conduct area plan administration activities with funds provided as set forth in paragraph (c)(2)(iv)(B) of this section, subject to Federal grant requirements under 2 CFR part 200 and 45 CFR part 75; and

(F) Prior approval by the Assistant Secretary for Aging does not apply.

(xvi) *Supplement, not supplant.* Funds awarded under the Act for services provided under sections 306(a)(9)(B) (42 U.S.C. 3026(a)(9)(B)), 315(b)(4)(E) (42 U.S.C. 3030c-2(b)(4)(E)), 321(d) (42 U.S.C. 3030d(d)), 374 (42 U.S.C. 3030s-2), and 705(a)(4) (42 U.S.C. 3058d(a)(4)), must be used to supplement, not supplant existing Federal, State, and local funds expended to support those activities.

(xvii) *Monitoring of State plan assurances.* Monitoring for compliance for assurances identified in the approved State plan as set forth in §1321.27.

(xviii) *Advance funding.* If the State agency permits the advance of funding to meet immediate cash needs of area agencies on aging and service providers, the State agency shall have policies and procedures which comply with all applicable Federal requirements, including timeframes and amount limitations that may apply.

(xix) *Fixed amount subawards.* Fixed amount subawards up to the simplified acquisition threshold are allowed.

(3) The State plan process, including compliance with requirements as set forth in §§1321.27 and 1321.29.

(4) In States with multiple planning and service areas, the area plan process, including compliance with requirements as set forth in §1321.65.

#### § 1321.11 Advocacy responsibilities.

(a) The State agency shall:

(1) Review, monitor, evaluate, and comment on Federal, State, and local plans, budgets, regulations, programs, laws, levies, hearings, policies, and actions which affect or may affect older individuals or family caregivers, and recommend any changes in these which the State agency considers to be aligned with the interests identified in the Act;

(2) Provide technical assistance and training to agencies, organizations, associations, or individuals representing older individuals and family caregivers; and

(3) Review and comment on applications to State and Federal agencies for assistance relating to meeting the needs of older individuals and family caregivers.

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(b) No requirement in this section shall be deemed to supersede a prohibition contained in a Federal appropriation on the use of Federal funds to lobby.

### **§ 1321.13 Designation of and designation changes to planning and service areas.**

(a) The State agency is responsible for designating distinct planning and service areas within the State.

(b) No State agency may designate the entire State as a single planning and service area, except for States designated as such on or before October 1, 1980.

(c) State agencies must have policies and procedures regarding designation of and changes to planning and service areas in accordance with the Act. Such policies and procedures should provide due process to affected parties, accountability, and transparency. Such policies and procedures must address the following:

(1) The application process to change a planning and service area, if initiated outside of the State agency;

(2) How notice to interested parties will be provided;

(3) How need for the action will be documented;

(4) Provisions for conducting a public hearing;

(5) Provisions for involving area agencies on aging, service providers, and older individuals in the action or proceeding, such as offering other opportunities for feedback from interested parties;

(6) The appeals process for affected parties; and

(7) Timeframes that apply to each of the items under this paragraph (c).

(d) State agencies that seek to change one or more planning and service area designations must consider the following:

(1) The geographical distribution of older individuals in the State;

(2) The incidence of the need for services under the Act;

(3) The distribution of older individuals who have greatest economic need and greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individ-

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uals with limited English proficiency, and older individuals residing in rural areas) residing in such areas;

(4) The distribution of older individuals who are Native Americans residing in such areas;

(5) The distribution of resources available to provide such services under the Act;

(6) The boundaries of existing areas within the State which were drawn for the planning or administration of services under the Act;

(7) The location of units of general purpose local government, as defined in section 302(4) of the Act (2 U.S.C. 3022(4)), within the State; and

(8) Any other relevant factors.

(e) When the State agency issues a decision to change planning and service areas, it shall provide an explanation of its consideration of the factors in paragraph (d) of this section. Such explanations must be included in the State plan amendment submitted as set forth in § 1321.31(b) or State plan submitted as set forth in § 1321.33.

### **§ 1321.15 Interstate planning and service area.**

(a) An interstate planning and service area is an agreement between the State agencies that have responsibility for administering the programs within the interstate area, in which the agreement increases the allotment of the State agency or agencies with lead responsibility and decreases the allotment of the State agency or agencies without the lead responsibility. The Governor of any State in which a planning and service area crosses State boundaries, or in which an interstate Indian reservation is located, may apply to the Assistant Secretary for Aging to request redesignation as an interstate planning and service area comprising the entire metropolitan area or Indian reservation. If the Assistant Secretary for Aging approves such an application, the Assistant Secretary for Aging shall adjust the State agency allotments of the areas within the planning and service area in which the interstate planning and service area is established to reflect the number of older individuals within the area who will be served by an interstate

planning and service area not within the State.

(b) Before requesting permission of the Assistant Secretary for Aging to designate an interstate planning and service area, the Governor of each State shall execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions, agreed upon by each State agency, governing the administration of the interstate planning and service area.

(c) The lead State agency shall request permission of the Assistant Secretary for Aging to designate an interstate planning and service area by submitting the request, together with a copy of the agreement as part of its State plan or as an amendment to its State plan.

(d) Prior to the Assistant Secretary for Aging's approval for State agencies to designate an interstate planning and service area, the Assistant Secretary for Aging shall determine that all applicable requirements and procedures in §§ 1321.27 and 1321.29 are met.

(e) If the request is approved, the Assistant Secretary for Aging, based on the agreement between the State agencies, will increase the allocation(s) of the State agency or agencies with lead responsibility for administering the programs within the interstate area and will reduce the allocation(s) of the State agency or agencies without lead responsibility by one of these methods:

(1) Reallocation of funds in proportion to the number of individuals age 60 and over for funding provided under Title III, parts B, C, and D and in proportion to the number of individuals age 70 and over for funding provided under Title III, part E for that portion of the interstate planning and service area located in the State without lead responsibility; or

(2) Reallocation of funds based on the intrastate funding formula of the State agency or agencies without lead responsibility.

(f) Each State agency that is a party to an interstate planning and service area agreement shall review and confirm their agreement as a part of their

State plan on aging as set forth in § 1321.27.

**§ 1321.17 Appeal to the Departmental Appeals Board on planning and service area designation.**

(a) This section sets forth the procedures for providing hearings to applicants for designation as a planning and service area under § 1321.13, whose application is denied by the State agency or § 1321.15, whose application is denied by the Assistant Secretary for Aging.

(b) Any applicant for designation as a planning and service area whose application is denied, and who has been provided a hearing and a written decision by the State agency, may appeal the denial to the Departmental Appeals Board (DAB) in writing following receipt of the State agency's written decision, in accordance with the procedures set forth in 45 CFR part 16. The applicant must, at the time of filing an appeal with the DAB, mail a copy of the appeal to the State agency, if appealing subject to § 1321.13, or the Assistant Secretary for Aging, if appealing subject to § 1321.15, and include a certificate of service with its initial filing. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision.

**§ 1321.19 Designation of and designation changes to area agencies.**

(a) The State agency is responsible for designating an area agency on aging to serve each planning and service area. Only one area agency on aging shall be designated to serve each planning and service area. An area agency on aging may serve more than one planning and service area. An area agency that serves more than one planning and service area must maintain separate funding, planning, and advocacy responsibilities for each planning and service area. State agencies shall have policies and procedures regarding designation of area agencies on aging and changes to an agency's designation as an area agency on aging in accordance with the Act. Such policies and procedures should provide due process to affected parties, accountability, and transparency and must address the following:

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(1) Provisions for designating an area agency on aging, including:

- (i) The application process;
- (ii) How notice to interested parties will be provided;
- (iii) How views offered by the unit(s) of general purpose local government in such area will be obtained and considered;
- (iv) How the State agency will provide the right of first refusal to a unit of general purpose local government if:
  - (A) Such unit demonstrates ability to meet the requirements as set forth by the State agency, in accordance with the Act; and
  - (B) The boundaries of such a unit and the boundaries of the area are reasonably contiguous.
- (v) How the State agency shall then give preference to an established office on aging if the unit of general purpose local government chooses not to exercise the right of first refusal;
- (vi) How the State agency will assume area agency on aging responsibilities in the event there are no successful applicants in the State agency's application process; and
- (vii) The appeals process for affected parties.

(2) Provisions for an area agency on aging that voluntarily relinquishes their area agency on aging designation, including that the State agency's written acceptance of the voluntary relinquishment of area agency on aging designation will be considered as the State agency's withdrawal of area agency on aging designation, and requirements under § 1321.21(b) will apply;

(3) Provisions for when the State agency takes action to withdraw an area agency on aging's designation, in accordance with § 1321.21;

(4) Provisions for when the State agency administers area agency on aging programs as provided for in section 306(f) (42 U.S.C. 3026(f)), where the Assistant Secretary for Aging may extend the 90-day period if the State agency requests an extension and demonstrates to the satisfaction of the Assistant Secretary for Aging a need for the extension; and

(5) If a State agency previously designated the entire State as a single planning and service area, provisions for when the State agency designates

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one or more additional planning and service areas.

(b) For any of the actions listed in paragraph (a) of this section, the State agency must submit a State plan amendment as set forth in § 1321.31(b) or State plan as set forth in § 1321.33;

(c) An area agency may be any of the following types of agencies:

(1) An established office on aging which is operating within a planning and service area;

(2) Any office or agency of a unit of general purpose local government, which is designated to function for the purpose of serving as an area agency on aging by the chief elected official of such unit;

(3) Any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act on behalf of such combination for such purpose; or

(4) Any non-State, local public, or nonprofit private agency in a planning and service area, or any separate organizational unit within such agency, which is under the supervision or direction for this purpose of the designated State agency, and which demonstrates the ability and willingness to engage in the planning or provision of a broad range of services under the Act within such planning and service area.

(d) A State agency may not designate any regional or local office of the State as an area agency.

### § 1321.21 Withdrawal of area agency designation.

(a) In carrying out section 305 of the Act (42 U.S.C. 3025), the State agency shall withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that:

(1) An area agency does not meet the requirements of this part;

(2) An area plan or plan amendment is not approved;

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Act, regulations and other guidance as set forth by the Assistant Secretary for Aging, terms and conditions of Federal grant awards

under the Act, or policies and procedures established and published by the State agency on aging;

(4) Activities of the area agency are inconsistent with the statutory mission prescribed in the Act;

(5) The State agency changes one or more planning and service area designations; or

(6) The area agency voluntarily requests the State agency withdraw its designation.

(b) If a State agency withdraws an area agency's designation under this section it shall:

(1) Provide a plan for the continuity of area agency functions and services in the affected planning and service area;

(2) Submit a State plan amendment as set forth in §1321.31(b) or State plan as set forth in §1321.33; and

(3) Designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period of up to 180 days after its final decision to withdraw designation of an area agency:

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

(d) The Assistant Secretary for Aging may extend the 180-day period if a State agency:

(1) Notifies the Assistant Secretary for Aging in writing of its action under this section;

(2) Requests an extension; and

(3) Demonstrates to the satisfaction of the Assistant Secretary for Aging a need for the extension. Need for the extension may include the State agency's reasonable but unsuccessful attempts to procure an applicant to serve as the area agency.

**§1321.23 Appeal to the Departmental Appeals Board on area agency on aging withdrawal of designation.**

(a) This section sets forth hearing procedures afforded to affected parties if the State agency initiates an action or proceeding to withdraw designation of an area agency on aging.

(b) Any area agency on aging that has appealed a State agency's decision to withdraw area agency on aging designation, and that has been provided a hearing and a written decision, may appeal the decision to the Departmental Appeals Board in writing following receipt of the State agency's written decision, in accordance with the procedures set forth in 45 CFR part 16. The applicant must, at the time of filing an appeal with the DAB, mail a copy of the appeal to the State agency and include a certificate of service with its initial filing. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision.

**§1321.25 Duration, format, and effective date of the State plan.**

(a) A State agency will follow the guidance issued by the Assistant Secretary for Aging regarding duration and formatting of the State plan. Unless otherwise indicated, a State agency may determine the format, how to collect information for the plan, and whether the plan will remain in effect for two, three, or four years.

(b) An approved State plan or amendment identified in §1321.31(a) becomes effective on the date designated by the Assistant Secretary for Aging.

(c) A State agency may not make expenditures under a new plan or amendment requiring approval, as identified in §1321.27 or §1321.31(a), until it is approved.

**§1321.27 Content of State plan.**

To receive a grant under this part, a State agency shall have an approved State plan as prescribed in section 307 of the Act (42 U.S.C. 3027). In addition to meeting the requirements of section 307, a State plan shall include:

(a) Identification of the sole State agency that the State has designated to develop and administer the plan.

(b) Statewide program objectives to implement the requirements under Title III and Title VII of the Act and any objectives established by the Assistant Secretary for Aging.

(c) Evidence that the State plan is informed by and based on area plans, except for single planning and service area States.

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(d) A description of how greatest economic need and greatest social need are determined and addressed by specifying:

(1) How the State agency defines greatest economic need and greatest social need, which shall include the populations as set forth in the §1321.3 definitions of greatest economic need and greatest social need; and

(2) The methods the State agency will use to target services to the populations identified in paragraph (d)(1) of this section, including how funds under the Act may be distributed to serve prioritized populations in accordance with requirements as set forth in §1321.49 or §1321.51, as appropriate.

(e) An intrastate funding formula or funds distribution plan indicating the proposed use of all Title III funds administered by a State agency, and the distribution of Title III funds to each planning and service area, in accordance with §1321.49 or §1321.51, as appropriate.

(f) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area, if applicable.

(g) Demonstration that the determination of greatest economic need and greatest social need specific to Native American persons is identified pursuant to communication among the State agency and Tribes, Tribal organizations, and Native communities, and that the services provided under this part will be coordinated, where applicable, with the services provided under Title VI of the Act and that the State agency shall require area agencies to provide outreach where there are older Native Americans in any planning and service area, including those living outside of reservations and other Tribal lands.

(h) Certification that any program development and coordination activities shall meet the following requirements:

(1) The State agency shall not fund program development and coordination activities as a cost of supportive services under area plans until it has first spent 10 percent of the total of its combined allotments under Title III on the administration of area plans;

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(2) Program development and coordination activities must only be expended as a cost of State plan administration, area plan administration, and/or Title III, part B supportive services;

(3) State agencies and area agencies on aging shall, consistent with the area plan and budgeting cycles, submit the details of proposals to pay for program development and coordination as a cost of Title III, part B supportive services to the general public for review and comment; and

(4) Expenditure by the State agency and area agency on program development and coordination activities are intended to have a direct and positive impact on the enhancement of services for older individuals and family caregivers in the planning and service area.

(i) Specification of the minimum proportion of funds that will be expended by each area agency on aging and the State agency to provide each of the following categories of services:

(1) Access to services;

(2) In-home supportive services; and

(3) Legal assistance, as set forth in §1321.93.

(j) If the State agency allows for Title III, part C-1 funds to be used as set forth in §1321.87(a)(1)(i):

(1) Evidence, using participation projections based on existing data, that provision of such meals will enhance and not diminish the congregate meals program, and a commitment to monitor the impact on congregate meals program participation;

(2) Description of how provision of such meals will be targeted to reach those populations identified as in greatest economic need and greatest social need;

(3) Description of the eligibility criteria for service provision;

(4) Evidence of consultation with area agencies on aging, nutrition and other direct services providers, other interested parties, and the general public regarding the provision of such meals; and

(5) Description of how provision of such meals will be coordinated with area agencies on aging, nutrition and other direct services providers, and other interested parties.

(k) How the State agency will use funds for prevention of elder abuse, neglect, and exploitation as set forth in 45 CFR part 1324, subpart B.

(l) How the State agency will meet responsibilities for the Legal Assistance Developer, as set forth in 45 CFR part 1324, subpart C.

(m) Description of how the State agency will conduct monitoring that the assurances to which they attest are being met.

#### **§ 1321.29 Public participation.**

The State agency shall:

(a) Have mechanisms and varied methods to obtain the views of older individuals, family caregivers, service providers, and the public on a periodic basis, with a focus on those in greatest economic need and greatest social need;

(b) Consider those views in developing and administering the State plan and policies and procedures regarding services provided under the plan;

(c) Establish and comply with a reasonable minimum time period (at least 30 calendar days) for public review and comment on new State plans as set forth in § 1321.27 and State plan amendments requiring approval of the Assistant Secretary for Aging as set forth in § 1321.31(a). State agencies may request a waiver of the minimum time period from the Assistant Secretary for Aging during an emergency or when a time sensitive action is otherwise necessary;

(d) Ensure the documents noted in paragraph (c) of this section and final State plans and amendments are available to the public for review, as well as available in alternative formats and other languages if requested.

#### **§ 1321.31 Amendments to the State plan.**

(a) Subject to prior approval by the Assistant Secretary for Aging, a State agency shall amend the State plan whenever necessary to reflect:

(1) New or revised statutes or regulations as determined by the Assistant Secretary for Aging;

(2) An addition, deletion, or change to a State agency's goal, assurance, or information requirement statement;

(3) A change in the State agency's intrastate funding formula or funds

distribution plan for Title III funds, as set forth in § 1321.49 or § 1321.51;

(4) A request to waive State plan requirements as set forth in section 316 of the Act (42 U.S.C. 3030c-3), or as required by guidance as set forth by the Assistant Secretary for Aging; or

(5) Other changes as required by guidance as set forth by the Assistant Secretary for Aging.

(b) A State agency shall amend the State plan and notify the Assistant Secretary for Aging of an amendment not requiring prior approval whenever necessary and within 30 days of the action(s) listed in paragraphs (b)(1) through (6) of this section:

(1) A significant change in a State law, organization, policy, or State agency operation;

(2) A change in the name or organizational placement of the State agency;

(3) Distribution of State plan administration funds for demonstration projects;

(4) A change in planning and service area designation, as set forth in § 1321.13;

(5) A change in area agency on aging designation, as set forth in § 1321.19; or

(6) Exercising of major disaster declaration flexibilities, as set forth in § 1321.101.

(c) Information required by this section shall be submitted according to guidelines prescribed by the Assistant Secretary for Aging.

#### **§ 1321.33 Submission of the State plan or plan amendment to the Assistant Secretary for Aging for approval.**

(a) Each State plan, or plan amendment which requires approval of the Assistant Secretary for Aging as set forth at § 1321.31(a), shall be signed by the Governor, or the Governor's designee, and submitted to the Assistant Secretary for Aging to be considered for approval at least 90 calendar days before the proposed effective date of the plan or plan amendment according to guidance as set forth by the Assistant Secretary for Aging, except in the case of a waiver provided by the Assistant Secretary for Aging. Each State plan amendment which does not require the prior approval of the Assistant Secretary for Aging shall be submitted as set forth at § 1321.31(b).



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(b) In advance of the submission to the Assistant Secretary for Aging to be considered for approval, the State agency shall submit a draft of the plan or amendment to the appropriate ACL Regional Office at least 120 calendar days before the proposed effective date of the plan or plan amendment, except in the case of a waiver request or as otherwise provided in guidance as set forth by the Assistant Secretary for Aging. The State agency shall work with the ACL Regional Office in reviewing the plan or plan amendment for compliance.

### **§ 1321.35 Notification of State plan or State plan amendment approval or disapproval for changes requiring Assistant Secretary for Aging approval.**

(a) The Assistant Secretary for Aging shall approve a State plan or State plan amendment by notifying the Governor or the Governor's designee in writing.

(b) When the Assistant Secretary for Aging proposes to disapprove a State plan or amendment, the Assistant Secretary for Aging shall notify the Governor in writing, giving the reasons for the proposed disapproval, and inform the State agency that it may request a hearing on the proposed disapproval following the procedures described in guidance issued by the Assistant Secretary for Aging.

### **§ 1321.37 Notification of State plan amendment receipt for changes not requiring Assistant Secretary for Aging approval.**

The State agency shall submit an amendment not requiring Assistant Secretary for Aging approval as set forth at § 1321.31(b) to the appropriate ACL Regional Office. The ACL Regional Office shall review the amendment to confirm the contents do not require approval of the Assistant Secretary for Aging and will acknowledge receipt of the State plan amendment by notifying the head of the State agency in writing.

### **§ 1321.39 Appeal to the Departmental Appeals Board regarding State plan on aging.**

If the Assistant Secretary for Aging intends to disapprove a State plan or

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State plan amendment, the Assistant Secretary for Aging shall first afford the State agency notice and an opportunity for a hearing. Administrative reviews of State plan disapprovals, as provided for in sections 307(c) and 307(d) of the Act (42 U.S.C. 3027(c)–(d)) are performed by the Department Appeals Board in accordance with the procedures set forth in 45 CFR part 16. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision.

### **§ 1321.41 When a disapproval decision is effective.**

(a) The Assistant Secretary for Aging shall specify the effective date for reduction and withholding of the State agency's grant upon a disapproval decision from the Departmental Appeals Board. This effective date may not be earlier than the date of the Departmental Appeals Board's decision or later than the first day of the next calendar quarter.

(b) A disapproval decision issued by the DAB represents the final determination of the Assistant Secretary for Aging and shall remain in effect unless reversed or stayed on judicial appeal, or until the agency or the plan is changed to meet all Federal requirements, except that the Assistant Secretary for Aging may modify or set aside the decision before the record of the proceedings under this subpart is filed in court.

### **§ 1321.43 How the State agency may appeal the Departmental Appeals Board's decision.**

A State agency may appeal the final decision of the Departmental Appeals Board disapproving the State plan or plan amendment, finding of noncompliance, or finding that a State agency does not meet the requirements of this part to the U.S. Court of Appeals for the circuit in which the State is located. The State agency shall file the appeal within 30 days of the Departmental Appeals Board's final decision.

### **§ 1321.45 How the Assistant Secretary for Aging may reallocate the State agency's withheld payments.**

The Assistant Secretary for Aging may disburse funds withheld from the

State agency directly to any public or nonprofit private organization or agency, or political subdivision of the State that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part, and which contains an agreement to meet the non-Federal share requirements.

**§ 1321.47 Conflicts of interest policies and procedures for State agencies.**

(a) State agencies must have policies and procedures regarding conflicts of interest, in accordance with the Act and all other applicable Federal requirements. These policies and procedures must safeguard against conflicts of interest on the part of the State agency, employees, and agents of the State who have responsibilities relating to Title III programs, including area agencies on aging, governing boards, advisory councils, staff, and volunteers. Conflicts of interest policies and procedures must establish mechanisms to identify, avoid, remove, and remedy conflicts of interest in a Title III program at organizational and individual levels, including:

(1) Ensuring that State agency employees and agents administering Title III programs do not have a financial interest in a Title III program;

(2) Removing and remedying actual, perceived, or potential conflicts that arise due to an employee or agent's financial interest in a Title III program;

(3) Establishing robust monitoring and oversight, including periodic reviews, to identify conflicts of interest in a Title III program;

(4) Ensuring that no individual, or member of the immediate family of an individual, involved in administration or provision of a Title III program has a conflict of interest;

(5) Requiring that other agencies that operate a Title III program have policies in place to prohibit the employment or appointment of Title III program decision-makers, staff, or volunteers with a conflict that cannot be adequately removed or remedied;

(6) Requiring that a Title III program takes reasonable steps to suspend or remove Title III program responsibilities of an individual who has a conflict

of interest, or who has an immediate family member with a conflict of interest, which cannot be adequately removed or remedied;

(7) Ensuring that no organization which provides a Title III service is subject to a conflict of interest;

(8) Prohibiting the officers, employees, or agents of the Title III program from soliciting or accepting gratuities, favors, or anything of monetary value from grantees, contractors, and/or sub-recipients, except where policies and procedures allow for situations where the financial interest is not substantial, or the gift is an unsolicited item of nominal value;

(9) Establishing the actions the State agency will require a Title III program to take in order to remedy or remove such conflicts, as well as disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Title III program; and

(10) Documenting conflict of interest mitigation strategies, as necessary and appropriate, when a State agency or Title III program operates an Adult Protective Services or guardianship program.

(b) Individual conflicts include:

(1) An employee, or immediate member of an employee's family, maintaining ownership, employment, consultancy, or fiduciary interest in a Title III program organization or awardee when that employee or immediate family member is in a position to derive personal benefit from actions or decisions made in their official capacity;

(2) One or more conflicts between the private interests and the official responsibilities of a person in a position of trust;

(3) One or more conflicts between competing duties; and

(4) Other conflicts of interest identified in guidance issued by the Assistant Secretary for Aging and/or by State agency policies.

(c) Organizational conflicts include:

(1) One or more conflicts between competing duties, programs, and/or services; and

(2) Other conflicts of interest identified in guidance issued by the Assistant Secretary for Aging and/or by State agency policies.

**§ 1321.49 Intrastate funding formula.**

(a) The State agency of a State with multiple planning and service areas, as part of its State plan, in accordance with guidelines issued by the Assistant Secretary for Aging, using the best available data, and after consultation with all area agencies on aging in the State, shall develop and publish for review and comment by older individuals, family caregivers, other appropriate agencies and organizations, and the general public, an intrastate funding formula for the allocation of funds specific to each planning and service area to area agencies on aging under Title III for supportive, nutrition, evidence-based disease prevention and health promotion, and family caregiver services prior to taking the steps as set forth in § 1321.33. The intrastate funding formula shall be made available for public review and comment for a reasonable minimum time period (at least 30 calendar days, unless a waiver is provided by the Assistant Secretary for Aging during an emergency or when a time sensitive action is otherwise necessary). The formula shall reflect the proportion among the planning and service areas of persons age 60 and over in greatest economic need and greatest social need with particular attention to low-income minority older individuals. A separate formula may be provided for the evidence-based disease prevention and health promotion allocation to target areas that are medically underserved and in which there are large numbers of older individuals who have the greatest economic need and greatest social need for such services. The State agency shall review, update, and submit for approval to the Assistant Secretary for Aging its formula as needed.

(b) The publication for review and comment required by the preceding paragraph shall include:

(1) A descriptive statement of the formula's assumptions and goals, and the application of the definitions of greatest economic need and greatest social need, including addressing the populations identified pursuant to § 1321.27(d)(1), which includes the following components:

(i) A statement that discloses if and how, prior to distribution under the

intrastate funding formula to the area agencies on aging, funds are deducted from Title III funds for State plan administration, disaster set-aside funds as set forth in § 1321.99, and/or Long-Term Care Ombudsman Program allocations;

(ii) A statement that describes if a separate formula will be used for evidence-based disease prevention and health promotion allocation; and

(iii) A statement of how the State agency's Nutrition Services Incentive Program award will be distributed.

(2) A numerical mathematical statement of the actual funding formula to be used for all supportive, nutrition, evidence-based disease prevention and health promotion, and family caregiver allocations of Title III funds, including the separate numerical mathematical statement that may be provided for the evidence-based disease prevention and health promotion allocation, which includes:

(i) A descriptive statement of each factor and the weight or percentage used for each factor; and

(ii) Definitions of the terms used in the numerical mathematical statement.

(3) A listing of the population, economic, and social data to be used for each planning and service area in the State;

(4) A demonstration of the allocation of funds, pursuant to the funding formula, to each planning and service area in the State by part of Title III; and

(5) The source of the best available data used to allocate funding through the intrastate funding formula, which may include:

(i) The most current U.S. Decennial Census results;

(ii) The most current and reliable American Community Survey results; and/or

(iii) Other high-quality data available to the State agency.

(c) In meeting the requirement in paragraph (a) of this section, the intrastate funding formula may not allow for:

(1) The State agency to hold funds at the State level except as outlined in paragraph (b)(1)(i) of this section;

(2) Exceeding the State plan and area plan administration caps set in the Act, as set forth at §1321.9(c)(2)(iv);

(3) Use of Title III, part D funds for area plan administration;

(4) A State agency to directly provide Title III funds to any entity other than a designated area agency on aging, with the exception of State plan administration funds, Title III, part B Ombudsman program funds, and disaster set-aside funds as described in §1321.99; or

(5) Any other use in conflict with the Act.

(d) In meeting the requirement in paragraph (b)(1)(iii) of this section, the following apply:

(1) Cash must be promptly and equitably disbursed to recipients of grants or contracts for nutrition projects under the Act;

(2) The statement of distribution of grant funds and procedures for determining any commodities election amount must be followed;

(3) State agencies have the option to receive grant as cash and/or agricultural commodities; and

(4) State agencies may consult with the area agencies on aging to determine the amount of the commodities election.

(e) In meeting the requirements in this section, the following apply:

(1) Title VII funds are not required to be subject to the intrastate funding formula;

(2) Any funds allocated for the Long-Term Care Ombudsman Program under Title III, part B are not required to be subject to the intrastate funding formula;

(3) The intrastate funding formula may provide for a separate allocation of funds received under Title III, part D for preventive health services. In the award of such funds to selected planning and service areas, the State agency shall give priority to areas of the State:

(i) Which are medically underserved; and

(ii) In which there are large numbers of individuals who have the greatest economic need and greatest social need for such services, including the populations the State agency identifies pursuant to §1321.27(d)(1).

(4) The State agency may determine the amount of funds available for area plan administration prior to deducting Title III, part B Ombudsman program funds and disaster set-aside funds as described in §1321.99;

(5) After deducting any State plan administration funds, Title III, part B Ombudsman program funds, and disaster set-aside funds as described in §1321.99, the State agency must allocate all other Title III funding to area agencies on aging designated to serve each planning and service area;

(6) State agencies may reallocate funding within the State when an area agency on aging voluntarily or otherwise returns funds, subject to the State agency's policies and procedures which must include the following:

(i) If an area agency voluntarily returns funds, the area agency on aging must provide evidence that its governing board or chief elected official approves the return of funds;

(ii) Funds must be made available to all area agencies on aging who request funds available for reallocation;

(iii) The intrastate funding formula shall be proportionally adjusted based on area agencies on aging that request redistributed allocations; and

(iv) Title III funds subject to reallocation may only be reallocated to area agencies on aging via the proportionally adjusted intrastate funding formula described in paragraph (a) of this section.

(f) The State agency shall submit its proposed intrastate funding formula to the Assistant Secretary for Aging for prior approval as part of a State plan or State plan amendment as set forth in §1321.33.

#### **§ 1321.51 Single planning and service area States.**

(a) Unless otherwise specified, the State agency in single planning and service area States must meet the requirements in the Act and subpart C of this part, including maintaining an advisory council as set forth in §1321.63.

(b) As part of their State plan submission, single planning and service area States must provide a funds distribution plan which includes:

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(1) A descriptive statement as to how the State agency determines the geographical distribution of the Title III and Nutrition Services Incentive Program funding;

(2) How the State agency targets the funding to reach individuals with greatest economic need and greatest social need, with particular attention to low-income minority older individuals;

(3) At the option of the State agency, a numerical/mathematical statement as a part of their funds distribution plan; and

(4) Justification if the State agency determines it meets requirements to provide services directly where:

(i) As set forth in section 307(a)(8)(A) of the Act (42 U.S.C. 3027(a)(8)(A)), no supportive services, except as set forth in paragraph (b)(4)(i)(B) of this section, nutrition services, disease prevention and health promotion, or family caregiver services will be directly provided by the State agency, unless, in the judgment of the State agency:

(A) Provision of such services by the State agency is necessary to assure an adequate supply of such services;

(B) Such services are directly related to such State agency's administrative functions; or

(C) Such services may be provided more economically, and with comparable quality, by such State agency.

(ii) The State agency may directly provide case management, information and assistance services, and outreach.

(iii) Approval of the State agency to provide direct services may only be granted for a maximum of the State plan period. For each time that approval is granted to a State agency to provide direct services, the State agency must demonstrate the State agency's efforts to identify service providers prior to being granted a subsequent approval.

(c) Single planning and service area States must adhere to use of the funds distribution plan for Title III and Nutrition Services Incentive Program funds within the State. If a single planning and service area State agency revises their Title III funds distribution plan, they may do so by:

(1) Following their policies and procedures to publish the updated funds

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distribution plan for public review and comment for a reasonable minimum time period (30 calendar days or greater, unless a waiver is provided by the Assistant Secretary for Aging during an emergency or when a time sensitive action is otherwise necessary); and

(2) Submitting the revised funds distribution plan for Assistant Secretary for Aging approval prior to implementing the changes as noted at § 1321.33.

**§ 1321.53 State agency Title III and Title VI coordination responsibilities.**

(a) For States where there are Title VI programs, the State agency's policies and procedures, developed in coordination with the relevant Title VI program director(s), as set forth in § 1322.13(a), must explain how the State's aging network, including area agencies and service providers, will coordinate with Title VI programs to ensure compliance with sections 306(a)(11)(B) and 307(a)(21)(A) of the Act (42 U.S.C. 3026(a)(11)(B) and 3027(a)(21)(A)). State agencies may meet these requirements through a Tribal consultation policy that includes Title VI programs.

(b) The policies and procedures set forth in paragraph (a) of this section must at a minimum address:

(1) How the State's aging network, including area agencies on aging and service providers, will provide outreach to Tribal elders and family caregivers regarding services for which they may be eligible under Title III and/or VII;

(2) The communication opportunities the State agency will make available to Title VI programs, to include Title III and other funding opportunities, technical assistance on how to apply for Title III and other funding opportunities, meetings, email distribution lists, presentations, and public hearings;

(3) The methods for collaboration on and sharing of program information and changes, including coordinating with area agencies and service providers where applicable;

(4) How Title VI programs may refer individuals who are eligible for Title III and/or VII services;

(5) How services will be provided in a culturally appropriate and trauma-informed manner; and

(6) Opportunities to serve on advisory councils, workgroups, and boards, including area agency advisory councils, as set forth in § 1321.63.

### **Subpart C—Area Agency Responsibilities**

#### **§ 1321.55 Mission of the area agency.**

(a) The Act intends that the area agency on aging shall be the lead on all aging issues on behalf of all older individuals and family caregivers in the planning and service area. The area agency shall proactively carry out, under the leadership and direction of the State agency, a wide range of functions including advocacy, planning, coordination, inter-agency collaboration, information sharing, monitoring, and evaluation. The area agency shall lead the development or enhancement of comprehensive and coordinated community-based systems in, or serving, each community in the planning and service area. These systems shall be designed to assist older individuals and family caregivers in leading independent, meaningful, healthy, and dignified lives in their own homes and communities.

(b) A comprehensive and coordinated community-based system described in of this section shall:

(1) Have a point of contact where anyone may go or contact for help, information, and/or referral on any aging issue;

(2) Provide information on a range of available public and private long-term care services and support options;

(3) Assure that these options are readily accessible to all older individuals and family caregivers, no matter what their income;

(4) Include a commitment of public, private, voluntary, and personal resources committed to supporting the system;

(5) Involve collaborative decision-making among public, private, voluntary, faith-based, civic, and fraternal organizations, including trusted leaders of communities in greatest economic need and greatest social need,

and older individuals and family caregivers in the community;

(6) Offer special help or targeted resources for the most vulnerable older individuals, family caregivers, and those in danger of losing their independence;

(7) Provide effective referral from agency to agency to assure that information and/or assistance is provided, no matter how or where contact is made in the community;

(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for vulnerable older individuals or family caregivers;

(9) Be tailored to the specific nature of the community and the needs of older adults in the community; and

(10) Have a board of directors comprised of leaders in the community, including leaders from groups identified as in greatest economic need and greatest social need, who have the respect, capacity, and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change, and plan community responses for the present and for the future.

(c) The resources made available to the area agency on aging under the Act shall be used consistent with the definition of area plan administration as set forth in § 1321.3 to finance those activities necessary to achieve elements of a community-based system set forth in paragraph (b) of this section and consistent with the requirements for provision of direct services as set forth in §§ 1321.85 through 1321.93.

(d) The area agency may not engage in any activity which is inconsistent with its statutory mission prescribed in the Act or policies prescribed by the State agency under § 1321.9.

#### **§ 1321.57 Organization and staffing of the area agency.**

(a) An area agency may be either:

(1) An agency whose single purpose is to administer programs for older individuals and family caregivers; or

(2) A separate organizational unit within a multipurpose agency which functions as the area agency on aging. Where the State agency designates a

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separate organizational unit of a multipurpose agency that has previously been serving as an area agency, the State agency action shall not be subject to section 305(b)(5)(B) of the Act (42 U.S.C. 3025(b)(5)(B)).

(b) The area agency, once designated, is responsible for providing for adequate and qualified staff to facilitate the performance of the functions as set forth in this part. Such functions, except for provision of direct services, are considered to be area plan administration functions.

(c) The designated area agency shall continue to function in that capacity until either:

(1) The State agency withdraws the designation of the area agency as provided in § 1321.21(a)(1) through (5); or

(2) The area agency informs the State agency that it no longer wishes to carry out the responsibilities of an area agency as provided in § 1321.21(a)(6).

## § 1321.59 Area agency policies and procedures.

(a) The area agency on aging shall develop policies and procedures in compliance with State agency policies and procedures, including those required under § 1321.9, governing all aspects of programs operated under this part, including those related to conflict of interest, and be in alignment with the Act and all other applicable Federal requirements. These policies and procedures shall be developed in consultation with other appropriate parties in the planning and service area.

(b) The policies and procedures developed by the area agency shall address the manner in which the area agency will monitor the programmatic and fiscal performance of all programs, direct service providers, and activities initiated under this part for quality and effectiveness. Quality monitoring and measurement results are encouraged to be publicly available in a format that may be understood by older individuals, family caregivers, and their families.

(c) The area agency is responsible for enforcement of these policies and procedures.

(d) The area agency may not delegate to another agency the authority to

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award or administer funds under this part.

## § 1321.61 Advocacy responsibilities of the area agency.

(a) The area agency shall serve as the public advocate for the development or enhancement of comprehensive and coordinated community-based systems of services in each community throughout and specific to each planning and service area.

(b) In carrying out this responsibility, the area agency shall:

(1) Monitor, evaluate, and comment on policies, programs, hearings, levies, and community actions which affect older individuals and family caregivers which the area agency considers to be aligned with the interests identified in the Act;

(2) Solicit comments from the public on the needs of older individuals and family caregivers;

(3) Represent the interests of older individuals and family caregivers to local level and executive branch officials, public and private agencies, or organizations;

(4) Consult with and support the State's Long-Term Care Ombudsman Program; and

(5) Coordinate with public and private organizations, including units of general purpose local government to promote new or expanded benefits and opportunities for older individuals and family caregivers.

(c) Each area agency on aging shall undertake a leadership role in assisting communities throughout the planning and service area to target resources from all appropriate sources to meet the needs of older individuals and family caregivers with greatest economic need and greatest social need, with particular attention to low-income minority individuals. Such activities may include location of services and specialization in the types of services most needed by these groups to meet this requirement. However, the area agency shall not permit a grantee or contractor under this part to employ a means test for services funded under this part.

(d) No requirement in this section shall be deemed to supersede a prohibition contained in the Federal appropriation on the use of Federal funds to lobby the Congress; or the lobbying provision applicable to private non-profit agencies and organizations contained in OMB Circular A-122.

**§ 1321.63 Area agency advisory council.**

(a) *Functions of council.* The area agency shall establish an advisory council. The council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for all older individuals and family and older relative caregivers specific to each planning and service area. The council shall advise the agency relative to:

- (1) Developing and administering the area plan;
- (2) Ensuring the plan is available to older individuals, family caregivers, service providers, and the general public;
- (3) Conducting public hearings;
- (4) Representing the interests of older individuals and family caregivers; and
- (5) Reviewing and commenting on community policies, programs and actions which affect older individuals and family caregivers with the intent of assuring maximum coordination and responsiveness to older individuals and family caregivers.

(b) *Composition of council.* The council shall include individuals and representatives of community organizations from or serving the planning and service area who will help to enhance the leadership role of the area agency in developing community-based systems of services targeting those in greatest economic need and greatest social need. The advisory council shall be made up of:

- (1) More than 50 percent older individuals, including minority individuals who are participants or who are eligible to participate in programs under this part, with efforts to include individuals identified as in greatest economic need and individuals identified as in greatest social need in § 1321.65(b)(2);

(2) Representatives of older individuals;

(3) Family caregivers, which may include older relative caregivers;

(4) Representatives of health care provider organizations, including providers of veterans' health care (if appropriate);

(5) Representatives of service providers, which may include legal assistance, nutrition, evidence-based disease prevention and health promotion, caregiver, long-term care ombudsman, and other service providers;

(6) Persons with leadership experience in the private and voluntary sectors;

(7) Local elected officials;

(8) The general public; and

(9) As available:

(i) Representatives from Indian Tribes, Pueblos, or Tribal aging programs; and

(ii) Older relative caregivers, including kin and grandparent caregivers of children or adults age 18 to 59 with a disability.

(c) *Review by advisory council.* The area agency shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval.

(d) *Conflicts of interest.* The advisory council shall not operate as a board of directors for the area agency. Individuals may not serve on both the advisory council and the board of directors for the same entity.

**§ 1321.65 Submission of an area plan and plan amendments to the State agency for approval.**

(a) The area agency shall submit the area plan on aging and amendments specific to each planning and service area to the State agency for approval following procedures specified by the State agency in the State agency policies prescribed by § 1321.9.

(b) State agency policies and procedures regarding area plan requirements will at a minimum address the following:

(1) Content, duration, and format;

(2) That the area agency shall identify populations within the planning and service area at greatest economic need and greatest social need, which



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shall include the populations as set forth in the §1321.3 definitions of greatest economic need and greatest social need.

(3) Assessment and evaluation of unmet need, such that each area agency shall submit objectively collected, and where possible, statistically valid, data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, evidence-based disease prevention and health promotion services, family caregiver support services, and multipurpose senior centers. The evaluations for each area agency shall consider all services in these categories regardless of the source of funding for the services;

(4) Public participation specifying mechanisms to obtain the periodic views of older individuals, family caregivers, service providers, and the public with a focus on those in greatest economic need and greatest social need, including:

(i) A reasonable minimum time period (at least 30 calendar days, unless a waiver is provided by the State agency during an emergency or when a time sensitive action is otherwise necessary) for public review and comment on area plans and area plan amendments; and

(ii) Ensuring the documents noted in (b)(4)(i) of this section and final area plans and amendments are accessible in a public location, as well as available in print by request.

(5) The services, including a definition of each type of service; the number of individuals to be served; the type and number of units to be provided; and corresponding expenditures proposed to be provided with funds under the Act and related local public sources under the area plan;

(6) Plans for how direct services funds under the Act will be distributed within the planning and service area, in order to address populations identified as in greatest social need and greatest economic need, as identified in §1321.27(d)(1);

(7) Process for determining whether the area agency meets requirements to provide services directly where:

(i) As set forth in section 307(a)(8)(A) of the Act (42 U.S.C. 3027(a)(8)(A)), no supportive services, nutrition services, evidence-based disease prevention and

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health promotion services, or family caregiver support services will be directly provided by an area agency on aging in the State, unless, in the judgment of the State agency:

(A) Provision of such services by the area agency on aging is necessary to assure an adequate supply of such services;

(B) Such services are directly related to such area agency on aging's administrative functions; or

(C) Such services may be provided more economically, and with comparable quality, by such area agency on aging.

(ii) At its discretion, the State agency may waive the conditions set forth in paragraph (b)(7)(i) of this section and allow area agencies on aging to directly provide the supportive services of case management, information and assistance services, and outreach without additional restriction.

(iii) Approval of the area agency to provide direct services shall only be granted for a maximum of the area plan period. For each time approval is granted to an area agency to provide direct services, the area agency must demonstrate the area agency's efforts to identify service providers prior to being granted a subsequent approval.

(8) Minimum adequate proportion requirements, as identified in the approved State plan as set forth in §1321.27;

(9) Requirements for program development and coordination activities as set forth in §1321.27(h), if allowed by the State agency;

(10) If the area agency requests to allow Title III, part C–1 funds to be used as set forth in §1321.87(a)(1)(i) through (iii), it must provide the following information to the State agency:

(i) Evidence, using participation projections based on existing data, that provision of such meals will enhance and not diminish the congregate meals program, and a commitment to monitor impact on congregate meals program participation;

(ii) Description of how provision of such meals will be targeted to reach those populations identified as in greatest economic need and greatest social need;

(iii) Description of the eligibility criteria for service provision;

(iv) Evidence of consultation with nutrition and other direct services providers, other interested parties, and the general public regarding the need for and provision of such meals; and

(v) Description of how provision of such meals will be coordinated with nutrition and other direct services providers and other interested parties.

(11) Initial submission and amendments;

(12) Approval by the State agency; and

(13) Appeals regarding area plans on aging.

(c) Area plans shall incorporate services which address the incidence of hunger, food insecurity and malnutrition; social isolation; and physical and mental health conditions.

(d) Pursuant to section 306(a)(16) of the Act (42 U.S.C. 3026(a)(16)), area plans shall provide, to the extent feasible, for the furnishing of services under this Act, through self-direction.

(e) Area plans on aging shall develop objectives that coordinate with and reflect the State plan goals for services under the Act.

**§ 1321.67 Conflicts of interest policies and procedures for area agencies on aging.**

(a) The area agency must have policies and procedures regarding conflicts of interest in accordance with the Act, guidance as set forth by the Assistant Secretary for Aging, and State agency policies and procedures as set forth at § 1321.47. These policies and procedures must safeguard against conflicts of interest on the part of the area agency, area agency employees, governing board and advisory council members, and awardees who have responsibilities relating to the area agency's grants and contracts. Conflicts of interest policies and procedures must establish mechanisms to avoid both actual and perceived conflicts of interest and to identify, remove, and remedy any existing or potential conflicts of interest at organizational and individual levels, including:

(1) Reviewing service utilization and financial incentives to ensure agency employees, governing board and advisory

council members, grantees, contractors, and other awardees who serve multiple roles, such as assessment and service delivery, are appropriately stewarding Federal resources while fostering services to enhance access to community living;

(2) Ensuring that the area agency on aging employees and agents administering Title III programs do not have a financial interest in Title III programs;

(3) Complying with § 1324.21 of this chapter regarding the Ombudsman program, as appropriate;

(4) Removing and remedying any actual, perceived, or potential conflict between the area agency on aging and the area agency on aging employee or contractor's financial interest in a Title III program;

(5) Establishing robust monitoring and oversight, including periodic reviews, to identify conflicts of interest in the Title III program;

(6) Ensuring that no individual, or member of the immediate family of an individual, involved in Title III programs has a conflict of interest;

(7) Requiring that agencies to which the area agency provides Title III funds have policies in place to prohibit the employment or appointment of Title III program decision makers, staff, or volunteers with conflicts that cannot be adequately removed or remedied;

(8) Requiring that Title III programs take reasonable steps to refuse, suspend or remove Title III program responsibilities of an individual who has a conflict of interest, or who has a member of the immediate family with a conflict of interest, that cannot be adequately removed or remedied;

(9) Complying with the State agency's periodic review and identification of conflicts of the Title III program;

(10) Prohibiting the officers, employees, or agents of the Title III program from soliciting or accepting gratuities, favors, or anything of monetary value from grantees, contractors, and/or sub-recipients, except where policies and procedures allow for situations where the financial interest is not substantial, or the gift is an unsolicited item of nominal value;

(11) Establishing the actions the area agency will require Title III programs

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to take in order to remedy or remove such conflicts, as well as disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Title III program; and

(12) Documentation of conflict of interest mitigation strategies, as necessary and appropriate, when operating an Adult Protective Services or guardianship program.

(b) [Reserved]

## § 1321.69 Area agency on aging Title III and Title VI coordination responsibilities.

(a) For planning and service areas where there are Title VI programs, the area agency's policies and procedures, developed in coordination with the relevant Title VI program director(s), as set forth in §1322.13(a), must explain how the area agency's aging network, including service providers, will coordinate with Title VI programs to ensure compliance with section 306(a)(11)(B) of the Act (42 U.S.C. 3026(a)(11)(B)).

(b) The policies and procedures set forth in paragraph (a) of this section must at a minimum address:

(1) How the area agency's aging network, including service providers, will provide outreach to Tribal elders and family caregivers regarding services for which they may be eligible under Title III;

(2) The communication opportunities the area agency will make available to Title VI programs, to include Title III and other funding opportunities, technical assistance on how to apply for Title III and other funding opportunities, meetings, email distribution lists, presentations, and public hearings;

(3) The methods for collaboration on and sharing of program information and changes, including coordinating with service providers where applicable;

(4) How Title VI programs may refer individuals who are eligible for Title III services;

(5) How services will be provided in a culturally appropriate and trauma-informed manner; and

(6) Opportunities to serve on advisory councils, workgroups, and boards, including area agency advisory councils as set forth in §1321.63.

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### Subpart D—Service Requirements

#### § 1321.71 Purpose of services allotments under Title III.

(a) Title III of the Act authorizes the distribution of Federal funds to the State agency on aging for the following services:

(1) Supportive services;

(2) Nutrition services;

(3) Evidence-based disease prevention and health promotion services; and

(4) Family caregiver support services.

(b) Funds authorized are for the purpose of assisting the State agency and its area agencies to develop, provide, or enhance for older individuals and family caregivers comprehensive and coordinated community-based direct services and systems.

(c) Except for ombudsman services, State plan administration, disaster assistance as noted at §§1321.99 through 1321.101, or as otherwise allowed in the Act, State agencies in States with multiple planning and service areas will award the funds made available under this section to designated area agencies on aging according to the approved intrastate funding formula as set forth in §1321.49.

(d) Except for ombudsman services, State plan administration, disaster assistance as noted at §§1321.99 through 1321.101, or as otherwise allowed in the Act, State agencies in States with single planning and service areas shall award funds by grant or contract to community services provider agencies and organizations for direct services to older individuals and family caregivers in, or serving, communities throughout the planning and service area, except as set forth in §1321.51(b)(4).

(e) Except where the State agency approves the area agency to provide direct services, as set forth in §1321.65(b)(7), after subtracting funds for area plan administration as set forth in §1321.9(c)(2)(iv)(B) and program development and coordination activities, if allowed by the State agency, as set forth in §1321.27(h), area agencies shall award these funds by grant or contract to community services provider agencies and organizations for direct services to older individuals and

family caregivers in, or serving, communities throughout the planning and service area.

**§ 1321.73 Policies and procedures.**

(a) The area agency on aging and/or service provider shall ensure the development and implementation of policies and procedures in accordance with State agency policies and procedures, including those required as set forth in § 1321.9. The State agency may allow for policies and procedures to be developed by the subrecipient(s), except as set forth at §§ 1321.9(a) and 1321.9(c)(2)(xi) and where otherwise specified.

(b) The area agency on aging and/or service provider will provide the State agency in a timely manner with statistical and other information which the State agency requires to meet its planning, coordination, evaluation, and reporting requirements established by the State agency under § 1321.9.

(c) The State agency and/or area agencies on aging must develop an independent qualitative and quantitative monitoring process ensuring the quality and effectiveness of services regarding meeting participant needs and preferences, the goals described within the State and/or area plan, and State and local requirements, as well as conflicts of interest policies and procedures. Quality monitoring and measurement results are encouraged to be made available to the public in plain language format designed to support and provide information and choice among persons and families receiving services.

**§ 1321.75 Confidentiality and disclosure of information.**

(a) State agencies and area agencies on aging shall have procedures to protect the confidentiality of information about older individuals and family caregivers collected in the conduct of their responsibilities. The procedures shall ensure that no information about an older person or family caregiver, or obtained from an older person or family caregiver by a service provider or the State or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of

their legal representative, unless the disclosure is required by law or court order, or for program monitoring and evaluation by authorized Federal, State, or local monitoring agencies.

(b) A State agency, area agency on aging or other contracting or granting or auditing agency may not require a provider of long-term care ombudsman services under this part to reveal any information that is protected by disclosure provisions in 45 CFR part 1324, subpart A. State agencies must comply with confidentiality and disclosure of information provisions as directed in 45 CFR part 1324, as appropriate.

(c) A State or area agency on aging shall not require a provider of legal assistance under this part to reveal any information that is protected by attorney client privilege.

(d) State agencies must have policies and procedures that ensure that entities providing services under this title promote the rights of each older individual who receives such services. Such rights include the right to confidentiality of records relating to such individual.

(e) State agencies' policies and procedures must explain that individual information and records may be shared with other State and local agencies, community-based organizations, and health care providers and payers in order to provide services.

(f) State agencies' policies and procedures must comply with all applicable Federal laws as well as guidance as the State determines, for the collection, use, and exchange of both Personal Identifiable Information (PII) and personal health information in the provision of Title III services under the Act. State agencies are encouraged to consult with Tribes regarding any Tribal data sovereignty expectations that may apply.

**§ 1321.77 Purpose of services—person- and family-centered, trauma-informed.**

(a) Services must be provided to older adults and family caregivers in a manner that is person-centered, trauma-informed, and culturally sensitive. Services should be responsive to their interests, physical and mental health, social and cultural needs, available supports,

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and desire to live where and with whom they choose. Person-centered services may include community-centered and family-centered approaches consistent with the traditions, practices, beliefs, and cultural norms and expectations of older adults and family caregivers.

(b) Services should, as appropriate, provide older adults and family caregivers with the opportunity to develop a person-centered plan that is led by the individual or, if applicable, by the individual and the individual's authorized representative. Services should be incorporated into existing person-centered plans, as appropriate.

(c) State and area agencies and service providers should provide training to staff and volunteers on person-centered and trauma-informed service provision.

### **§ 1321.79 Responsibilities of service providers under State and area plans.**

As a condition for receipt of funds under this part, each State agency and/or area agency on aging shall assure that service providers shall:

(a) Specify how the service provider intends to satisfy the service needs of those identified as in greatest economic need and greatest social need, with a focus on low-income minority individuals in the area served, including attempting to provide services to low-income minority individuals at least in proportion to the number of low-income minority older individuals and family caregivers in the population serviced by the provider;

(b) Provide recipients with an opportunity to contribute to the cost of the service as provided in § 1321.9(c)(2)(x) or (xi);

(c) Pursuant to section 306(a)(16) of the Act (42 U.S.C. 3026(a)(16)), provide, to the extent feasible, for the furnishing of services under this Act through self-direction;

(d) Bring conditions or circumstances which place an older person, or the household of an older person, in imminent danger to the attention of adult protective services or other appropriate officials for follow-up, provided that:

(1) The older person or their legal representative consents; or

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(2) Such action is in accordance with local adult protective services requirements, except as set forth at § 1321.93 and part 1324, subpart A, of this chapter;

(e) Where feasible and appropriate, make arrangements for the availability of services to older individuals and family caregivers in weather-related and other emergencies;

(f) Assist participants in taking advantage of benefits under other programs; and

(g) Assure that all services funded under this part are coordinated with other appropriate services in the community, and that these services do not constitute an unnecessary duplication of services provided by other sources.

### **§ 1321.81 Client eligibility for participation.**

(a) An individual must be age 60 or older at the time of service to be eligible to participate in services under the Act, unless the Act otherwise provides an explicit exception. Exceptions are limited to the following specific services:

(1) Nutrition services:

(i) Services shall be available to spouses of any age of older individuals;

(ii) Services may be available to:

(A) A person with a disability who lives with an adult age 60 or older or who resides in a housing facility that is primarily occupied by older adults at which congregate meals are served; and

(B) A volunteer during meal hours.

(2) Family caregiver support services for:

(i) Adults caring for older adults and adults caring for individuals of any age with Alzheimer's or a related disorder;

(ii) Older relative caregivers who are caring for children and are not the biological or adoptive parent of the child, where older relative caregivers shall no longer be eligible for services under this part when the child reaches 18 years of age; or

(iii) Older relative caregivers who are caring for individuals age 18 to 59 with disabilities and who may be of any relationship, including the biological or adoptive parent.

(3) Services such as information and assistance and public education, where recipients of information may not be

age 60 or older, but the information is targeted to those who are age 60 or older and/or benefits those who are age 60 or older.

(4) Ombudsman program services, as provided in 45 CFR part 1324.

(b) State agencies, area agencies on aging, and local service providers may develop further eligibility requirements for implementation of services for older adults and family caregivers, as long as they do not conflict with the Act, this part, or guidance as set forth by the Assistant Secretary for Aging. Such requirements may include:

- (1) Assessment of greatest social need;
- (2) Assessment of greatest economic need;
- (3) Assessment of functional and support need;
- (4) Geographic boundaries;
- (5) Limitations on number of persons that may be served;
- (6) Limitations on number of units of service that may be provided;
- (7) Limitations due to availability of staff/volunteers;
- (8) Limitations to avoid duplication of services; and
- (9) Specification of settings where services shall or may be provided.

#### § 1321.83 Client and service priority.

(a) The State agency and/or area agency shall ensure service to those identified as members of priority groups through assessment of local needs and resources.

(b) The State agency and/or area agency shall establish criteria to prioritize the delivery of services under Title III, parts B (except for Ombudsman program services which are subject to provisions in 45 CFR part 1324), C, and D, in accordance with the Act.

(c) The State agency and/or area agency shall establish criteria to prioritize the delivery of services under Title III, part E, in accordance with the Act, to include:

- (1) Caregivers who are older individuals with greatest social need, and older individuals with greatest economic need (with particular attention to low-income older individuals);
- (2) Caregivers who provide care for individuals with Alzheimer's disease

and related disorders with neurological and organic brain dysfunction; and

(3) If serving older relative caregivers, older relative caregivers of children or adults with severe disabilities.

#### § 1321.85 Supportive services.

(a) Supportive services are community-based interventions set forth in the Act under Title III, part B, section 321 (42 U.S.C. 3030d) which meet standards established by the Assistant Secretary for Aging. They include in-home supportive services, access services, which may include multipurpose senior centers, and legal services.

(b) State agencies may allow use of Title III, part B funds for acquiring, altering or renovating, or constructing facilities to serve as multipurpose senior centers, in accordance with guidance as set forth by the Assistant Secretary for Aging.

(c) For those Title III, part B services intended to benefit family caregivers, such as those provided under sections 321(a)(6)(C), 321(a)(19), and 321(a)(21) of the Act (42 U.S.C. 3030d(a)(6)(C), 3030d(a)(19), and 3030d(a)(21)), State and area agencies shall ensure that there is coordination and no inappropriate duplication of such services available under Title III, part E.

(d) All funds provided under Title III, part B of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51.

#### § 1321.87 Nutrition services.

(a) Nutrition services are community-based interventions as set forth in Title III, part C of the Act, and as further defined by the Assistant Secretary for Aging. Nutrition services include congregate meals, home-delivered meals, nutrition education, nutrition counseling, and other nutrition services.

(1) Congregate meals are meals meeting the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g-21) provided under Title III, part C-1 by a qualified nutrition service provider to eligible individuals and consumed while congregating virtually or in-person, except where:

- (i) If included as part of an approved State plan as set forth in § 1321.27 or

State plan amendment as set forth in §1321.31(a) and area plan or plan amendment as set forth in §1321.65 and to complement the congregate meals program, shelf-stable, pick-up, carry-out, drive-through, or similar meals may be provided under Title III, part C-1;

(ii) Meals provided as set forth in paragraph (a)(1)(i) of this section shall:

(A) Not exceed 25 percent of the funds expended by the State agency under Title III, part C-1, to be calculated based on the amount of Title III, part C-1 funds available after all transfers as set forth in §1321.9(c)(2)(iii) are completed;

(B) Not exceed 25 percent of the funds expended by any area agency on aging under Title III, part C-1, to be calculated based on the amount of Title III, part C-1 funds available after all transfers as set forth in §1321.9(c)(2)(iii) are completed.

(iii) Meals provided as set forth in paragraph (a)(1)(i) of this section may be provided to complement the congregate meal program:

(A) During disaster or emergency situations affecting the provision of nutrition services;

(B) To older individuals who have an occasional need for such meal; and/or

(C) To older individuals who have a regular need for such meal, based on an individualized assessment, when targeting services to those in greatest economic need and greatest social need.

(2) Home-delivered meals are meals meeting the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g–21) provided under Title III, part C-2 by a qualified nutrition service provider to eligible individuals and consumed at their residence or otherwise outside of a congregate setting, as organized by a service provider under the Act. Meals may be provided via home delivery, pick-up, carry-out, drive-through, or similar meals.

(i) Eligibility criteria for home-delivered meals may include consideration of an individual's ability to leave home unassisted, ability to shop for and prepare nutritious meals, degree of disability, or other relevant factors per-

taining to their need for the service, including social need and economic need.

(ii) Home-delivered meals service providers may encourage meal participants to attend congregate meal sites and other health and wellness activities, as feasible, based on a person-centered approach and local service availability.

(3) Nutrition education is information provided under Title III, parts C-1 or 2 which provides individuals with the knowledge and skills to make healthy food and beverage choices. Congregate and home-delivered nutrition services shall provide nutrition education, as appropriate, based on the needs of meal participants.

(4) Nutrition counseling is a service provided under Title III, parts C-1 or 2 which must align with the Academy of Nutrition and Dietetics. Congregate and home-delivered nutrition services shall provide nutrition counseling, as appropriate, based on the needs of meal participants, the availability of resources, and the expertise of a Registered Dietitian Nutritionist.

(5) Other nutrition services include additional services provided under Title III, parts C-1 or 2 that may be provided to meet nutritional needs or preferences of eligible participants, such as weighted utensils, supplemental foods, oral nutrition supplements, or groceries.

(b) State agencies shall establish policies and procedures that define a nutrition project and include how a nutrition project will provide meals and nutrition services five or more days per week in accordance with the Act. The definition of nutrition project established by the State agency must consider the availability of resources and the community's need for nutrition services as described in the State and area plans.

(c) All funds provided under Title III, part C of the Act must be distributed within a State pursuant to §1321.49 or §1321.51.

(d) Nutrition Services Incentive Program allocations are available to States and Territories that provide nutrition services where:

(1) Nutrition Services Incentive Program allocation amounts are based on

the number of meals reported by the State agency which meet the following requirements:

(i) The meal is served to an individual who is eligible to receive services under the Act;

(ii) The meal is served to an individual who has not been means-tested to receive the meal;

(iii) The meal is served to an individual who has been provided the opportunity to provide a voluntary contribution to the cost of service;

(iv) The meal meets the other requirements of the Act, including that the meal meets the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g-21); and

(v) The meal is served by an agency that has a grant or contract with a State agency or area agency.

(2) The State agency may choose to receive their Nutrition Services Incentive Program grant as cash, commodities, or a combination of cash and commodities.

(3) Nutrition Services Incentive Program funds may only be used to purchase domestically produced foods used in a meal as set forth under the Act.

(4) Nutrition Services Incentive Program funds are distributed within a State pursuant to § 1321.49(b)(1)(iii) and (d) or § 1321.51(b)(1).

**§ 1321.89 Evidence-based disease prevention and health promotion services.**

(a) Evidence-based disease prevention and health promotion services programs are community-based interventions as set forth in Title III, part D of the Act, that have been proven to improve health and well-being and/or reduce risk of injury, disease, or disability among older adults. All programs provided using these funds must be evidence-based and must meet the Act's requirements and guidance as set forth by the Assistant Secretary for Aging.

(b) All funds provided under Title III, part D of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51.

**§ 1321.91 Family caregiver support services.**

(a) Family caregiver support services are community-based interventions set forth in Title III, part E of the Act, which meet standards set forth by the Assistant Secretary for Aging and which may be informed through the use of an evidence-informed or evidence-based caregiver assessment, including:

(1) Information to family caregivers about available services via public education;

(2) Assistance to family caregivers in gaining access to the services through:

(i) Individual information and assistance; or

(ii) Case management or care coordination.

(3) Individual counseling, organization of support groups, and caregiver training to assist family caregivers in those areas in which they provide support, including health, nutrition, complex medical care, and financial literacy, and in making decisions and solving problems relating to their caregiving roles;

(4) Respite care to enable family caregivers to be temporarily relieved from their caregiving responsibilities; and

(5) Supplemental services, on a limited basis, to complement the care provided by family caregivers. State agencies and AAAs shall define "limited basis" for supplemental services and may consider limiting units, episodes or expenditure amounts when making this determination.

(b) State agencies shall ensure that there is a plan to provide each of the services authorized under this part in each planning and service area, or statewide in accordance with a funds distribution plan for single planning and service area States, subject to availability of funds under the Act.

(c) To provide services listed in paragraphs (a)(4) and (5) of this section to family caregivers of adults aged 60 and older or of individuals of any age with Alzheimer's disease or a related disorder, the individual for whom they are caring must be determined to be functionally impaired because the individual:



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(1) Is unable to perform at least two activities of daily living without substantial assistance, including verbal reminding, physical cueing, or supervision;

(2) At the option of the State agency, is unable to perform at least three such activities without such assistance; or

(3) Due to a cognitive or other mental impairment, requires substantial supervision because the individual poses a serious health or safety hazard to himself or others.

(d) All funds provided under Title III, part E of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51.

### § 1321.93 Legal assistance.

(a) *General—definition.* (1) The provisions and restrictions in this section apply to legal assistance funded by and provided pursuant to the Act.

(2) Legal assistance means legal advice and/or representation provided by an attorney to older individuals with economic or social needs, per section 102(33) of the Act (42 U.S.C. 3002(33)). Legal assistance may include, to the extent feasible, counseling, or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney, and counseling or representation by a non-lawyer as permitted by law.

(b) *State agency on aging requirements.* (1) Under section 307(a)(11) of the Act (42 U.S.C. 3027(a)(11)), the roles and responsibilities of the State agency shall include assurances for the provision of legal assistance in the State plan as follows:

(i) Legal assistance, to the extent practicable, supplements and does not duplicate or supplant legal services provided with funding from other sources, including grants made by the Legal Services Corporation;

(ii) Legal assistance supplements existing sources of legal services through focusing legal assistance delivery and provider capacity in the specific areas of law affecting older adults with greatest economic need or greatest social need;

(iii) Reasonable efforts will be made to maintain existing levels of legal assistance for older individuals;

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(iv) Advice, training, and technical assistance support for the provision of legal assistance for older adults will be made available to legal assistance providers, as provided in § 1324.303 and section 420(a)(1) of the Act (42 U.S.C. 3032i(a)(1));

(v) The State agency in single planning and service area States or area agencies on aging in States with multiple planning and service areas shall award, through contract funds, only to legal assistance providers that meet the standards and requirements as set forth in this section and section (c); and

(vi) Attorneys and personnel under the supervision of attorneys providing legal assistance shall adhere to the applicable Rules of Professional Conduct including the obligation to preserve the attorney-client privilege.

(2) As set forth in section 307(a)(2)(C) of the Act (42 U.S.C. 3027(a)(2)(C)) and § 1321.27(i)(3), the State agency shall designate the minimum proportion of Title III, part B funds and require the expenditure of at least that sum for each planning and service area for the purpose of procuring contract(s) for legal assistance.

(3) The State agency in States with a single planning and service area shall meet the requirements for area agencies on aging as set forth in paragraph (c) of this section.

(c) *Area Agency on Aging requirements—(1) Adequate proportion funding.* The area agency on aging shall award at a minimum the required adequate proportion of Title III, part B funds designated by the State agency to procure legal assistance for older residents of the planning and service area as set forth in §§ 1321.27 and 1321.65.

(2) *Standards for selection of legal assistance providers.* Area agencies on aging shall adhere to the following standards in selecting legal assistance providers:

(i) The area agency on aging must select and procure through contract the legal assistance provider or providers best able to provide legal assistance as provided in this paragraph (c)(2) and paragraphs (d) through (f) of this section; and

(ii) The area agency on aging must select the legal assistance provider(s)

that best demonstrate the capacity to conduct legal assistance, which means having the requisite expertise and staff to fulfill the requirements of the Act and all applicable Federal requirements for provision of legal assistance.

(d) *Standards for legal assistance provider selection.* Selected legal assistance providers shall exhibit the capacity to:

(1) Retain staff with expertise in specific areas of law affecting older individuals with economic or social need, including the priority areas identified in the Act;

(2) Demonstrate expertise in specific areas of law that are given priority in the Act, including income and public entitlement benefits, health care, long-term care, nutrition, consumer law, housing, utilities, protective services, abuse, neglect, age discrimination, and defense of guardianship, prioritizing focus from among the areas of law based on the needs of the community served;

(i) Defense of guardianship means advice to and representation of older individuals at risk of guardianship and older individuals subject to guardianship to divert them from guardianship to less restrictive, more person-directed forms of decisional support whenever possible, to oppose appointment of a guardian in favor of such less restrictive decisional supports, to seek limitation of guardianship and to seek revocation of guardianship;

(ii) Defense of guardianship includes:

(A) Representation to maintain the rights of individuals at risk of guardianship, and to advocate for limited guardianship if a court orders guardianship to be imposed; assistance removing or limiting an existing guardianship; or assistance to preserve or restore an individual's rights or autonomy;

(B) Representation to advocate for and assert use of least-restrictive alternatives to guardianship to preserve or restore an individual's rights and or autonomy to support decision-making, or to limit the scope of guardianship orders when such orders have or will be entered by a court; and

(C) A legal assistance provider shall not represent a petitioner for imposition of guardianship except in limited circumstances involving guardianship

proceedings of older individuals who seek to become guardians only if other adequate representation is unavailable in the proceedings, and the provider has exhausted, and documents efforts made to explore less restrictive alternatives to guardianship.

(3) Provide effective administrative and judicial advocacy in the areas of law affecting older individuals with greatest economic need or greatest social need;

(4) Support other advocacy efforts, for example, the Long-Term Care Ombudsman Program, including requiring a memorandum of agreement between the State Long-Term Care Ombudsman and the legal assistance provider(s) as required by section 712(h)(8) of the Act (42 U.S.C. 3058g(h)(8)); and

(5) Effectively provide legal assistance to older individuals residing in congregate residential long-term settings as defined in the Act in section 102(35) (42 U.S.C. 3002(35)), or who are isolated as defined in the Act in section 102(24)(c) (42 U.S.C. 3002(24)(c)), or who are restricted to the home due to cognitive or physical limitations.

(e) *Standards for contracting between Area Agencies on Aging and legal assistance providers.* (1) The area agency shall enter into a contract(s) with the selected legal assistance provider(s) that demonstrate(s) the capacity to deliver legal assistance.

(2) The contract shall specify that legal assistance provider(s) shall demonstrate capacity to:

(i) Maintain expertise in specific areas of law that are to be given priority, as defined in paragraphs (d)(1) and (2) of this section.

(ii) Prioritize representation and advice that focus on the specific areas of law that give rise to problems that are disparately experienced by older adults with economic or social need.

(iii) Maintain staff with the expertise, knowledge, and skills to deliver legal assistance as described in this section.

(iv) Engage in reasonable efforts to involve the private bar in legal assistance activities authorized under the Act, including groups within the private bar furnishing services to older individuals on a pro bono and reduced fee basis.

(v) Ensure that attorneys and personnel under the supervision of attorneys providing legal assistance will adhere to the applicable Rules of Professional Conduct including, but not limited to, the obligation to preserve the attorney-client privilege.

(3) The contract shall include provisions:

(i) Describing the duty of the area agency to refer older adults to the legal assistance provider(s) with whom the area agency contracts. In fulfilling this duty, the area agency is precluded from requiring a pre-screening of older individuals seeking legal assistance or from acting as the sole and exclusive referral pathway to legal assistance.

(ii) Requiring the contracted legal assistance provider(s) to maintain capacity to provide legal assistance in the preferred language used by older individuals seeking and/or receiving legal assistance who are limited English proficient (LEP), including in oral and written communication, and to ensure effective communication for individuals with disabilities, including by providing appropriate auxiliary aids and services where necessary.

(A) This includes requiring legal assistance providers take reasonable steps to ensure meaningful access to legal assistance by older individuals with limited-English proficiency, including an individualized assessment of an individual's need to understand and participate in the legal process (as determined by each individual).

(B) This includes stating the responsibility of the legal assistance provider to provide access to interpretation and translation services to meet clients' needs.

(C) This includes taking appropriate steps to ensure communications with persons with disabilities are as effective as communication with others, including by providing appropriate auxiliary aids and services where necessary to afford qualified persons with disabilities an equal opportunity to participate in, and enjoy the benefits of, legal assistance.

(iii) Providing that the area agency will provide outreach activities that will include information about the availability of legal assistance to address problems experienced by older

adults that may have legal solutions, such as those referenced in sections 306(a)(4)(B) and 306(a)(19) of the Act (42 U.S.C. 3026(a)(4)(B) and 3026(a)(19)). This includes outreach to:

(A) Older adults with greatest economic need due to low income and to those with greatest social need, including minority older individuals; and

(B) Older adults of underserved communities, including:

(1) Older adults with limited-English proficiency and/or whose primary language is not English;

(2) Older adults with severe disabilities;

(3) Older adults living in rural areas;

(4) Older adults at risk for institutional placement; and

(5) Older adults with Alzheimer's disease and related disorders with neurological and organic brain dysfunction and their caregivers.

(iv) Providing that legal assistance provider attorney staff and non-attorney personnel under the supervision of legal assistance attorneys must adhere to the applicable State Rules of Professional Conduct.

(v) Requiring that if the legal assistance provider(s) contracted by the area agency is located within a Legal Services Corporation grantee entity, that the legal assistance provider(s) shall adhere to the specific restrictions on activities and client representation in the Legal Services Corporation Act (42 U.S.C. 2996 *et seq.*). Exempted from this requirement are:

(A) Restrictions governing eligibility for legal assistance under such Act;

(B) Restrictions for membership of governing boards; and

(C) Any additional provisions as determined appropriate by the Assistant Secretary for Aging.

(f) *Legal assistance provider requirements.* (1) The provisions and restrictions in this section apply to legal assistance provider(s) when they are providing legal assistance under section 307(a)(11) of the Act (42 U.S.C. 3027(a)(11)).

(2) Legal assistance providers under contract with the State agency in States with single planning and service areas or area agency in States with multiple planning and service areas

shall adhere to the following requirements:

(i) Provide legal assistance to meet complex and evolving legal needs that may arise involving a range of private, public, and governmental entities, programs, and activities that may impact an older adult's independence, choice, or financial security; and

(ii) Maintain the capacity for and provision of effective administrative and judicial representation.

(A) *Effective administrative and judicial representation* means the expertise and ability to provide the range of services necessary to adequately address the needs of older adults through legal assistance in administrative and judicial forums, as required under the Act. This includes providing the full range of legal services, from brief service and advice through representation in administrative and judicial proceedings.

(B) [Reserved]

(iii) Conduct administrative and judicial advocacy as is necessary to meet the legal needs of older adults with economic or social need, focusing on such individuals with the greatest economic need or greatest social need:

(A) *Economic need* means the need for legal assistance resulting from income at or below the Federal poverty level, as defined in section 102(44) of the Act (42 U.S.C. 3002(44)), that is insufficient to meet the legal needs of an older individual or that causes barriers to attaining legal assistance to assert the rights of older individuals as articulated in the Act and in the laws, regulations, and Constitution.

(B) *Social need* means the need for legal assistance resulting from social factors, as defined by in section 102(24) of the Act (42 U.S.C. 3002(24)), that cause barriers to attaining legal assistance to assert the rights of older individuals.

(iv) Maintain the expertise required to capably handle matters related to the priority case type areas specified under the Act, including income and public entitlement benefits, health care, long-term care, nutrition, housing, utilities, protective services, abuse, neglect, age discrimination and defense of guardianship (as defined in paragraph (d)(2)(i) of this section).

(v) Maintain the expertise required to deliver any matters in addition to those specified in paragraph (f)(2)(iv) of this section that are related to preserving, maintaining, and restoring an older adult's independence, choice, or financial security.

(vi) Maintain the expertise and capacity to deliver a full range of legal assistance, from brief service and advice through representation in hearings, trials, and other administrative and judicial proceedings in the areas of law affecting such older individuals with economic or social need.

(vii) Maintain the capacity to provide effective legal assistance and legal support to other advocacy efforts, including, but not limited to, the Long-Term Care Ombudsman Program serving the planning and service area, as required by section 712(h)(8) of the Act (42 U.S.C. 3058g(h)(8)), and maintain the capacity to form, develop and maintain partnerships that support older adults' independence, choice, or financial security.

(viii) Maintain and exercise the capacity to effectively provide legal assistance to older adults regardless of whether they reside in community or congregate settings, and to provide legal assistance to older individuals who are confined to their home, and older adults whose access to legal assistance may be limited by geography or isolation.

(ix) Maintain the capacity to provide legal assistance in the preferred language used by older individuals seeking and/or receiving legal assistance who are limited-English proficient (LEP), including in oral and written communication.

(A) Legal assistance provider(s) shall take reasonable steps to ensure meaningful access to legal assistance by older individuals with limited English-speaking proficiency and other communication needs;

(B) Such reasonable steps require an individualized assessment of the needs of individuals who are seeking legal assistance and legal assistance clients to understand and participate in the legal process (as determined by each individual); and

(C) Legal assistance provider(s) are responsible for providing access to interpretation, translation, and auxiliary aids and services to meet older individuals' legal assistance needs.

(x) Maintain staff with knowledge of the unique experiences of older adults with economic or social need and expertise in areas of law affecting such older adults.

(xi) Meet the following legal assistance provider requirements:

(A) A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.

(B) A legal assistance provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling, and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

(C) A legal assistance provider and its attorneys may engage in other legal activities to the extent that there is no conflict of interest nor other interference with their professional responsibilities under this Act.

(D) Legal assistance providers that are not housed within Legal Services Corporation grantee entities shall coordinate their services with existing Legal Services Corporation projects to concentrate funds under this Act in providing legal assistance to older adults with the greatest economic need or greatest social need.

(E) Nothing in this section is intended to prohibit any attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(F) Legal assistance provider attorney staff and non-attorney personnel under the supervision of legal assistance attorneys must adhere to the applicable Rules of Professional Conduct.

(3) Restrictions on legal assistance.

(i) No legal assistance provider(s) shall use funds received under the Act to provide legal assistance in a fee generating case unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. All providers shall estab-

lish procedures for the referral of fee generating cases.

(A) "Fee generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

(B) [Reserved]

(ii) Other adequate representation is deemed to be unavailable when:

(A) Recovery of damages is not the principal object of the client; or

(B) A court appoints a provider or an employee of a provider pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(C) An eligible client is seeking benefits under Title II of the Social Security Act (42 U.S.C. 401 *et seq.*), Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act (42 U.S.C. 1381 *et seq.*), Supplemental Security Income for Aged, Blind, and Disabled.

(iii) A provider may seek and accept a fee awarded or approved by a court or administrative body or included in a settlement.

(iv) When a case or matter accepted in accordance with this section results in a recovery of damages, other than statutory benefits, a provider may accept reimbursement for out-of-pocket costs and expenses incurred in connection with the case or matter.

(4) Legal assistance provider prohibited activities.

(i) A provider, employee of the provider, or staff attorney shall not engage in the following prohibited political activities:

(A) No provider or its employees shall contribute or make available funds, personnel, or equipment provided under the Act to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;

(B) No provider or its employees shall intentionally identify the Title III program or provider with any partisan or nonpartisan political activity, or with

the campaign of any candidate for public or party office; or

(C) While engaged in legal assistance activities supported under the Act, no attorney shall engage in any political activity.

(ii) No funds made available under the Act shall be used for lobbying activities including, but not limited to, any activities intended to influence any decision or activity by a non-judicial Federal, State, or local individual or body.

(A) Nothing in this section is intended to prohibit an employee from:

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation relevant to the client's legal matter;

(3) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Act, Title III regulations or other applicable law. This provision does not authorize publication or training of clients on lobbying techniques or the composition of a communication for the client's use;

(4) Making direct contact with the area agency for any purpose; or

(5) Testifying before a government agency, legislative body, or committee at the request of the government agency, legislative body, or committee.

(B) [Reserved]

(iii) A provider may use funds provided by private sources to:

(A) Engage in lobbying activities if a government agency, elected official, legislative body, committee, or member thereof is considering a measure directly affecting activities of the provider under the Act;

(B) [Reserved]

(iv) While carrying out legal assistance activities and while using resources provided under the Act, by private entities or by a recipient, directly or through a subrecipient, no provider or its employees shall:

(A) Participate in any public demonstration, picketing, boycott, or strike, whether in person or online, ex-

cept as permitted by law in connection with the employee's own employment situation;

(B) Encourage, direct, or coerce others to engage in such activities; or

(C) At any time engage in or encourage others to engage in:

(1) Rioting or civil disturbance;

(2) Activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction;

(3) Any illegal activity;

(4) Any intentional identification of programs funded under the Act or recipient with any partisan or non-partisan political activity, or with the campaign of any candidate for public or party office; or

(v) None of the funds made available under the Act may be used to pay dues exceeding a reasonable amount per legal assistance provider per annum to any organization (other than a bar association), a purpose or function of which is to engage in activities prohibited under these regulations. Such dues may not be used to engage in activities for which Older Americans Act funds cannot be directly used.

**§ 1321.95 Service provider Title III and Title VI coordination responsibilities.**

(a) For locations served by service providers under Title III of the Act where there are Title VI programs, the area agency on aging's and/or service provider's policies and procedures, developed in coordination with the relevant Title VI program director(s), as set forth in §1322.13(a), must explain how the service provider will coordinate with Title VI programs.

(b) The policies and procedures set forth in paragraph (a) of this section must at a minimum address:

(1) How the service provider will provide outreach to Tribal elders and family caregivers regarding services for which they may be eligible under Title III;

(2) The communication opportunities the service provider will make available to Title VI programs, to include meetings email distribution lists, and presentations;

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(3) The methods for collaboration on and sharing of program information and changes;

(4) How Title VI programs may refer individuals who are eligible for Title III services;

(5) How services will be provided in a culturally appropriate and trauma-informed manner; and

(6) Opportunities to serve on advisory councils, workgroups, and boards.

### **Subpart E—Emergency and Disaster Requirements**

#### **§ 1321.97 Coordination with State, Tribal, and local emergency management.**

(a) *State agencies.* (1) State agencies shall establish emergency plans, as set forth in section 307(a)(28) of the Act (42 U.S.C. 3027(a)(28)). Such plans must include, at a minimum:

(i) The State agency's continuity of operations plan and an all-hazards emergency response plan based on completed risk assessments for all hazards and updated annually;

(ii) A plan to coordinate activities with area agencies on aging, service providers, local emergency response agencies, relief organizations, local governments, State agencies responsible for emergency and disaster preparedness, and any other institutions that have responsibility for disaster relief service delivery;

(iii) Processes for developing and updating long-range emergency and disaster preparedness plans; and

(iv) Other relevant information as determined by the State agency.

(2) The plan shall include information describing the involvement of the head of the State agency in the development, revision, and implementation of emergency and disaster preparedness plans, including the State Public Health Emergency Preparedness and Response Plan.

(3) The plan shall discuss coordination with area agencies on aging and service providers and Tribal and local emergency management.

(b) *Area agencies on aging.* (1) Area agencies on aging shall establish emergency plans. Such plans must include:

(i) The area agency's continuity of operations plan and an all-hazards

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emergency response plan based on completed risk assessments for all hazards and updated annually;

(ii) A description of coordination activities for both development and implementation of long-range emergency and disaster preparedness plans; and

(iii) Other information as deemed appropriate by the area agency on aging.

(2) The area agency on aging shall coordinate with Federal, local, and State emergency response agencies, service providers, relief organizations, local and State governments, and any other entities that have responsibility for disaster relief service delivery, as well as with Tribal emergency management, as appropriate.

#### **§ 1321.99 Setting aside funds to address disasters.**

(a) Section 310 of the Act (42 U.S.C. 3030) authorizes the use of funds during Presidentially declared major disaster declarations under the Stafford Act (42 U.S.C. 5121–5207) without regard to distribution through the State agency's intrastate funding formula or funds distribution plan when the following apply:

(1) Title III services are impacted; and

(2) Flexibility is needed as determined by the State agency.

(b) When implementing this authority, State agencies may set aside funds, up to five percent of their total Title III allocations, if specified as being allowed to be withheld for the purpose in their approved intrastate funding formula or funds distribution plan, or with prior approval from the Assistant Secretary for Aging. The following apply for use of set aside funds:

(1) Set aside funds that are awarded under this provision must comply with the requirements at § 1321.101; and

(2) The State agency must have policies and procedures in place to award funds set aside through the intrastate funding formula, as set forth in § 1321.49, or funds distribution plan, as set forth in § 1321.51(b), if there are no funds awarded subject to this provision within 30 days of the end of the fiscal year in which the funds were received.

**§ 1321.101 Flexibilities under a major disaster declaration.**

(a) If a State or Indian Tribe requests and receives a major disaster declaration under the Stafford Act (42 U.S.C. 5121-5207), the State agency may use disaster relief flexibilities under Title III as set forth in this section to provide disaster relief services for areas of the State where the specific major disaster declaration is authorized and where older adults and family caregivers are affected.

(b) Flexibilities a State agency may exercise under a major disaster declaration include:

(1) Allowing use of any portion of the funds of any open grant awards under Title III of the Act for disaster relief services for older individuals and family caregivers.

(2) Awarding portions of State plan administration, up to a maximum of five percent of the Title III grant award or to a maximum of the amounts set forth at § 1321.9(c)(2)(iv), for use in a planning and service area covered in whole or part under a major disaster declaration without the requirement of allocation through the intrastate funding formula or funds distribution plan to be used for direct service provision.

(3) Awarding of funds set aside to address disasters, as set forth in § 1321.99, or as determined by the Assistant Secretary for Aging, in the following ways:

(i) to an area agency serving a planning and service area covered in whole or part under a major disaster declaration without the requirement of allocation through the intrastate funding formula;

(ii) for single planning and service area States, to a service provider without the requirement of allocation through a funds distribution plan; or

(iii) to be used for direct service provision, direct expenditures, and/or procurement of items on a statewide level, if the State agency adheres to the following:

(A) The State agency judges that provision of services or procurement of supplies by the State agency is necessary to ensure an adequate supply of such services and/or that such services can be provided/supplies procured more economically, and with comparable quality, by the State agency;

(B) The State agency consults with area agencies on aging prior to exercising the flexibility, and includes the Ombudsman as set forth in part 1324, subpart A if funding for the Ombudsman program is affected;

(C) The State agency uses such set aside funding, as provided at § 1321.99, for services provided through area agencies on aging and other aging network partners to the extent reasonably practicable, in the judgment of the State agency; and

(D) The State agency ensures reporting of any clients, units, and services provided through such expenditures.

(c) A State agency must submit a State plan amendment as set forth in § 1321.31(b) if the State agency exercises any of the flexibilities as set forth in paragraph (b) of this section. The State plan amendment must at a minimum include the specific entities receiving funds; the amount, source, and intended use for funds; and other such justification of the use of funds.

(d) Disaster relief services may include any allowable services under the Act to eligible older individuals or family caregivers during the period covered by the major disaster declaration.

(e) Expenditures of funds under disaster relief flexibilities must be reported separately from the grant where funding was expended. State agencies may expend funds from any source within open grant awards under Title III and Title VII of the Act but must track the source of all expenditures.

(f) State agencies must have policies and procedures outlining communication with area agencies on aging and/or local service providers regarding State agency expectations for eligibility, use, and reporting of services and funds provided under these flexibilities, and include the Ombudsman as set forth in part 1324, subpart A if funding for the Ombudsman program is affected.

(g) A State agency may only make obligations exercising this flexibility during the major disaster declaration incident period or 90 days thereafter or with prior approval from the Assistant Secretary for Aging.



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### § 1321.103 Title III and Title VI coordination for emergency and disaster preparedness.

State agencies, area agencies, and Title VI programs should coordinate in emergency and disaster preparedness planning, response, and recovery. State agencies and area agencies that have Title VI programs in operation within their jurisdictions must have policies and procedures, developed in communication with the relevant Title VI program director(s) as set forth in § 1322.13(c), in place for how they will communicate and coordinate with Title VI programs regarding emergency and disaster preparedness planning, response, and recovery.

### § 1321.105 Modification during major disaster declaration or public health emergency.

The Assistant Secretary for Aging retains the right to modify the requirements described in these regulations pursuant to a major disaster declaration or public health emergency.

## PART 1322—GRANTS TO INDIAN TRIBES AND NATIVE HAWAIIAN GRANTEEES FOR SUPPORTIVE, NUTRITION, AND CAREGIVER SERVICES

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- 1322.3 Definitions.

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- 1322.5 Application requirements.
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- 1322.11 Purpose of services allotments under Title VI.
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### Subpart D—Emergency and Disaster Requirements

- 1322.33 Coordination with Tribal, State, and local emergency management.
- 1322.35 Flexibilities under a major disaster declaration.
- 1322.37 Title VI and Title III coordination for emergency and disaster preparedness.
- 1322.39 Modification during major disaster declaration or public health emergency.

AUTHORITY: 42 U.S.C. 3001 *et seq.*

SOURCE: 89 FR 11681, Feb. 14, 2024, unless otherwise noted.

### Subpart A—Introduction

#### § 1322.1 Basis and purpose of this part.

(a) This program is established to meet the unique needs and circumstances of American Indian and Alaskan Native elders and family caregivers and of older Native Hawaiians and family caregivers, on Indian reservations and/or in service areas as approved in § 1322.7. This program honors the sovereign government to government relationship with a Tribal organization serving elders and family caregivers through direct grants to serve the eligible participants and similar considerations, as appropriate, for Hawaiian Native grantees representing elders and family caregivers. This part implements Title VI (parts A, B, and C) of the Older Americans Act, as amended (the Act), by establishing the requirements that an Indian Tribal organization or Hawaiian Native grantee shall meet in order to receive a grant to promote the delivery of services for older Indians, Alaskan Native, Native Hawaiians, and Native American family caregivers that are comparable to services provided under Title III. This part also prescribes application and hearing requirements and procedures for these grants.

(b) Terms used, but not otherwise defined, in this part will have the meanings ascribed to them in the Act.

#### § 1322.3 Definitions.

*Access to services or access services*, as used in this part, means services which may facilitate connection to or receipt of other direct services, including transportation, outreach, information

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and assistance, options counseling, and case management services.

*Acquiring*, as used in this part, means obtaining ownership of an existing facility.

*Act*, means the Older Americans Act of 1965 as amended.

*Altering or renovating*, as used in this part, means making modifications to or in connection with an existing facility which are necessary for its effective use. Such modifications may include alterations, improvements, replacements, rearrangements, installations, renovations, repairs, expansions, upgrades, or additions, which are not in excess of double the square footage of the original facility and all physical improvements.

*Area agency on aging*, as used in this part, means a single agency designated by the State agency to perform the functions specified in the Act for a planning and service area.

*Budgeting period*, as used in § 1322.19, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

*Constructing*, as used in this part, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

*Department*, means the U.S. Department of Health and Human Services.

*Domestically produced foods*, as used in this part, means agricultural foods, beverages and other food ingredients which are a product of the United States, its Territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands (hereinafter referred to as “the United States”), except as may otherwise be required by law, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to minor ingredients. Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise:

(1) Produced in the United States; and

(2) Commercially available in the United States at fair and reasonable prices from domestic sources.

*Eligible organization*, means either a Tribal organization or a public or non-profit private organization having the capacity to provide services under this part for older Hawaiian Natives.

*Family caregiver*, as used in this part, means an adult family member, or another individual, who is an informal provider of in-home and community care to an older Native American; an adult family member, or another individual, who is an informal provider of in-home and community care to an individual of any age with Alzheimer’s disease or a related disorder with neurological and organic brain dysfunction; or an older relative caregiver. For purposes of this part, family caregiver does not include individuals whose primary relationship with the older adult is based on a financial or professional agreement.

*Hawaiian Native or Native Hawaiian*, as used in this part, means any individual, any of whose ancestors were native of the area which consists of the Hawaiian Islands prior to 1778.

*Hawaiian Native grantee*, as used in this part, means an eligible organization that has received funds under Title VI of the Act to provide services to older Hawaiians.

*Indian reservation*, means the reservation of any Federally recognized Indian Tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, any community on non-trust land under the jurisdiction of an Indian Tribe, including a band, nation, pueblo, or rancheria, with allotted lands, or lands subject to a restriction against alienation imposed by the United States, and Alaska Native regions established, pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

*Indian Tribe*, means any Indian Tribe, band, nation, or organized group or community, including any Alaska Native village, regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the

special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b).

*In-home supportive services*, as used in this part, references those supportive services provided in the home as set forth in the Act, to include:

- (1) Homemaker, personal care, home care, home health, and other aides;
- (2) Visiting and telephone or virtual reassurance;
- (3) Chore maintenance;
- (4) Respite care for families, including adult day care as a respite service for families; and
- (5) Minor modification of homes that is necessary to facilitate the independence and health of older Native Americans and that is not readily available under another program.

*Major disaster declaration*, as used in this part and section 310 of the Act (42 U.S.C. 3030), means a Presidentially declared disaster under the Robert T. Stafford Relief and Emergency Assistance Act (42 U.S.C. 5121–5207).

*Means test*, as used in this part in the provision of services, means the use of the income, assets, or other resources of an older Native American, family caregiver, or the households thereof to deny or limit that person's eligibility to receive services under this part.

*Multipurpose senior center*, as used in the Act, means a community facility for the organization and provision of a broad spectrum of services, which shall include provision of health (including mental and behavioral health), social, nutritional, and educational services and the provision of facilities for recreational activities for older Native Americans, as practicable, including as provided via virtual facilities; as used in §1322.25, facilitation of services in such a facility.

*Native American*, as used in the Act, means a person who is a member of any Indian Tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) who:

- (1) Is recognized as eligible for the special programs and services provided

by the United States to Indians because of their status as Indians; or

- (2) Is located on, or in proximity to, a Federal or State reservation or rancheria; or is a person who is a Native Hawaiian, who is any individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

*Nutrition Services Incentive Program*, as used in the Act, means grant funding to State agencies, eligible Tribal organizations, and Native Hawaiian grantees to support congregate and home-delivered nutrition programs by providing an incentive to serve more meals.

*Older Indians*, means those individuals who have attained the minimum age determined by the Indian Tribe for services.

*Older Native Hawaiian*, means any individual, age 60 or over, who is a Hawaiian Native.

*Older relative caregiver*, as used in section 631 of the Act (42 U.S.C. 3057k–11), means a caregiver who is age 55 or older and lives with, is the informal provider of in-home and community care to, and is the primary caregiver for, a child or an individual with a disability;

- (1) In the case of a caregiver for a child is:

- (i) The grandparent, step-grandparent, or other relative (other than the parent) by blood, marriage, or adoption, of the child;

- (ii) Is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregivers of the child; and

- (iii) Has a legal relationship to the child, such as legal custody, adoption, or guardianship, or is raising the child informally; and

- (2) In the case of a caregiver for an individual with a disability, is the parent, grandparent, step-grandparent, or other relative by blood, marriage, or adoption of the individual with a disability.

*Program income*, as defined in 2 CFR part 200.1 means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance

except as provided in 2 CFR 200.307(f). Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also 2 CFR 200.307, 200.407 and 35 U.S.C. 200–212 (which applies to inventions made under Federal awards).

*Project period*, as used in §1322.19, means the total time for which a project is approved including any extensions.

*Reservation*, as used in section 305(b)(2) of the Act (42 U.S.C. 3025(b)(2)) with respect to the designation of planning and service areas, means any Federally or State recognized American Indian Tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

*Service area*, as used in §1322.5(b) and elsewhere in this part, means that geographic area approved by the Assistant Secretary for Aging in which the Tribal organization or Hawaiian Native grantee provides supportive, nutrition, and/or family caregiver support services to older Indians or Native Hawaiians residing there. Service areas are approved through the funding application process, which may include Bureau of Indian Affairs service area maps. A service area may include all or part of the reservation or any portion of a county or counties which has a common boundary with the reservation. A service area may also include a non-contiguous area if the designation of such an area will further the purpose of the Act and will provide for more effective administration of the program by the Tribal organization.

*Service provider*, means an entity that is awarded funds, including via a grant, subgrant, contract, or subcontract, from a Tribal organization or Native Hawaiian grantee to provide direct services under this part.

*State agency*, as used in this part, means the designated State unit on aging for each of the 50 States, the District of Columbia, and the Territories of Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, unless otherwise specified.

*Title VI director*, as used in this part, means a single individual who is the key personnel responsible for day-to-day management of the Title VI program and who serves as a contact point for communications regarding the Title VI program.

*Tribal organization*, as used in this part, means the recognized governing body of any Indian Tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. Provided that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each Indian Tribe shall be a prerequisite to the letting or making of the contract or grant (25 U.S.C. 450b).

*Voluntary contributions*, as used in section 315(b) of the Act (42 U.S.C. 3030c–2(b)), means donations of money or other personal resources given freely, without pressure or coercion, by individuals receiving services under the Act.

## Subpart B—Application

### § 1322.5 Application requirements.

An eligible organization shall submit an application. The application shall be submitted as prescribed in section 614 of the Act (42 U.S.C. 3057e) and in accordance with the Assistant Secretary for Aging's instructions for the specified project and budget periods. In

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addition to the requirements set out in section 614 of the Act (42 U.S.C. 3057e), the application shall provide for:

(a) Program objectives, as set forth in section 614(a)(5) of the Act (42 U.S.C. 3057e(a)(5)), and any objectives established by the Assistant Secretary for Aging;

(b) A map and/or description of the geographic boundaries of the service area proposed by the eligible organization, which may include Bureau of Indian Affairs service area maps;

(c) Documentation of the ability of the eligible organization to deliver supportive and nutrition services to older Native Americans, or documentation that the eligible organization has effectively administered supportive and nutrition services within the last 3 years;

(d) Assurances as prescribed by the Assistant Secretary for Aging that:

(1) The eligible organization represents at least 50 individuals who have attained 60 years of age or older and reside in the service area;

(2) The eligible organization shall comply with all applicable State and local license and safety requirements, if any, for the provision of those services;

(3) If a substantial number of the older Native Americans residing in the service area are limited English proficient, the Tribal organization shall utilize the services of workers who are fluent in the language used by a predominant number of older Native Americans;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) The eligible organization shall comply with all requirements set forth in §§ 1322.7 through 1322.17;

(6) The services provided under this part shall be coordinated, where applicable, with services provided under Title III of the Act as set forth in 45 CFR part 1321 and Title VII of the Act as set forth in 45 CFR part 1324, and the eligible organization shall establish and follow policies and procedures as set forth in § 1322.13;

(7) The eligible organization shall have a completed needs assessment within the project period immediately prior to the application identifying the need for nutrition and supportive serv-

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ices for older Native Americans and, if applying for funds under Title VI part C, for family caregivers;

(8) The eligible organization shall ensure policies and procedures are aligned with periodic data collection and reporting requirements, including ensuring service and unit definitions are consistent with definitions set forth in these regulations, policy guidance, and other information developed by the Assistant Secretary for Aging; and

(9) The eligible organization shall complete a program evaluation using data as set forth by the Assistant Secretary for Aging and shall use findings of such program evaluation to establish and update program goals and objectives.

(e) A Tribal resolution(s) authorizing the Tribal organization to apply for a grant under this part; and

(f) Signature by the principal official of the Indian Tribe or eligible organization.

### § 1322.7 Application approval.

(a) Approval of any application under section 614(e) of the Act (42 U.S.C. 3057e(e)), shall not commit the Assistant Secretary for Aging in any way to make additional, supplemental, continuation, or other awards with respect to any approved application.

(b) The Assistant Secretary for Aging may give first priority in awarding grants to grantees that have effectively administered such grants in the prior year.

(c) Upon approval of an application and acceptance of the funding award, the Tribal organization or Hawaiian Native grantee is required to submit all performance and fiscal reporting as set forth by the Assistant Secretary for Aging on a no less than an annual basis.

(d) If the Assistant Secretary for Aging disapproves of an application, the Assistant Secretary for Aging must follow procedures outlined in section 614(d) of the Act (42 U.S.C. 3057e(d)).

### § 1322.9 Hearing procedures.

In meeting the requirements of section 614(d)(3) of the Act (42 U.S.C. 3057e(d)(3)), if the Assistant Secretary for Aging disapproves an application

from an eligible organization, the eligible organization may file a written request for a hearing with the Departmental Appeals Board (DAB) in accordance with 45 CFR part 16.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the eligible organization shall submit to the DAB, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and all documentation to support its position as well as any documentation requested by the DAB.

(b) Upon receipt of appeal for reconsideration of a rejected application or activities proposed by an applicant, the DAB will notify the applicant by certified mail that the appeal has been received.

(c) The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision. After consideration of the record, the DAB will issue a written decision, based on the record, that sets forth the reasons for the decision and the evidence on which it was based. A disapproval decision issued by the DAB represents the final determination of the Assistant Secretary for Aging and remains in effect unless reversed or stayed on judicial appeal, except that the Assistant Secretary for Aging may modify or set aside the decision before the record of the proceedings under this subpart is filed in court.

(d) Either the eligible organization or the staff of the Administration on Aging may request for good cause an extension of any of the time limits specified in this section.

### Subpart C—Service Requirements

#### § 1322.11 Purpose of services allotted under Title VI.

(a) Title VI of the Act authorizes the distribution of Federal funds to Tribal organizations and a Hawaiian Native grantee for the following categories of services:

- (1) Supportive services;
- (2) Nutrition services; and
- (3) Family caregiver support program services.

(b) Funds authorized under these categories are for the purpose of assisting a Tribal organization or Hawaiian Native grantee to develop or enhance comprehensive and coordinated community-based systems for older Native Americans and family caregivers.

#### § 1322.13 Policies and procedures.

The Tribal organization and Hawaiian Native grantee shall ensure the development and implementation of policies and procedures, including those required as set forth in this part.

(a) Upon approval of a program application and acceptance of funding, the Tribal organization or Hawaiian Native grantee must appoint a Title VI Director and provide appropriate contact information for the Title VI Director consistent with guidance from the Assistant Secretary for Aging.

(b) The Tribal organization or Hawaiian Native grantee shall provide the Assistant Secretary for Aging with statistical and other information in order to meet planning, coordination, evaluation and reporting requirements in a timely manner and shall ensure policies and procedures are aligned with periodic data collection and reporting requirements, including ensuring service and unit definitions are consistent with definitions set forth in these regulations, policy guidance, and other information developed by the Assistant Secretary for Aging.

(c) A Tribal organization or Hawaiian Native grantee must maintain program policies and procedures. Policies and procedures shall address:

(1) Direct service provision, including:

(i) Requirements for client eligibility, periodic assessment, and person-centered planning, where appropriate;

(ii) Access to information and assistance to minimally address:

(A) Establishing or having a list of all services that are available to older Native Americans in the service area;

(B) Maintaining a list of services needed or requested by older Native Americans;

(C) Providing assistance to older Native Americans to help them take advantage of available services;

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(D) Working with agencies, such as area agencies on aging and other programs funded by Title III and Title VII as set forth in §§1321.53 and 1321.69 of this chapter, to facilitate participation of older Native Americans; and

(E) A listing and definitions of services that may be provided by the Tribal organization or Native Hawaiian grantee with funds received under the Act.

(iii) Limitations on the frequency, amount, or type of service provided; and

(iv) The grievance process for older individuals and family caregivers who are dissatisfied with or denied services under the Act.

(2) Fiscal requirements including:

(i) *Voluntary contributions.* Voluntary contributions, where:

(A) Each Tribal organization or Hawaiian Native grantee shall:

(1) Provide each older Native American with a voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Native American with respect to their contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all voluntary contributions to expand comprehensive and coordinated services systems supported under this part, while using voluntary contributions provided for nutrition services only to expand nutrition services, consistent with §1322.27.

(B) Each Tribal organization or Native Hawaiian grantee may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the Tribal organization or Native Hawaiian grantee shall consider the income ranges of older Native Americans in the service area and the Tribal organization's or Hawaiian Native grantee's other sources of income. However, means tests may not be used.

(C) A Tribal organization or Hawaiian Native grantee that receives funds under this part may not deny any older Native American a service because the older Native American will not or cannot contribute to the cost of the service.

(ii) *Buildings and equipment.* Buildings and equipment, where costs incurred

for altering or renovating, utilities, insurance, security, necessary maintenance, janitorial services, repair, and upkeep (including Federal property unless otherwise provided for) to keep buildings and equipment in an efficient operating condition, may be an allowable use of funds if:

(A) Costs are not payable by third parties through rental or other agreements;

(B) Costs support an allowed activity under Title VI part A, B, or C of the Act and are allocated proportionally to the benefiting grant program;

(C) Constructing and acquiring activities are only allowable for multipurpose senior centers;

(D) In addition to complying with 2 CFR part 200, the Tribal organization or Native Hawaiian grantee (and all other necessary parties) must file a Notice of Federal Interest in the appropriate official records of the jurisdiction where the property is located at the time of acquisition or prior to commencement of construction, as applicable. The Notice of Federal Interest must indicate that the acquisition or construction has been funded with an award under Title VI of the Act and that inquiries regarding the Federal Government's interest in the property should be directed in writing to the Assistant Secretary for Aging;

(E) Altering and renovating activities are allowable for facilities providing services with funds provided as set forth in this part and as subject to 2 CFR part 200.

(iii) *Supplement, not supplant.* Funds awarded under this part must be used to supplement, not supplant existing Federal, State, and local funds expended to support activities.

(d) The Tribal organization or Hawaiian Native grantee must develop a monitoring process ensuring the quality and effectiveness of services regarding meeting participant needs, the goals outlined within the approved application, and Tribal organization requirements.

**§ 1322.15 Confidentiality and disclosure of information.**

A Tribal organization or Hawaiian Native grantee shall develop and maintain confidentiality and disclosure procedures as follows:

(a) A Tribal organization or Hawaiian Native grantee shall have procedures to ensure that no information about an older Native American or obtained from an older Native American by any provider of services is disclosed by the provider of such services in a form that identifies the person without the informed consent of the person or their legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal or Tribal monitoring agencies.

(b) A Tribal organization or Hawaiian Native grantee is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act (5 U.S.C. 552).

(c) A Tribal organization or Hawaiian Native grantee shall not require a provider of legal assistance under this part to reveal any information that is protected by attorney client privilege.

(d) The Tribal organization or Hawaiian Native grantee must have policies and procedures that ensure that entities providing services under this title promote the rights of each older Native American who receives such services. Such rights include the right to confidentiality of records relating to such Native American.

(e) A Tribal organization's or Hawaiian Native grantee's policies and procedures may explain that individual information and records may be shared with other State and local agencies, community-based organizations, and health care providers and payers, as appropriate, in order to provide services.

(f) A Tribal organization's or Hawaiian Native grantee's policies and procedures must comply with all applicable Federal laws, codes, rules, and regulations, including the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. 1301 *et seq.*), as well as guidance as the Tribal organization or Hawaiian Native grantee determines, for the collection, use, and exchange of both Personal Identifiable

Information (PII) and personal health information in the provision of Title VI services under the Act.

**§ 1322.17 Purpose of services—person- and family-centered, trauma-informed.**

(a) Services must be provided to older Native Americans and family caregivers in a manner that is person-centered, trauma-informed, and culturally sensitive. Services should be consistent with culturally appropriate holistic traditional care and responsive to their interests, physical and mental health, social and cultural needs, available supports, and desire to live where and with whom they choose. Person-centered services may include community-centered and family-centered approaches consistent with the traditions, practices, beliefs, and cultural norms and expectations of the Tribal organization or Hawaiian Native grantee.

(b) Services should, as appropriate, be consistent with culturally appropriate holistic traditional care and provide older Native Americans and family caregivers with the opportunity to develop a person-centered plan that is led by the individual or, if applicable, by the individual and the individual's authorized representative. Services should be incorporated into existing person-centered plans, as appropriate.

(c) Tribal organizations and Hawaiian Native grantees should provide training to staff and volunteers on culturally appropriate holistic traditional care and person-centered and trauma-informed service provision.

**§ 1322.19 Responsibilities of service providers.**

As a condition for receipt of funds under this part, each Tribal organization and Hawaiian Native grantee shall assure that providers of services shall:

(a) Provide service participants with an opportunity to contribute to the cost of the service as provided in § 1322.13(c)(2)(i);

(b) Provide, to the extent feasible, for the furnishing of services under this Act, through self-direction;

(c) With the consent of the older Native American, or their legal representative if there is one, or in accordance



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with local adult protective services requirements, bring to the attention of adult protective services or other appropriate officials for follow-up, conditions or circumstances which place the older Native American, or the household of the older Native American, in imminent danger;

(d) Where feasible and appropriate, make arrangements for the availability of services to older Native Americans and family caregivers in weather-related and other emergencies;

(e) Assist participants in taking advantage of benefits under other programs;

(f) Assure that all services funded under this part are coordinated with other appropriate services in the community, and that these services do not constitute an unnecessary duplication of services provided by other sources; and

(g) Receive training to provide services in a culturally competent manner and consistent with §§ 1322.13 through 1322.17.

### § 1322.21 Client eligibility for participation.

(a) An individual must have attained the minimum age determined by the Tribal organization or Hawaiian Native grantee as specified in their approved application, to be eligible to participate in services under the Act, unless the Act otherwise provides an explicit exception. Exceptions are limited to the following specific services:

(1) Nutrition services:

(i) Services shall be available to spouses of any age of older Native Americans;

(ii) Services may be available to:

(A) A person with a disability who lives with an adult, age 60 or older, or who resides in a housing facility that is primarily occupied by older adults at which congregate meals are served; and

(B) A volunteer during meal hours.

(2) Family caregiver support services for:

(i) Adults caring for older Native Americans or individuals of any age with Alzheimer's or related disorder;

(ii) Older relative caregivers who are caring for children and are not the biological or adoptive parent of the child, where older relative caregivers shall no

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longer be eligible for services under this part when the child reaches 18 years of age; or

(iii) Older relative caregivers who are caring for individuals age 18 to 59 with disabilities, and who may be of any relationship, including the biological or adoptive parent.

(3) Services such as information and assistance and public education, where recipients of information may not be older Native Americans, but the information is targeted to those who are older Native Americans and/or benefits those who are older Native Americans.

(b) A Tribal organization or Hawaiian Native grantee may develop further eligibility requirements for implementation of services for older Native Americans and family caregivers, consistent with the Act and all applicable Federal requirements. Such requirements may include:

(1) Assessment of functional and support needs;

(2) Geographic boundaries;

(3) Limitations on number of persons that may be served;

(4) Limitations on number of units of service that may be provided;

(5) Limitations due to availability of staff/volunteers;

(6) Limitations to avoid duplication of services;

(7) Specification of settings where services shall or may be provided;

(8) Whether to serve Native Americans who have Tribal or Native Hawaiian membership other than those who are specified in the Tribal organization's or Hawaiian Native grantee's approved application; and

(9) Whether to serve older individuals or family caregivers who are non-Native Americans but live within the approved service area and are considered members of the community by the Tribal organization.

### § 1322.23 Client and service priority.

(a) The Tribal organization or Hawaiian Native grantee shall ensure service to those identified as members of priority groups through their assessment of local needs and resources.

(b) The Tribal organization or Hawaiian Native grantee shall identify criteria for being given priority in the delivery of services under Title VI, parts

A or B, consistent with the Act and all applicable Federal requirements.

(c) The Tribal organization or Hawaiian Native grantee shall identify criteria for being given priority in the delivery of services under Title VI, part C, consistent with the Act and all applicable Federal requirements:

(1) Caregivers who are older Native Americans with greatest social need, and older Native Americans with greatest economic need (with particular attention to low-income older individuals);

(2) Caregivers who provide care for individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction; and

(3) When serving older relative caregivers, older relative caregivers of children or adults with severe disabilities shall be given priority.

#### § 1322.25 Supportive services.

(a) Supportive services are community-based interventions as set forth in Title VI of the Act, are intended to be comparable to such services set forth under Title III, and meet standards established by the Assistant Secretary for Aging. They include in-home supportive services, access services, which may include multipurpose senior centers, and legal services.

(b) A Tribal organization or Hawaiian Native grantee may provide any of the supportive services mentioned under Title III of the Act, and any other supportive services that are necessary for the general welfare of older Native Americans and older Hawaiian Natives.

(c) A Tribal organization or Hawaiian Native grantee may allow use of Title VI, part A and B funds, respectively, for acquiring, altering or renovating, or constructing facilities to serve as multipurpose senior centers, in accordance with guidance as set forth by the Assistant Secretary for Aging.

(d) For those Title VI, parts A and B services intended to benefit family caregivers, a Tribal organization or Hawaiian Native grantee, respectively, shall ensure that there is coordination and no duplication of such services available under Title VI, part C or Title III.

(e) If a Tribal organization or Hawaiian Native grantee elects to provide

legal services, it shall comply with the requirements in § 1321.93 of this chapter and legal services providers shall comply fully with the requirements in § 1321.93(f) of this chapter.

#### § 1322.27 Nutrition services.

(a) Nutrition services are community-based interventions as set forth in Title VI, parts A and B of the Act, and as further defined by the Assistant Secretary for Aging. Nutrition services include congregate meals, home-delivered meals, nutrition education, nutrition counseling, and other nutrition services.

(1) Congregate meals are meals meeting the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g-21) provided by a qualified nutrition service provider to eligible individuals and consumed while congregating virtually, in-person, or in community off-site.

(2) Home-delivered meals are meals meeting the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g-21) provided by a qualified nutrition service provider to eligible individuals and consumed at their residence or otherwise outside of a congregate setting, as organized by a service provider under the Act. Meals may be provided via home delivery, pick-up, carry-out or drive-through, or through other service as determined by the Tribal organization or Hawaiian Native grantee.

(i) Eligibility criteria for home-delivered meals, as determined by the Tribal organization or Hawaiian Native grantee, may include consideration of an individual's ability to leave home unassisted, ability to shop for and prepare nutritious meals, degree of disability, or other relevant factors pertaining to their need for the service.

(ii) Home-delivered meals providers may encourage meal participants to attend congregate meal sites and other health and wellness activities, as feasible, based on a person-centered approach and local service availability.

(3) Nutrition education is information provided which provides individuals with the knowledge and skills to make healthy food and beverage

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choices. Congregate and home-delivered nutrition services may provide nutrition education, as appropriate, based on the needs of meal participants.

(4) Nutrition counseling is a standardized service provided which must align with the Academy of Nutrition and Dietetics. Congregate and home-delivered nutrition services may provide nutrition counseling, as appropriate, based on the needs of meal participants.

(5) Other nutrition services include additional services that may be provided to meet nutritional needs or preferences, such as weighted utensils, supplemental foods, or food items, based on the needs of eligible participants.

(b) The Tribal organization or Hawaiian Native grantee shall provide congregate meals and home-delivered meals to eligible participants and may provide nutrition education, nutrition counseling, and other nutrition services, as available. As set forth in section 614(a)(8) of the Act (42 U.S.C. 3057e(a)(8)), if the need for nutrition services is met from other sources, the Tribal organization or Hawaiian Native grantee may use the available funding under the Act for supportive services.

(c) Nutrition Services Incentive Program allocations are available to a Tribal organization or Hawaiian Native grantee that provides nutrition services where:

(1) Nutrition Services Incentive Program allocation amounts are based on the number of meals reported by the Tribal organization or Hawaiian Native grantee which meet the following requirements:

(i) The meal is served to an individual who is eligible to receive services under the Act;

(ii) The meal is served to an individual who has not been means-tested to receive the meal;

(iii) The meal is served to an individual who has been provided the opportunity to provide a voluntary contribution to the cost of service;

(iv) The meal meets the other requirements of the Act, including that the meal meets the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g-21); and

(v) The meal is served by an agency that is, or has a grant or contract with, a Tribal organization or Hawaiian Native grantee.

(2) The Tribal organization or Hawaiian Native grantee may choose to receive their Nutrition Services Incentive Program grant as cash, commodities, or a combination of cash and commodities.

(3) Nutrition Services Incentive Program funds may only be used to purchase domestically produced foods used in a meal as set forth under the Act.

(d) Where applicable, the Tribal organization or Hawaiian Native grantee shall work with agencies responsible for administering nutrition and other programs to facilitate participation of older Native Americans.

## § 1322.29 Family caregiver support services.

(a) Family caregiver support services are community-based interventions set forth in Title VI, part C of the Act, which meet standards set forth by the Assistant Secretary for Aging and which may be informed through the use of an evidence-informed or evidence-based caregiver assessment, including:

(1) Information to caregivers about available services via public education;

(2) Assistance to caregivers in gaining access to the services through:

(i) Individual information and assistance; or

(ii) Case management or care coordination.

(3) Individual counseling, organization of support groups, and caregiver training to assist the caregivers in those areas in which they provide support, including health, nutrition, complex medical care, and financial literacy, and in making decisions and solving problems relating to their caregiving roles;

(4) Respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities; and

(5) Supplemental services, on a limited basis, to complement the care provided by caregivers. A Tribal organization or Hawaiian Native grantee shall define "limited basis" for supplemental services and may consider limiting

units, episodes or expenditure amounts when making this determination.

(b) The Title VI Native American Family Caregiver Support Program is intended to serve unpaid family caregivers and to provide services to caregivers, not to the people for whom they care. Its primary purpose is not to pay for care for an elder. However, respite care may be provided to an unpaid family caregiver.

(c) To provide services listed in paragraphs (a)(4) and (5) of this section to caregivers of older Native Americans or of individuals of any age with Alzheimer's disease or a related disorder, the individual for whom they are caring must be determined to be functionally impaired because the individual:

(1) Is unable to perform at least two activities of daily living without substantial assistance, including verbal reminding, physical cueing, or supervision;

(2) At the option of the Tribal organization or Hawaiian Native grantee, is unable to perform at least three such activities without such assistance; or

(3) Due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or to another individual.

**§ 1322.31 Title VI and Title III coordination.**

(a) A Tribal organization or Hawaiian Native grantee under Title VI of the Act must have policies and procedures, developed in coordination with the relevant State agency, area agency or agencies, and service provider(s) that explain how the Title VI program will coordinate with Title III and/or VII funded services within the Tribal organization's or Hawaiian Native grantee's approved service area for which older Native Americans and family caregivers are eligible to ensure compliance with sections 614(a)(11) and 624(a)(3) of the Act (42 U.S.C. 3057e(a)(11) and 3057j(a)(3)), respectively. A Tribal organization or Hawaiian Native grantee may meet these requirements by participating in Tribal consultation with the State agency regarding Title VI programs.

(b) The policies and procedures set forth in paragraph (a) of this section must at a minimum address:

(1) How the Tribal organization or Hawaiian Native grantee will provide outreach to Tribal elders and family caregivers regarding services for which they may be eligible under Title III and/or VII of the Act;

(2) The communication opportunities the Tribal organization or Hawaiian Native grantee will make available to Title III and VII programs, to include meetings, email distribution lists, and presentations;

(3) The methods for collaboration on and sharing of program information and changes;

(4) How Title VI programs may refer individuals who are eligible for Title III services;

(5) How services will be provided in a culturally appropriate and trauma-informed manner; and

(6) Processes the Title VI program will use for providing feedback on the State plan on aging and any area plans on aging relevant to the Tribal organization's or Hawaiian Native grantee's approved service area.

(c) The Title VI program director, as set forth in § 1322.13(a), shall participate in the development of policies and procedures as set forth in §§ 1321.53, 1321.69, and 1321.95 of this chapter.

**Subpart D—Emergency and Disaster Requirements**

**§ 1322.33 Coordination with Tribal, State, and local emergency management.**

A Tribal organization or Hawaiian Native grantee shall establish emergency plans. Such plans must include, at a minimum:

(a) A continuity of operations plan and an all-hazards emergency response plan based on completed risk assessments for all hazards and updated annually;

(b) A plan to coordinate activities with the State agency, any area agencies on aging providing Title III and VII funded services within the Tribal organization's or Hawaiian Native grantee's approved service area, local emergency response and management agencies, relief organizations, local

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governments, other State agencies responsible for emergency and disaster preparedness, and any other institutions that have responsibility for disaster relief service delivery;

(c) Processes for developing and updating long-range emergency and disaster preparedness plans; and

(d) Other relevant information as determined by the Tribal organization or Hawaiian Native grantee.

### **§ 1322.35 Flexibilities under a major disaster declaration.**

(a) If a State or Indian Tribe requests and receives a major disaster declaration under the Stafford Act (42 U.S.C. 5121–5207), the Tribal organization or Hawaiian Native grantee may use disaster relief flexibilities as set forth in this section to provide disaster relief services within its approved service area for areas of the State or Indian Tribe where the specific major disaster declaration is authorized and where older Native Americans and family caregivers are affected.

(b) Flexibilities a Tribal organization or Hawaiian Native grantee may exercise under a major disaster declaration include allowing use of any portion of the funds of any open grant awards under Title VI of the Act for disaster relief services for older individuals and family caregivers.

(c) Disaster relief services may include any allowable services under the Act to eligible older Native Americans or family caregivers during the period covered by the major disaster declaration.

(d) Expenditures of funds under disaster relief flexibilities must be reported separately from the grant where funding was expended. A Tribal organization or Hawaiian Native grantee may expend funds from any source within open grant awards under Title VI of the Act but must track the source of all expenditures.

(e) A Tribal organization or Hawaiian Native grantee must have policies and procedures outlining eligibility, use, and reporting of services and funds provided under these flexibilities.

(f) A Tribal organization or Hawaiian Native grantee may only make obligations exercising this flexibility during the major disaster declaration incident

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period or 90 days thereafter or with prior approval from the Assistant Secretary for Aging.

### **§ 1322.37 Title VI and Title III coordination for emergency and disaster preparedness.**

A Tribal organization or Hawaiian Native grantee under Title VI of the Act and State and area agencies funded under Title III of the Act should coordinate in emergency and disaster preparedness planning, response, and recovery. A Tribal organization or Hawaiian Native grantee must have policies and procedures in place for how they will communicate and coordinate with State agencies and area agencies regarding emergency and disaster preparedness planning, response, and recovery.

### **§ 1322.39 Modification during major disaster declaration or public health emergency.**

The Assistant Secretary for Aging retains the right to modify the requirements described in these regulations pursuant to a major disaster declaration or public health emergency.

## **PART 1324—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES**

### **Subpart A—State Long-Term Care Ombudsman Program**

Sec.

1324.1 Definitions.

1324.11 Establishment of the Office of the State Long-Term Care Ombudsman.

1324.13 Functions and responsibilities of the State Long-Term Care Ombudsman.

1324.15 State agency responsibilities related to the Ombudsman program.

1324.17 Responsibilities of agencies hosting local Ombudsman entities.

1324.19 Duties of the representatives of the Office.

1324.21 Conflicts of interest.

### **Subpart B—Programs for Prevention of Elder Abuse, Neglect, and Exploitation**

1324.201 State agency responsibilities for the prevention of elder abuse, neglect, and exploitation.

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### Subpart C—State Legal Assistance Development

- 1324.301 Definitions.
- 1324.303 Legal Assistance Developer.

### Subpart D—Adult Protective Services Programs

- 1324.400 Eligibility for funding.
- 1324.401 Definitions.
- 1324.402 Program administration.
- 1324.403 APS response.
- 1324.404 Conflict of interest.
- 1324.405 Accepting reports.
- 1324.406 Coordination with other entities.
- 1324.407 APS program performance.
- 1324.408 State plans.

AUTHORITY: 2 U.S.C. 3001 *et seq.* and 42 U.S.C. 1394m.

SOURCE: 89 FR 11688, Feb. 14, 2024, unless otherwise noted.

### Subpart A—State Long-Term Care Ombudsman Program

#### § 1324.1 Definitions.

The following definitions apply to this part:

*Immediate family*, pertaining to conflicts of interest as used in section 712 of the Older Americans Act (the Act) (42 U.S.C. 3058g), means a member of the household or a relative with whom there is a close personal or significant financial relationship.

*Office of the State Long-Term Care Ombudsman*, as used in sections 711 and 712 of the Act (42 U.S.C. 3058f and 3058g), means the organizational unit in a State or Territory which is headed by a State Long-Term Care Ombudsman.

*Official duties*, as used in section 712 of the Act (42 U.S.C. 3058g) with respect to representatives of the Long-Term Care Ombudsman Program, means work pursuant to the Long-Term Care Ombudsman Program authorized by the Act, subpart A of this part, and/or State law and carried out under the auspices and general direction of, or by direct delegation from, the State Long-Term Care Ombudsman.

*Representatives of the Office of the State Long-Term Care Ombudsman*, as used in sections 711 and 712 of the Act (42 U.S.C. 3058f and 3058g), means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in §1324.19(a), whether personnel supervision is provided by the Ombuds-

man or their designees or by an agency hosting a local Ombudsman entity designated by the Ombudsman pursuant to section 712(a)(5) of the Act (42 U.S.C. 3058g(a)(5)).

*Resident representative* means any of the following:

(1) An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access the resident's medical, social, or other personal information; manage the resident's financial matters; or receive notifications pertaining to the resident;

(2) A person authorized by State or Federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access the resident's medical, social or other personal information; manage the resident's financial matters; or receive notifications pertaining to the resident;

(3) Legal representative, as used in section 712 of the Act (42 U.S.C. 3058g);

(4) The court-appointed guardian or conservator of a resident;

(5) Nothing in this rule is intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, State or Federal law, or a court of competent jurisdiction.

*State Long-Term Care Ombudsman*, or *Ombudsman*, as used in sections 711 and 712 of the Act (42 U.S.C. 3058f and 3058g), means the individual who heads the Office and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities and duties set forth in §§1324.13 and 1324.19.

*State Long-Term Care Ombudsman program*, *Ombudsman program*, or *program*, as used in sections 711 and 712 of the Act (42 U.S.C. 3058f and 3058g), means the program through which the functions and duties of the Office are carried out, consisting of the Ombudsman, the Office headed by the Ombudsman, and the representatives of the Office.

*Willful interference* means actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any

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of the functions or responsibilities set forth in §1324.13, or the Ombudsman or a representative of the Office from performing any of the duties set forth in §1324.19.

#### **§ 1324.11 Establishment of the Office of the State Long-Term Care Ombudsman.**

(a) The Office of the State Long-Term Care Ombudsman shall be an entity headed by the State Long-Term Care Ombudsman, who shall carry out all of the functions and responsibilities set forth in §1324.13 and, directly and/or through local Ombudsman entities, the duties set forth in §1324.19.

(b) The State agency shall establish the Office and thereby carry out the Long-Term Care Ombudsman Program in either of the following ways:

(1) The Office is a distinct entity, separately identifiable, and located within or connected to the State agency; or

(2) The State agency enters into a contract or other arrangement with any public agency or nonprofit organization which shall establish a separately identifiable, distinct entity as the Office.

(c) The State agency shall require that the Ombudsman serve on a full-time basis. In providing leadership and management of the Office, the functions, responsibilities, and duties, as set forth in §§1324.13 and 1324.19 are to constitute the entirety of the Ombudsman's work. The State agency or other agency carrying out the Office shall not require or request the Ombudsman to be responsible for leading, managing or performing the work of non-ombudsman services or programs except on a time-limited, intermittent basis.

(1) This provision does not limit the authority of the Ombudsman program to provide ombudsman services to populations other than residents of long-term care facilities so long as the appropriations under the Act are utilized to serve residents of long-term care facilities, as authorized by the Act.

(2) [Reserved]

(d) The State agency, and other entity selecting the Ombudsman, if applicable, shall ensure that the Ombudsman meets minimum qualifications

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which shall include, but not be limited to, demonstrated expertise in:

(1) Long-term services and supports or other direct services for older individuals or individuals with disabilities;

(2) Consumer-oriented public policy advocacy;

(3) Leadership and program management skills; and

(4) Negotiation and problem resolution skills.

(e) Where the Ombudsman has the legal authority to do so, they shall establish policies and procedures, in consultation with the State agency, to carry out the Ombudsman program in accordance with the Act. Where State law does not provide the Ombudsman with legal authority to establish policies and procedures, the Ombudsman shall recommend policies and procedures to the State agency or other agency in which the Office is organizationally located, and such agency shall establish Ombudsman program policies and procedures as recommended by the Ombudsman. Where local Ombudsman entities are designated within area agencies on aging or other entities, the Ombudsman and/or appropriate agency shall develop such policies and procedures in consultation with the agencies hosting local Ombudsman entities, area agencies on aging, and representatives of the Office. The policies and procedures must address the following:

(1) *Program administration.* Policies and procedures regarding program administration must include, but not be limited to:

(i) A requirement that the agency in which the Office is organizationally located must not have personnel policies or practices that prohibit the Ombudsman from performing the functions and responsibilities of the Ombudsman, as set forth in §1324.13, or from adhering to the requirements of section 712 of the Act (42 U.S.C. 3058g). Nothing in this provision shall prohibit such agency from requiring that the Ombudsman, or other employees or volunteers of the Office, adhere to the personnel policies and procedures of the entity which are otherwise lawful.

(ii) A requirement that an agency hosting a local Ombudsman entity must not have personnel policies or

practices which prohibit a representative of the Office from performing the duties of the Ombudsman program or from adhering to the requirements of section 712 of the Act (42 U.S.C. 3058g). Nothing in this provision shall prohibit such agency from requiring that representatives of the Office adhere to the personnel policies and procedures of the host agency which are otherwise lawful.

(iii) A requirement that the Ombudsman shall, on a regular basis, monitor the performance of local Ombudsman entities which the Ombudsman has designated to carry out the duties of the Office.

(iv) A description of the process by which the agencies hosting local Ombudsman entities will coordinate with the Ombudsman in the employment or appointment of representatives of the Office.

(v) Standards to ensure that the Office and/or local Ombudsman entities provide prompt response to complaints, with priority given to complaints regarding abuse, neglect, exploitation, and complaints that are time sensitive. At a minimum, the standards shall require consideration of the severity of the risk to the resident, the imminence of the threat of or potential harm to the resident, and the opportunity for mitigating harm to the resident through provision of Ombudsman program services.

(vi) Procedures that clarify appropriate fiscal responsibilities of the local Ombudsman entity, including but not limited to clarifications regarding access to programmatic fiscal information by appropriate representatives of the Office.

(vii) Procedures that establish standard retention periods for files, records, and other information maintained by the Ombudsman program and allowable methods of storage and destruction.

(2) *Procedures for access.* Policies and procedures regarding timely access to facilities, residents, and appropriate records (regardless of format and including, upon request, copies of such records) by the Ombudsman and representatives of the Office must include, but not be limited to:

(i) Access to enter all long-term care facilities at any time during a facili-

ty's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated;

(ii) Access to all residents to perform the functions and duties set forth in §§1324.13 and 1324.19;

(iii) Access to the name and contact information of the resident representative, if any, where needed to perform the functions and duties set forth in §§1324.13 and 1324.19;

(iv) Access to review the medical, social, and other records relating to a resident, if:

(A) The resident or resident representative communicates informed consent to the access and the consent is given in writing or through the use of auxiliary aids and services;

(B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services, and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures;

(C) The resident is unable to communicate consent to the review and has no legal representative, and the representative of the Office obtains the approval of the Ombudsman; or

(D) Access is necessary in order to investigate a complaint, the resident representative refuses to consent to the access, a representative of the Office has reasonable cause to believe that the resident representative is not acting in the best interests of the resident, and the representative of the Office obtains the approval of the Ombudsman.

(v) Access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities;

(vi) Access of the Ombudsman to, and, upon request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities; and

(vii) Reaffirmation that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (42 U.S.C. 1301 *et seq.*), 45 CFR part 160 and 45 CFR part 164, subparts A and E, does not preclude release by covered



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entities of resident private health information or other resident identifying information to the Ombudsman program, including but not limited to residents' medical, social, or other records, a list of resident names and room numbers, or information collected in the course of a State or Federal survey or inspection process.

(3) *Disclosure.* Policies and procedures regarding disclosure of files, records, and other information maintained by the Ombudsman program must include, but not be limited to:

(i) Provision that the files, records, and information maintained by the Ombudsman program may be disclosed only at the discretion of the Ombudsman or designee of the Ombudsman for such purpose and in accordance with the criteria developed by the Ombudsman, as required by § 1324.13(e);

(ii) Prohibition of the disclosure of identifying information of any resident with respect to whom the Ombudsman program maintains files, records, or information, except as otherwise provided by § 1324.19(b)(5) through (8), unless:

(A) The resident or the resident representative communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

(B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or

(C) The disclosure is required by court order.

(iii) Prohibition of the disclosure of identifying information of any complainant with respect to whom the Ombudsman program maintains files, records, or information, unless:

(A) The complainant communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

(B) The complainant communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a rep-

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resentative of the Office in accordance with such procedures; or

(C) The disclosure is required by court order.

(iv) Standard criteria for making determinations about disclosure of resident information when the resident is unable to provide consent and there is no resident representative or the resident representative refuses consent as set forth in § 1324.19(b)(5) through (8);

(v) Prohibition on requirements for mandatory reporting abuse, neglect, or exploitation to adult protective services or any other entity, long-term care facility, or other concerned person, including when such reporting would disclose identifying information of a complainant or resident without appropriate consent or court order, except as otherwise provided in § 1324.19(b)(5) through (8); and

(vi) Adherence to the provisions of paragraph (e)(3) of this section, regardless of the source of the request for information or the source of funding for the services of the Ombudsman program, notwithstanding section 705(a)(6)(C) of the Act (42 U.S.C. 3058d(a)(6)(C)).

(4) *Conflicts of interest.* Policies and procedures regarding conflicts of interest must establish mechanisms to identify and remove or remedy conflicts of interest as provided in § 1324.21, including:

(i) Ensuring that no individual, or member of the immediate family of an individual, involved in the employment or appointment of the Ombudsman has or may have a conflict of interest;

(ii) Requiring that other agencies in which the Office or local Ombudsman entities are organizationally located have policies in place to prohibit the employment or appointment of an Ombudsman or a representative of the Office who has or may have a conflict that cannot be adequately removed or remedied;

(iii) Requiring that the Ombudsman take reasonable steps to refuse, suspend, or remove designation of an individual who has a conflict of interest, or who has a member of the immediate family who has or may have a conflict of interest, which cannot be removed or remedied;

(iv) Establishing the methods by which the Office and/or State agency will periodically review and identify conflicts of the Ombudsman and representatives of the Office; and

(v) Establishing the actions the Office and/or State agency will require the Ombudsman or representatives of the Office to take in order to remedy or remove such conflicts.

(5) *Systems advocacy.* Policies and procedures related to systems advocacy must assure that the Office is required and has sufficient authority to carry out its responsibility to analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services and to the health, safety, welfare, and rights of residents, and to recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate.

(i) Such procedures must exclude the Ombudsman and representatives of the Office from any State lobbying prohibitions to the extent that such requirements are inconsistent with section 712 of the Act (42 U.S.C. 3058g).

(ii) Nothing in this part shall prohibit the Ombudsman or the State agency or other agency in which the Office is organizationally located from establishing policies which promote consultation regarding the determinations of the Office related to recommended changes in laws, regulations, and policies. However, such a policy shall not require a right to review or pre-approve positions or communications of the Office.

(6) *Designation.* Policies and procedures related to designation must establish the criteria and process by which the Ombudsman shall designate and/or refuse, suspend, or remove designation of local Ombudsman entities and representatives of the Office.

(i) Such criteria should include, but not be limited to, the authority to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office in situations in which an identified conflict of interest cannot be removed or remedied as set forth in § 1324.21.

(ii) [Reserved]

(7) *Grievance process.* Policies and procedures related to grievances must establish a grievance process for the receipt and review of grievances regarding the determinations or actions of the Ombudsman and representatives of the Office.

(i) Such process shall include an opportunity for reconsideration of the Ombudsman decision to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office. Notwithstanding the grievance process, the Ombudsman shall make the final determination to designate or to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office.

(ii) [Reserved]

(8) *Determinations of the Office.* Policies and procedures related to the determinations of the Office must ensure that the Ombudsman, as head of the Office, shall be able to independently make determinations and establish positions of the Office, and carry out the functions and responsibilities authorized by § 1324.13 without interference and shall not be constrained by or necessarily represent the determinations or positions of the State agency or other agency in which the Office is organizationally located.

(9) *Emergency planning.* Policies and procedures related to emergency planning must include continuity of operations procedures using an all-hazards approach, and coordination with emergency management agencies.

#### **§ 1324.13 Functions and responsibilities of the State Long-Term Care Ombudsman.**

The Ombudsman, as head of the Office, shall have responsibility and authority for the leadership and management of the Office in coordination with the State agency, and, where applicable, any other agency carrying out the Ombudsman program, as follows.

(a) *Functions.* The Ombudsman shall, personally or through representatives of the Office:

(1) Identify, investigate, and resolve complaints that:

(i) Are made by, or on behalf of, residents; and

(ii) Relate to action, inaction, or decisions, that may adversely affect the

health, safety, welfare, or rights of residents (including the welfare and rights of residents with respect to the appointment and activities of resident representatives) of:

(A) Providers, or representatives of providers, of long-term care;

(B) Public agencies; or

(C) Health and social service agencies.

(2) Provide services to protect the health, safety, welfare, and rights of the residents;

(3) Inform residents about means of obtaining services provided by the Ombudsman program;

(4) Ensure that residents have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses from representatives of the Office to requests for information and complaints;

(5) Represent the interests of residents before governmental agencies, assure that individual residents have access to, and pursue (as the Ombudsman determines as necessary and consistent with resident interests) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents;

(6) Provide administrative and technical assistance to representatives of the Office and agencies hosting local Ombudsman entities;

(7)(i) Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;

(ii) Recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate;

(iii) Facilitate public comment on the laws, regulations, policies, and actions;

(iv) Provide leadership to statewide systems advocacy efforts of the Office on behalf of long-term care facility residents, including coordination of systems advocacy efforts carried out by representatives of the Office;

(v) Provide information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns;

(vi) Such determinations and positions shall be those of the Office and shall not necessarily represent the determinations or positions of the State agency or other agency in which the Office is organizationally located;

(vii) In carrying out systems advocacy efforts of the Office on behalf of long-term care facility residents and pursuant to the receipt of grant funds under the Act, the provision of information, recommendations of changes of laws to legislators, and recommendations of changes to government agency regulations and policies by the Ombudsman or representatives of the Office do not constitute lobbying activities as defined by 45 CFR part 93.

(8) Coordinate with and promote the development of citizen organizations consistent with the interests of residents; and

(9) Promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils to protect the well-being and rights of residents.

(b) *Responsibilities.* The Ombudsman shall be the head of a unified statewide Long-Term Care Ombudsman Program and shall:

(1) Establish or recommend policies, procedures, and standards for administration of the Ombudsman program pursuant to §1324.11(e);

(2) Require representatives of the Office to fulfill the duties set forth in §1324.19 in accordance with Ombudsman program policies and procedures.

(c) *Designation.* The Ombudsman shall determine designation and refusal, suspension, or removal of designation, of local Ombudsman entities and representatives of the Office pursuant to section 712(a)(5) of the Act (42 U.S.C. 3058g(a)(5)) and the policies and procedures set forth in §1324.11(e)(6).

(1) If an Ombudsman chooses to designate local Ombudsman entities, the Ombudsman shall:

(i) Designate local Ombudsman entities to be organizationally located

within public or non-profit private entities;

(ii) Review and approve plans or contracts governing local Ombudsman entity operations, including, where applicable, through area agency on aging plans, in coordination with the State agency; and

(iii) Monitor, on a regular basis, the Ombudsman program performance of local Ombudsman entities.

(2) The Ombudsman shall establish procedures for training for certification and continuing education of the representatives of the Office, based on and consistent with standards established by the Director of the Office of Long-Term Care Ombudsman Programs as described in section 201(d) of the Act (42 U.S.C. 3011(d)) and set forth by the Assistant Secretary for Aging, in consultation with residents, resident representatives, citizen organizations, long-term care providers, and the State agency, that:

(i) Specify a minimum number of hours of initial training;

(ii) Specify the content of the training, including training relating to Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State; investigative and resolution techniques; and such other matters as the Office determines to be appropriate;

(iii) Specify that all program staff or volunteers who have access to residents, files, records, and other information of the Ombudsman program subject to disclosure requirements shall undergo training and certification to be designated as representatives of the Office; and

(iv) Specify an annual number of hours of in-service training for all representatives of the Office.

(3) Prohibit any representative of the Office from carrying out the duties described in § 1324.19 unless the representative:

(i) Has received the training required under paragraph (c)(2) of this section or is performing such duties under supervision of the Ombudsman or a designated representative of the Office as part of certification training requirements; and

(ii) Has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office.

(4) The Ombudsman shall investigate allegations of misconduct by representatives of the Office in the performance of Ombudsman program duties and, as applicable, coordinate such investigations with the State agency in which the Office is organizationally located, agency hosting the local Ombudsman entity and/or the local Ombudsman entity.

(5) Policies, procedures, or practices which the Ombudsman determines to be in conflict with the laws, policies, or procedures governing the Ombudsman program shall be sufficient grounds for refusal, suspension, or removal of designation of the representative of the Office and/or the local Ombudsman entity.

(d) *Ombudsman program information.* The Ombudsman shall manage the files, records, and other information of the Ombudsman program, whether in physical, electronic, or other formats, including information maintained by representatives of the Office and local Ombudsman entities pertaining to the cases and activities of the Ombudsman program. Such files, records, and other information are the property of the Office. Nothing in this provision shall prohibit a representative of the Office or a local Ombudsman entity from maintaining such information in accordance with Ombudsman program requirements. All program staff or volunteers who access the files, records, and other information of the Ombudsman program subject to disclosure requirements shall undergo training and certification to be designated as representatives of the Office.

(e) *Disclosure.* In making determinations regarding the disclosure of files, records, and other information maintained by the Ombudsman program, the Ombudsman shall:

(1) Have the sole authority to make or delegate determinations concerning the disclosure of the files, records, and other information maintained by the Ombudsman program. The Ombudsman shall comply with section 712(d) of the Act (42 U.S.C. 3058g(d)) in responding to requests for disclosure of files, records, and other information, regardless of

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the format of such file, record, or other information, the source of the request, and the sources of funding to the Ombudsman program;

(2) Develop and adhere to criteria to guide the Ombudsman's discretion in determining whether to disclose the files, records, or other information of the Office. Criteria for disclosure of records shall consider if the disclosure has the potential to:

(i) Cause retaliation against residents, complainants, or witnesses;

(ii) Undermine the working relationships between the Ombudsman program, facilities, and/or other agencies; or

(iii) Undermine other official duties of the program.

(3) Develop and adhere to a process for the appropriate disclosure of information maintained by the Office, including:

(i) Classification of at least the following types of files, records, and information: medical, social, and other records of residents; administrative records, policies, and documents of long-term care facilities; licensing and certification records maintained by the State with respect to long-term care facilities; and data collected in the Ombudsman program reporting system;

(ii) Identification of the appropriate individual designee or category of designee, if other than the Ombudsman, authorized to determine the disclosure of specific categories of information in accordance with the criteria described in this paragraph (e).

(f) *Fiscal management.* The Ombudsman shall determine the use of the fiscal resources appropriated or otherwise available for the operation of the Office. Where local Ombudsman entities are designated, the Ombudsman shall approve the allocations of Federal and State funds provided to such entities, subject to applicable Federal and State laws and policies. The Ombudsman shall determine that program budgets and expenditures of the Office and local Ombudsman entities are consistent with laws, policies, and procedures governing the Ombudsman program.

(g) *Annual report.* In addition to the annual submission of the National Ombudsman Reporting System report, the Ombudsman shall independently de-

velop, provide final approval of, and disseminate an annual report as set forth in section 712(h)(1) of the Act (42 U.S.C. 3058g(h)(1)) and as otherwise required by the Assistant Secretary for Aging.

(1) Such report shall:

(i) Describe the activities carried out by the Office in the year for which the report is prepared;

(ii) Contain analysis of Ombudsman program data;

(iii) Describe evaluation of the problems experienced by, and the complaints made by or on behalf of, residents;

(iv) Contain policy, regulatory, and/or legislative recommendations for improving quality of the care and life of the residents; protecting the health, safety, welfare, and rights of the residents; and resolving resident complaints and identified problems or barriers;

(v) Contain analysis of the success of the Ombudsman program, including success in providing services to residents of assisted living, board and care facilities, and other similar adult care facilities; and

(vi) Describe barriers that prevent the optimal operation of the Ombudsman program.

(2) The Ombudsman shall make such report available to the public and submit it to the Assistant Secretary for Aging, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities.

(h) *Memoranda of understanding.* Through adoption of memoranda of understanding or other means, the Ombudsman shall lead State-level coordination and support appropriate local Ombudsman entity coordination, between the Ombudsman program and other entities with responsibilities relevant to the health, safety, well-being, or rights of residents of long-term care facilities, including:

(1) The required adoption of memoranda of understanding between the Ombudsman program and:

(i) Legal assistance programs provided under section 306(a)(2)(C) of the Act (42 U.S.C. 3026(a)(2)(C)), addressing

at a minimum referral processes and strategies to be used when the Ombudsman program and a legal assistance program are both providing program services to a resident;

(ii) Facility and long-term care provider licensure and certification programs, addressing at minimum communication protocols and procedures to share information including procedures for access to copies of licensing and certification records maintained by the State with respect to long-term care facilities.

(2) The recommended adoption of memoranda of understanding or other means between the Ombudsman program and:

- (i) Area agency on aging programs;
- (ii) Aging and disability resource centers;
- (iii) Adult protective services programs;
- (iv) Protection and advocacy systems, as designated by the State, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 *et seq.*);
- (v) The State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));
- (vi) Victim assistance programs;
- (vii) State and local law enforcement agencies;
- (viii) Courts of competent jurisdiction;
- (ix) The State Legal Assistance Developer as provided under section 731 of the Act (42 U.S.C. 3058j) and as set forth in subpart C to this part; and
- (x) The State mental health authority.

(i) *Other activities.* The Ombudsman shall carry out such other activities as the Assistant Secretary for Aging determines to be appropriate and are consistent with the functions of the State Long-Term Care Ombudsman Program as authorized by the Older Americans Act.

**§ 1324.15 State agency responsibilities related to the Ombudsman program.**

(a) *Compliance.* In addition to the responsibilities set forth in part 1321 of this chapter, the State agency shall ensure that the Ombudsman complies

with the relevant provisions of the Act and of this rule.

(b) *Authority and access.* The State agency shall ensure, through the development of policies, procedures, and other means, consistent with § 1324.11(e)(2), that the Ombudsman program has sufficient authority and access to facilities, residents, and information needed to fully perform all of the functions, responsibilities, and duties of the Office.

(c) *Training.* The State agency shall provide opportunities for training for the Ombudsman and representatives of the Office in order to maintain expertise to serve as effective advocates for residents. The State agency may utilize funds appropriated under Title III and/or Title VII of the Act designated for direct services in order to provide access to such training opportunities.

(d) *Personnel supervision and management.* The State agency shall provide personnel supervision and management for the Ombudsman and representatives of the Office who are employees of the State agency. Such management shall include an assessment of whether the Office is performing all of its functions under the Act.

(e) *State agency monitoring.* The State agency shall provide monitoring, as required by § 1321.9(b) of this chapter, including but not limited to fiscal monitoring, where the Office and/or local Ombudsman entity is organizationally located within an agency under contract or other arrangement with the State agency. Such monitoring shall include an assessment of whether the Ombudsman program is performing all of the functions, responsibilities and duties set forth in §§ 1324.13 and 1324.19. The State agency may make reasonable requests for reports, including aggregated data regarding Ombudsman program activities, to meet the requirements of this provision.

(f) *Disclosure limitations.* The State agency shall ensure that any review of files, records, or other information maintained by the Ombudsman program is consistent with the disclosure limitations set forth in §§ 1324.11(e)(3) and 1324.13(e).

(g) *State and area plans on aging.* The State agency shall integrate the goals and objectives of the Office into the

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State plan and coordinate the goals and objectives of the Office with those of other programs established under Title VII of the Act and other State elder rights, disability rights, and elder justice programs, including, but not limited to, legal assistance programs provided under section 306(a)(2)(C) of the Act (42 U.S.C. 3026(a)(2)(C)), to promote collaborative efforts and diminish duplicative efforts. Where applicable, the State agency shall require inclusion of goals and objectives of local Ombudsman entities into area plans on aging.

(h) *Elder rights leadership.* The State agency shall provide elder rights leadership. In so doing, it shall require the coordination of Ombudsman program services with the activities of other programs authorized by Title VII of the Act, as well as other State and local entities with responsibilities relevant to the health, safety, well-being, or rights of older adults, including residents of long-term care facilities as set forth in § 1324.13(h).

(i) *Interference, retaliation, and reprisals.* The State agency shall:

(1) Ensure that it has mechanisms to prohibit and investigate allegations of interference, retaliation, and reprisals:

(i) By a long-term care facility, other entity, or individual with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the Office; or

(ii) By a long-term care facility, other entity or individual against the Ombudsman or representatives of the Office for fulfillment of the functions, responsibilities, or duties enumerated at §§ 1324.13 and 1324.19; and

(2) Provide for appropriate sanctions with respect to interference, retaliation, and reprisals.

(j) *Legal counsel.* (1) The State agency shall ensure that:

(i) Legal counsel for the Ombudsman program is adequate, available, is without conflict of interest (as defined by the State ethical standards governing the legal profession), and has competencies relevant to the legal needs of:

(A) The program, in order to provide consultation and/or representation as

needed to assist the Ombudsman and representatives of the Office in the performance of their official functions, responsibilities, and duties, including complaint resolution and systems advocacy. Legal representation, arranged by or with the approval of the Ombudsman, is provided to the Ombudsman or any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of official duties.

(B) Residents, in order to provide consultation and representation as needed for the Ombudsman program to protect the health, safety, welfare, and rights of residents.

(ii) The Ombudsman and representatives of the Office assist residents in seeking administrative, legal, and other appropriate remedies. In so doing, the Ombudsman shall coordinate with the Legal Assistance Developer, legal services providers, and victim assistance services to promote the availability of legal counsel to residents.

(2) Such legal counsel may be provided by one or more entities, depending on the nature of the competencies and services needed and as necessary to avoid conflicts of interest (as defined by the State ethical standards governing the legal profession). At a minimum, the Office shall have access to an attorney knowledgeable about the Federal and State laws protecting the rights of residents and governing long-term care facilities.

(3) Legal representation of the Ombudsman program by the Ombudsman or representative of the Office who is a licensed attorney shall not by itself constitute sufficiently adequate legal counsel.

(4) The communications between the Ombudsman and their legal counsel are subject to attorney-client privilege.

(k) *Fiscal management.* The State agency shall ensure that:

(1) The Ombudsman receives notification of all sources of funds received by the State agency that are allocated or appropriated to the Ombudsman program and provides information on any requirements of the funds, and the Ombudsman is supported in their determination of the use of funds;

(2) The Ombudsman has full authority to determine the use of fiscal resources appropriated or otherwise available for the operation of the Office;

(3) Where local Ombudsman entities are designated, the Ombudsman approves the allocations of Federal and State funds to such entities, prior to any distribution of such funds, subject to applicable Federal and State laws and policies; and

(4) The Ombudsman determines that program budgets and expenditures of the Office and local Ombudsman entities are consistent with laws, policies, and procedures governing the Ombudsman program.

(1) *State agency requirements of the Office.* The State agency shall require the Office to:

(1) Develop and provide final approval of an annual report as set forth in section 712(h)(1) of the Act (42 U.S.C. 3058g(h)(1)) and § 1324.13(g) and as otherwise required by the Assistant Secretary for Aging;

(2) Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

(3) Provide such information as the Office determines to be necessary to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of individuals residing in long-term care facilities; and recommendations related to such problems and concerns;

(4) Establish procedures for the training of the representatives of the Office, as set forth in § 1324.13(c)(2); and

(5) Coordinate Ombudsman program services with entities with responsibilities relevant to the health, safety, welfare, and rights of residents of long-term care facilities, as set forth in § 1324.13(h).

#### **§ 1324.17 Responsibilities of agencies hosting local Ombudsman entities.**

(a) The agency in which a local Ombudsman entity is organizationally located shall be responsible for the personnel management, but not the programmatic oversight, of representatives, including employee and volunteer representatives, of the Office.

(b) The agency in which a local Ombudsman entity is organizationally located shall not have personnel policies or practices which prohibit the representatives of the Office from performing the duties, or from adhering to the access, confidentiality, and disclosure requirements of section 712 of the Act (42 U.S.C. 3058g), as implemented through this rule and the policies and procedures of the Office.

(1) Policies, procedures, and practices, including personnel management practices of the host agency, which the Ombudsman determines conflict with the laws or policies governing the Ombudsman program shall be sufficient grounds for the refusal, suspension, or removal of the designation of local Ombudsman entity by the Ombudsman.

(2) Nothing in this provision shall prohibit the host agency from requiring that the representatives of the Office adhere to the personnel policies and procedures of the agency which are otherwise lawful.

#### **§ 1324.19 Duties of the representatives of the Office.**

In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity and may designate an employee or volunteer of the local Ombudsman entity as a representative of the Office. Representatives of the Office may also be designated employees or volunteers within the Office.

(a) *Duties.* An individual so designated as a representative of the Office shall, in accordance with the policies and procedures established by the Office and the State agency:

(1) Identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;



(2) Provide services to protect the health, safety, welfare, and rights of residents;

(3) Ensure that residents in the service area of the local Ombudsman entity have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses to requests for information and complaints;

(4) Represent the interests of residents before government agencies and assure that individual residents have access to, and pursue (as the representative of the Office determines necessary and consistent with resident interest) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(5)(i) Review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents;

(ii) Facilitate the ability of the public to comment on the laws, regulations, policies, and actions.

(6) Promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils; and

(7) Carry out other activities that the Ombudsman determines to be appropriate and are consistent with the functions of the State Long-Term Care Ombudsman Program as authorized by the Older Americans Act.

(b) *Complaint processing.* (1) With respect to identifying, investigating, and resolving complaints, and regardless of the source of the complaint (*i.e.*, complainant), the Ombudsman and the representatives of the Office serve the resident of a long-term care facility. The Ombudsman or representative of the Office shall investigate a complaint, including but not limited to a complaint related to abuse, neglect, or exploitation, for the purposes of resolving the complaint to the resident's satisfaction and of protecting the health, welfare, and rights of the resident. The Ombudsman or representative of the Office may identify, investigate, and resolve a complaint impacting multiple residents or all residents of a facility.

(2) Regardless of the source of the complaint (*i.e.*, the complainant), including when the source is the Ombudsman or representative of the Office, the Ombudsman or representative of the Office must support and maximize resident participation in the process of resolving the complaint as follows:

(i) The Ombudsman or representative of the Office shall offer privacy to the resident for the purpose of confidentially providing information and hearing, investigating, and resolving complaints.

(ii) The Ombudsman or representative of the Office shall discuss the complaint with the resident (and, if the resident is unable to communicate informed consent, the resident's representative) in order to:

(A) Determine the perspective of the resident (or resident representative, where applicable) of the complaint;

(B) Request the resident (or resident representative, where applicable) to communicate informed consent in order to investigate the complaint;

(C) Determine the wishes of the resident (or resident representative, where applicable) with respect to resolution of the complaint, including whether the allegations are to be reported and, if so, whether the Ombudsman or representative of the Office may disclose resident identifying information or other relevant information to the facility and/or appropriate agencies. Such report and disclosure shall be consistent with paragraph (b)(3) of this section;

(D) Advise the resident (and resident representative, where applicable) of the resident's rights;

(E) Work with the resident (or resident representative, where applicable) to develop a plan of action for resolution of the complaint;

(F) Investigate the complaint to determine whether the complaint can be verified; and

(G) Determine whether the complaint is resolved to the satisfaction of the resident (or resident representative, where applicable).

(iii) Where the resident is unable to communicate informed consent, and has no resident representative, the Ombudsman or representative of the Office shall:

(A) Take appropriate steps to investigate and work to resolve the complaint in order to protect the health, safety, welfare and rights of the resident; and

(B) Determine whether the complaint was resolved to the satisfaction of the complainant.

(iv) In determining whether to rely upon a resident representative to communicate or make determinations on behalf of the resident related to complaint processing, the Ombudsman or representative of the Office shall ascertain the extent of the authority that has been granted to the resident representative under court order (in the case of a guardian or conservator), by power of attorney or other document by which the resident has granted authority to the representative, or under other applicable State or Federal law.

(3) The Ombudsman or representative of the Office may provide information regarding the complaint to another agency in order for such agency to substantiate the facts for regulatory, protective services, law enforcement, or other purposes so long as the Ombudsman or representative of the Office adheres to the disclosure requirements of section 712(d) of the Act (42 U.S.C. 3058g(d)) and the procedures set forth in §1324.11(e)(3).

(i) Where the goals of a resident or resident representative are for regulatory, protective services or law enforcement action, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Office, the Office must assist the resident or resident representative in contacting the appropriate agency and/or disclose the information for which the resident has provided consent to the appropriate agency for such purposes.

(ii) Where the goals of a resident or resident representative can be served by disclosing information to a facility representative and/or referrals to an entity other than those referenced in paragraph (b)(3)(i) of this section, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Ombudsman program, the Ombudsman or

representative of the Office may assist the resident or resident representative in contacting the appropriate facility representative or the entity, provide information on how a resident or representative may obtain contact information of such facility representatives or entities, and/or disclose the information for which the resident has provided consent to an appropriate facility representative or entity, consistent with Ombudsman program procedures.

(iii) In order to comply with the wishes of the resident, (or, in the case where the resident is unable to communicate informed consent, the wishes of the resident representative), the Ombudsman and representatives of the Office shall not report suspected abuse, neglect or exploitation of a resident when a resident or resident representative has not communicated informed consent to such report except as set forth in paragraphs (b)(5) through (7) of this section, notwithstanding State laws to the contrary.

(4) For purposes of paragraphs (b)(1) through (3) of this section, communication of informed consent may be made in writing, including through the use of auxiliary aids and services. Alternatively, communication may be made orally or visually, including through the use of auxiliary aids and services, and such consent must be documented contemporaneously by the Ombudsman or a representative of the Office, in accordance with the procedures of the Office.

(5) For purposes of paragraphs (b)(1) through (3) of this section, if a resident is unable to communicate their informed consent, or perspective on the extent to which the matter has been satisfactorily resolved, the Ombudsman or representative of the Office may rely on the communication by a resident representative of informed consent and/or perspective regarding the resolution of the complaint if the Ombudsman or representative of the Office has no reasonable cause to believe that the resident representative is not acting in the best interests of the resident.

(6) For purposes of paragraphs (b)(1) through (3) of this section, the procedures for disclosure, as required by §1324.11(e)(3), shall provide that the

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Ombudsman or representative of the Office may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances:

(i) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office;

(ii) The resident has no resident representative;

(iii) The Ombudsman or representative of the Office has reasonable cause to believe that an action, inaction, or decision may adversely affect the health, safety, welfare, or rights of the resident;

(iv) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;

(v) The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and

(vi) The representative of the Office obtains the approval of the Ombudsman or otherwise follows the policies and procedures of the Office described in paragraph (b)(9) of this section.

(7) For purposes of paragraphs (b)(1) through (3) of this section, the procedures for disclosure, as required by §1324.11(e)(3), shall provide that, the Ombudsman or representative of the Office may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances:

(i) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office and the Ombudsman or representative of the Office has reasonable cause to believe that the resident representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of the resident;

(ii) The Ombudsman or representative of the Office has no evidence indi-

cating that the resident would not wish a referral to be made;

(iii) The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and

(iv) The representative of the Office obtains the approval of the Ombudsman.

(8) The procedures for disclosure, as required by §1324.11(e)(3), shall provide that, if the Ombudsman or representative of the Office personally witnesses suspected abuse, gross neglect, or exploitation of a resident, the Ombudsman or representative of the Office shall seek communication of informed consent from such resident to disclose resident-identifying information to appropriate agencies.

(i) Where such resident is able to communicate informed consent, or has a resident representative available to provide informed consent, the Ombudsman or representative of the Office shall follow the direction of the resident or resident representative as set forth in paragraphs (b)(1) through (3) of this section; and

(ii) Where the resident is unable to communicate informed consent, and has no resident representative available to provide informed consent, the Ombudsman or representative of the Office shall open a case with the Ombudsman or representative of the Office as the complainant, follow the Ombudsman program's complaint resolution procedures, and shall refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides and/or to the appropriate agency or agencies for substantiation of abuse, gross neglect or exploitation in the following circumstances:

(A) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;

(B) The Ombudsman or representative of the Office has reasonable cause to believe that disclosure would be in the best interest of the resident; and

(C) The representative of the Office obtains the approval of the Ombudsman or otherwise follows the policies and procedures of the Office described in paragraph (b)(9) of this section.

(iii) In addition, the Ombudsman or representative of the Office, following the policies and procedures of the Office described in paragraph (b)(9) of this section, may report the suspected abuse, gross neglect, or exploitation to other appropriate agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action.

(9) Prior to disclosing resident-identifying information pursuant to paragraph (b)(6) or (8) of this section, a representative of the Office must obtain approval by the Ombudsman or, alternatively, follow policies and procedures of the Office which provide for such disclosure.

(i) Where the policies and procedures require Ombudsman approval, they shall include a time frame in which the Ombudsman is required to communicate approval or disapproval in order to assure that the representative of the Office has the ability to promptly take actions to protect the health, safety, welfare or rights of residents.

(ii) Where the policies and procedures do not require Ombudsman approval prior to disclosure, they shall require that the representative of the Office promptly notify the Ombudsman of any disclosure of resident-identifying information under the circumstances set forth in paragraph (b)(6) or (8) of this section.

(iii) Disclosure of resident-identifying information under paragraph (b)(7) of this section shall require Ombudsman approval.

#### § 1324.21 Conflicts of interest.

The State agency and the Ombudsman shall consider both the organizational and individual conflicts of interest that may impact the effectiveness and credibility of the work of the Office. In so doing, both the State agency and the Ombudsman shall be responsible to identify actual and potential conflicts and, where a conflict has been identified, to remove or remedy such conflict as set forth in paragraphs (b) and (d) of this section.

(a) *Identification of organizational conflicts.* In identifying conflicts of interest pursuant to section 712(f) of the Act (42 U.S.C. 3058g(f)), the State agency

and the Ombudsman shall consider the organizational conflicts that may impact the effectiveness and credibility of the work of the Office. Organizational conflicts of interest include, but are not limited to, placement of the Office, or requiring that an Ombudsman or representative of the Office perform conflicting activities, in an organization that:

(1) Is responsible for licensing, surveying, or certifying long-term care services, including facilities;

(2) Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities;

(3) Has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility;

(4) Has governing board members with any ownership, investment, or employment interest in long-term care facilities;

(5) Provides long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;

(6) Provides long-term care services, including programs carried out under a Medicaid waiver approved under section 1115 of the Social Security Act (42 U.S.C. 1315) or under subsection (b) or (c) of section 1915 of the Social Security Act (42 U.S.C. 1396n), or under a Medicaid State plan under section 1905(a) or subsection (i), (j), or (k) of section 1915 of the Social Security Act (42 U.S.C. 1396d(a); 42 U.S.C. 1396n(i)-(k));

(7) Provides long-term care coordination or case management, including for residents of long-term care facilities;

(8) Sets reimbursement rates for long-term care facilities;

(9) Sets reimbursement rates for long-term care services;

(10) Provides adult protective services;

(11) Is responsible for eligibility determinations for the Medicaid program carried out under title XIX of the Social Security Act (42 U.S.C. 1396-1396v);

(12) Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;

(13) Conducts preadmission screening for long-term care facility admission;

(14) Makes decisions regarding admission or discharge of individuals to or from long-term care facilities; or

(15) Provides guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long-term care facilities.

(b) *Removing or remedying organizational conflicts.* The State agency and the Ombudsman shall identify and take steps to remove or remedy conflicts of interest between the Office and the State agency or other agency carrying out the Ombudsman program.

(1) The Ombudsman shall identify organizational conflicts of interest in the Ombudsman program and describe steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary for Aging through the National Ombudsman Reporting System.

(2) Where the Office is located within or otherwise organizationally attached to the State agency, the State agency shall:

(i) Take reasonable steps to avoid internal conflicts of interest;

(ii) Establish a process for review and identification of internal conflicts;

(iii) Take steps to remove or remedy conflicts;

(iv) Ensure that no individual, or member of the immediate family of an individual, involved in designating, appointing, otherwise selecting, or terminating the Ombudsman is subject to a conflict of interest; and

(v) Assure that the Ombudsman has disclosed such conflicts and described steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary for Aging through the National Ombudsman Reporting System.

(3) Where a State agency is unable to adequately remove or remedy a conflict, it shall carry out the Ombudsman program by contract or other arrangement with a public agency or nonprofit private organization, pursuant to section 712(a)(4) of the Act (42 U.S.C. 3058g(a)(4)). The State agency may not

enter into a contract or other arrangement to carry out the Ombudsman program if the other entity, and may not operate the Office directly if it:

(i) Is responsible for licensing, surveying, or certifying long-term care facilities;

(ii) Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities; or

(iii) Has any ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility.

(4) Where the State agency carries out the Ombudsman program by contract or other arrangement with a public agency or nonprofit private organization, pursuant to section 712(a)(4) of the Act (42 U.S.C. 3058g(a)(4)), the State agency shall:

(i) Prior to contracting or making another arrangement, take reasonable steps to avoid conflicts of interest in such agency or organization which is to carry out the Ombudsman program and to avoid conflicts of interest in the State agency's oversight of the contract or arrangement;

(ii) Establish a process for periodic review and identification of conflicts;

(iii) Establish criteria for approval of steps taken by the agency or organization to remedy or remove conflicts;

(iv) Require that such agency or organization have a process in place to:

(A) Take reasonable steps to avoid conflicts of interest; and

(B) Disclose identified conflicts and steps taken to remove or remedy conflicts to the State agency for review and approval.

(5) Where an agency or organization carrying out the Ombudsman program by contract or other arrangement develops a conflict and is unable to adequately remove or remedy a conflict, the State agency shall either operate the Ombudsman program directly or by contract or other arrangement with another public agency or nonprofit private organization.

(6) Where local Ombudsman entities provide ombudsman services, the Ombudsman shall:

(i) Prior to designating or renewing designation, take reasonable steps to

avoid conflicts of interest in any agency which may host a local Ombudsman entity;

(ii) Establish a process for periodic review and identification of conflicts of interest with the local Ombudsman entity in any agencies hosting a local Ombudsman entity;

(iii) Require that such agencies disclose identified conflicts of interest with the local Ombudsman entity and steps taken to remove or remedy conflicts within such agency to the Ombudsman;

(iv) Establish criteria for approval of steps taken to remedy or remove conflicts in such agencies; and

(v) Establish a process for review of and criteria for approval of plans to remove or remedy conflicts with the local Ombudsman entity in such agencies.

(7) Failure of an agency hosting a local Ombudsman entity to disclose a conflict to the Office or inability to adequately remove or remedy a conflict shall constitute grounds for refusal, suspension, or removal of designation of the local Ombudsman entity by the Ombudsman.

(c) *Identifying individual conflicts of interest.* (1) In identifying conflicts of interest pursuant to section 712(f) of the Act (42 U.S.C. 3058g(f)), the State agency and the Ombudsman shall consider individual conflicts that may impact the effectiveness and credibility of the work of the Office.

(2) Individual conflicts of interest for an Ombudsman, representatives of the Office, and members of their immediate family include, but are not limited to:

(i) Direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(ii) Ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or a long-term care service;

(iii) Employment of an individual by, or participation in the management of, a long-term care facility or a related organization, in the service area or by the owner or operator of any long-term care facility in the service area;

(iv) Receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;

(v) Accepting gifts or gratuities of significant value from a long-term care facility or its management, a resident, or a resident representative of a long-term care facility in which the Ombudsman or representative of the Office provides services (except where there is a personal relationship with a resident or resident representative which is separate from the individual's role as Ombudsman or representative of the Office);

(vi) Accepting money or any other consideration from anyone other than the Office, or an entity approved by the Ombudsman, for the performance of an act in the regular course of the duties of the Ombudsman or the representatives of the Office without Ombudsman approval;

(vii) Serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in which the Ombudsman or representative of the Office provides services;

(viii) Serving residents of a facility in which an immediate family member resides;

(ix) Management responsibility for, or operating under the supervision of, an individual with management responsibility for, adult protective services; and

(x) Serving as a guardian or in another fiduciary capacity for residents of long-term care facilities in an official capacity (as opposed to serving as a guardian or fiduciary for a family member, in a personal capacity).

(d) *Removing or remedying individual conflicts.* (1) The State agency or Ombudsman shall develop and implement policies and procedures, pursuant to §1324.11(e)(4), to ensure that no Ombudsman or representatives of the Office are required or permitted to hold positions or perform duties that would constitute a conflict of interest as set forth in §1324.21(c). This rule does not prohibit a State agency or Ombudsman from having policies or procedures that exceed these requirements.

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(2) When considering the employment or appointment of an individual as the Ombudsman or as a representative of the Office, the State agency or other employing or appointing entity shall:

(i) Take reasonable steps to avoid employing or appointing an individual who has an unremedied conflict of interest or who has a member of the immediate family with an unremedied conflict of interest;

(ii) Take reasonable steps to avoid assigning an individual to perform duties which would constitute an unremedied conflict of interest;

(iii) Establish a process for periodic review and identification of conflicts of the Ombudsman and representatives of the Office; and

(iv) Take steps to remove or remedy conflicts.

(3) In no circumstance shall the entity, which appoints or employs the Ombudsman, appoint or employ an individual as the Ombudsman who:

(i) Has direct involvement in the licensing or certification of a long-term care facility;

(ii) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;

(iii) Has been employed by or participated in the management of a long-term care facility within the previous twelve months; and

(iv) Receives, or has the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility.

(4) In no circumstance shall the State agency, other agency which carries out the Office, or an agency hosting a local Ombudsman entity appoint or employ an individual, nor shall the Ombudsman designate an individual, as a representative of the Office who:

(i) Has direct involvement in the licensing or certification of a long-term care facility;

(ii) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment

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within a reasonable period may be considered an adequate remedy to this conflict;

(iii) Receives, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility; or

(iv) Is employed by, or participating in the management of, a long-term care facility.

(A) An agency which appoints or employs representatives of the Office shall make efforts to avoid appointing or employing an individual as a representative of the Office who has been employed by or participated in the management of a long-term care facility within the previous twelve months.

(B) Where such individual is appointed or employed, the agency shall take steps to remedy the conflict.

### Subpart B—Programs for Prevention of Elder Abuse, Neglect, and Exploitation

#### § 1324.201 State agency responsibilities for the prevention of elder abuse, neglect, and exploitation.

(a) In accordance with Title VII, chapter 3 of the Act, the distribution of Federal funds to the State agency on aging by formula is authorized to carry out activities to develop, strengthen, and carry out programs for the prevention, detection, assessment, and treatment of, intervention in, investigation of, and response to elder abuse, neglect, and exploitation.

(b) All programs using these funds must meet requirements as set forth in the Act, including those of section 721(c), (d), (e) (42 U.S.C. 3058i(c)–(e)) and guidance as set forth by the Assistant Secretary for Aging.

### Subpart C—State Legal Assistance Development

#### § 1324.301 Definitions.

(a) Definitions as set forth in § 1321.3 of this chapter apply to this part.

(b) Terms used, but not otherwise defined in this part will have the meanings ascribed to them in the Act.

**§ 1324.303 Legal Assistance Developer.**

(a) *State Legal Assistance Developer.* In accordance with section 731 of the Act (42 U.S.C. 3058j), the State agency shall designate an individual who shall be known as a State Legal Assistance Developer, and other personnel, sufficient to ensure:

(1) State leadership in securing and maintaining the legal rights of older individuals;

(2) State capacity for coordinating the provision of legal assistance, in accordance with section 102(23) and (24) and consistent with section 102(33) of the Act (42 U.S.C. 3002(23), (24), (33)), to include prioritizing such services provided to individuals with greatest economic need, or greatest social need;

(3) State capacity to provide technical assistance, training, and other supportive functions to area agencies on aging, legal assistance providers, Long-Term Care Ombudsman programs, adult protective services, and other service providers under the Act;

(i) The Legal Assistance Developer shall utilize the trainings, case consultations, and technical assistance provided by the support and technical assistance entity established pursuant to section 420(c) of the Act (42 U.S.C. 3032i(c)).

(ii) [Reserved]

(4) State capacity to promote financial management services to older individuals at risk of guardianship, conservatorship, or other fiduciary proceedings;

(i) In so doing, the Legal Assistance Developer shall take into consideration promotion of activities to increase awareness of and access to self-directed financial management services and legal assistance and;

(ii) The Legal Assistance Developer shall also take into consideration promotion of activities that proactively enable older adults and those they designate as decisional supporters through powers of attorney, health care proxies, supported decision making and similar instruments or approaches to be connected to resources and education to manage their finances and the decisions they make about their lives so as to limit their risk for guardianship, conservatorship, or more restrictive fiduciary proceedings.

(5) State capacity to assist older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship, conservatorship, or other fiduciary proceedings;

(i) In so doing, the Legal Assistance Developer shall take into consideration engaging in activities aimed at preserving an individual's rights or autonomy, including, but not limited to, increasing awareness of and access to least-restrictive alternatives to guardianship, conservatorship, or more restrictive fiduciary proceedings, such as supported decision making, and legal assistance;

(ii) In so doing, the Legal Assistance Developer shall adhere to the restrictions contained in section 321(a)(6)(B)(i) of the Act (42 U.S.C. 3030d(a)(6)(B)(i)) regarding the involvement of legal assistance providers in guardianship proceedings, and shall apply these restrictions to conservatorship and other fiduciary proceedings;

(iii) In undertaking this activity, the Legal Assistance Developer shall take into consideration coordination of efforts with legal assistance providers funded under the Act contracted by area agencies on aging, any Bar Association Elder Law section, and other elder rights or entities active in the State.

(6) State capacity to improve the quality and quantity of legal services provided to older individuals.

(b) *State plan.* The activities designated by the State agency for the Legal Assistance Developer, in accordance with paragraphs (a)(1) through (6) of this section, shall be contained in the State plan, per section 307 of the Act (42 U.S.C. 3027) and as set forth in § 1321.27 of this chapter.

(c) *Knowledge, resources, and capacity.* The State agency shall ensure that the Legal Assistance Developer has the knowledge, resources, and capacity to conduct the activities outlined in paragraph (a) of this section.

(d) *Conflicts of interest.* (1) In designating a Legal Assistance Developer, the State agency shall consider any potential conflicts of interest posed by any candidate for the role, and take



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steps to prevent, remedy, or remove such conflicts of interest.

(2) In designating a Legal Assistance Developer, the State agency shall consider both organizational and individual interests that may impact the effectiveness and credibility of the work of the Legal Assistance Developer to coordinate legal assistance and work to secure, protect, and promote the legal rights of older adults in the State.

(i) This includes holding a position or performing duties that could lead to decisions that are or have the appearance of being contrary to the Legal Assistance Developer's duties as defined in this section and contained in the State plan as set forth in §1321.27 of this chapter.

(ii) [Reserved]

(3) The State agency shall not designate as Legal Assistance Developer any individual who is:

(i) Serving as a director of adult protective services, or as legal counsel to adult protective services;

(ii) Serving as a State Long-Term Care Ombudsman, or as legal counsel to a State Long-Term Care Ombudsman Program;

(iii) Serving as a hearing officer, administrative law judge, trier of fact or counsel to these positions in an administrative proceeding related to the legal rights of older adults, such as one in which a legal assistance provider might appear;

(iv) Serving as legal counsel or a party to an administrative proceeding related to long-term care settings, including residential settings;

(v) Conducting surveys of and licensure certifications for long-term care settings, including residential settings, or serving as counsel or advisor to such positions;

(vi) Serving as a public or private guardian, conservator, or fiduciary or operating such a program, or serving as counsel to these positions or programs.

(4) The State agency and the Legal Assistance Developer shall be responsible for identifying any other actual and potential conflicts of interest and circumstances that may lead to the appearance of a conflict of interest; identifying processes for preventing conflicts of interest and, where a conflict

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of interest has been identified, for removing or remedying the conflict.

(5) The State agency shall develop and implement policies and procedures to ensure that the Legal Assistance Developer is not required or permitted to hold positions or perform duties that would constitute a conflict of interest.

### Subpart D—Adult Protective Services Programs

AUTHORITY: 42 U.S.C. 3011(e)(3); 42 U.S.C. 1397m-1.

SOURCE: 89 FR 39528, May 8, 2024, unless otherwise noted.

#### § 1324.400 Eligibility for funding.

State entities are required to adhere to all provisions contained herein to be eligible for funding under 42 U.S.C. 1397m-1(b).

#### § 1324.401 Definitions.

As used in this part, the term—

*Abuse* means the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.

*Adult* means older adults and adults with disabilities as defined by State APS laws.

*Adult maltreatment* means the abuse, neglect, financial exploitation, or sexual abuse of an adult at-risk of harm.

*Adult Protective Services (APS)* means such activities and services the Assistant Secretary for Aging may specify in guidance and includes:

(1) Receiving reports of adult abuse, neglect, financial exploitation, sexual abuse, and/or self-neglect;

(2) Investigating the reports described in paragraph (1) of this definition;

(3) Case planning, monitoring, evaluation, and other case work and services, and;

(4) Providing, arranging for, or facilitating the provision of medical, social services, economic, legal, housing, law enforcement, or other protective, emergency, or supportive services.

*Adult Protective Services Program* means local Adult Protective Services

providers within an Adult Protective Services system.

*Adult Protective Services Systems* means the totality of the State entities and the local APS programs.

*Allegation* means an accusation of adult maltreatment and/or self-neglect about each adult in a report made to APS.

*At risk of harm* means the strong likelihood that an adult will imminently experience an event, condition, injury, or other outcome that is adverse or detrimental.

*Assistant Secretary for Aging* means the position identified in section 201(a) of the Older Americans Act (OAA), 42 U.S.C. 3002(7).

*Case* means all activities related to an APS investigation of, and response to, an allegation of adult maltreatment and/or self-neglect.

*Client* means an adult who is the subject of an APS response regarding a report of alleged adult maltreatment and/or self-neglect.

*Conflict of interest* means a situation that interferes with a program or program employee or representative's ability to provide objective information or act in the best interests of the adult.

*Dual relationship* means a relationship in which an APS worker assumes one or more professional, personal, or volunteer roles in addition to their role as an APS worker at the same time, or sequentially, with a client.

*Emergency Protective Action* means immediate access to petition the court for temporary or emergency orders or emergency out-of-home placement.

*Financial exploitation* means the fraudulent or otherwise illegal, unauthorized, or improper act or process of a person, including a caregiver or fiduciary, that uses the resources of an adult for monetary or personal benefit, profit, or gain, or that results in depriving an adult of rightful access to, or use of, their benefits, resources, belongings, or assets.

*Finding* means the decision made by APS after investigation that evidence is or is not sufficient under State law to determine adult maltreatment and/or self-neglect has occurred.

*Intake* or *Pre-Screening* means the APS process of receiving allegations of

adult maltreatment or self-neglect and gathering information on the reports, the alleged victim, and the alleged perpetrator.

*Investigation* means the process by which APS examines and gathers information about a possible allegation of adult maltreatment and/or self-neglect to determine if the circumstances of the allegation meet the State's standards of evidence for a finding.

*Mandated reporter* means someone who works with an adult in the course of their professional duties and who is required by State law to report suspected adult maltreatment or self-neglect to APS.

*Neglect* means the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health and/or safety of an adult.

*Perpetrator* means the person determined by APS to be responsible for one or more instances of adult maltreatment.

*Quality assurance* means the process by which APS programs ensure investigations meet or exceed established standards, and includes:

(1) Thorough documentation of all investigation and case management activities;

(2) Review and approval of case closure; and

(3) Conducting a case review process.

*Report* means a formal account or statement made to APS regarding an allegation or multiple allegations of adult maltreatment and/or self-neglect and the relevant circumstances concerning the allegation or allegations.

*Response* means the range of actions and activities undertaken as the result of a report received by APS.

*Screening* means a process whereby APS carefully reviews the intake information to determine if the report of adult maltreatment meets the minimum requirements to be opened for investigation by APS, or if the report should be referred to a service or program other than APS.

*Self-neglect* means a serious risk of imminent harm to oneself or other created by an adult's inability, due to a

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physical or mental impairment or diminished capacity, to perform essential self-care tasks, including at least one of the following:

- (1) Obtaining essential food, clothing, shelter, and medical care;
- (2) Obtaining goods and services necessary to maintain physical health, mental health, or general safety; or,
- (3) Managing one's own financial affairs.

*Sexual abuse* means the non-consensual sexual interaction (touching and non-touching acts) of any kind with an adult.

*State entity* means the unit or units of State, District of Columbia, or U.S. Territorial government designated as responsible for APS programs, including through the establishment and enforcement of policies and procedures, and that receive(s) Federal grant funding under section 2042(b) of the EJA, 42 U.S.C. 1397m-1(b).

*Victim* means an adult who has experienced adult maltreatment.

### § 1324.402 Program administration.

(a) The State entity shall establish definitions for APS systems that:

- (1) Define the populations eligible for APS;
- (2) Define the specific elements of adult maltreatment and self-neglect that render an adult eligible for APS;
- (3) Define the alleged perpetrators who are subject to APS investigations in the State; and
- (4) Define the settings and locations in which adults may experience adult maltreatment and self-neglect and be eligible for APS in the State.

(5) State entities are not required to uniformly adopt the regulatory definitions in §1324.401, but State definitions may not narrow the scope of adults eligible for APS or services provided.

(b) The State entity shall create, publish, and implement policies and procedures for APS systems to receive and respond to reports of adult maltreatment and self-neglect in a standardized fashion. Such policies and procedures, at a minimum, shall:

- (1) Incorporate principles of person-directed services and planning and reliance upon least restrictive alternatives; and

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(2) Define processes for receiving, screening, prioritizing, and referring cases based on risk and type of adult maltreatment and self-neglect consistent with §1324.403, including:

- (i) Creation of at least a two-tiered response system for initial contact with the alleged victim based on immediate risk of death, irreparable harm, or significant loss of income, assets, or resources.

(A) For immediate risk, the response should occur in person and no later than 24-four hours after receiving a report of adult maltreatment and/or self-neglect.

(B) For non-immediate risk, response should occur no more than 7 calendar days after receiving a report of adult maltreatment and/or self-neglect.

(c) Upon first contact, APS systems shall provide to potential APS clients an explanation of their APS-related rights to the extent they exist under State law, including:

- (1) The right to confidentiality of personal information;
- (2) The right to refuse to speak to APS; and
- (3) The right to refuse APS services;
- (d) Information shall be provided in a format and language understandable by the adult, and in alternative formats as needed.

(e) The State entity shall establish policies and procedures for the staffing of APS systems that include:

- (1) Staff training and on-going education, including training on conflicts of interest; and
- (2) Staff supervision.

### § 1324.403 APS response.

The State entity shall adopt standardized and systematic policies and procedures for APS response across and within the State including, at a minimum:

- (a) Screening, triaging, and decision-making criteria or protocols to review and assign adult maltreatment and self-neglect reports for APS investigation and/or to report to other authorities;
- (b) Tools and/or decision-making processes for APS to review reports of adult maltreatment and self-neglect for any emergency needs of the adult

and for immediate safety and risk factors affecting the adult or APS worker when responding to the report and;

(c) Practices during investigations to collect information and evidence to support findings on allegations, and service planning that will:

(1) Recognize that acceptance of APS services is voluntary, except where mandated by State law;

(2) Ensure the safety of APS client and worker;

(3) Ensure the preservation of a client's rights;

(4) Integrate principles of person-directedness and trauma-informed approaches;

(5) Maximize engagement with the APS client, and;

(6) Permit APS the emergency use of APS funds to buy goods and services;

(7) Permit APS to seek emergency protective action only as appropriate and necessary as a measure of last resort to protect the life and safety of the client.

(d) Methods to make findings on allegations and record case findings, including:

(1) Ability for APS programs to consult with appropriate experts, other team members, and supervisors;

(2) Protocols for the standards of evidence APS should apply when making a finding on allegations.

(e) Provision of and/or referral to services, as appropriate, that:

(1) Respect the autonomy and authority of clients to make their own life choices;

(2) Respect the client's views about safety, quality of life, and success;

(3) Develop any service plan or referrals in consultation with the client;

(4) Engage community partners through referrals for services or purchase of services where services are not directly provided by APS, and;

(f) Case handling criteria that:

(1) Establish timeframes for on-going review of open cases;

(2) Establish a reasonable length of time by which investigations should be completed and findings be made; and

(3) Document, at a minimum:

(i) The APS response;

(ii) Significant changes in client status;

(iii) Assessment of safety and risk at case closure; and

(iv) The reason to close the case.

#### § 1324.404 Conflict of interest.

The State entity shall establish standardized policies and procedures to avoid both actual and perceived conflicts of interest for APS. Such policies and procedures must include mechanisms to identify, remove, and remedy any actual or perceived conflicts of interest at organizational and individual levels, including to:

(a) Ensure that employees and individuals administering or representing APS programs, and members of an employee or individual's immediate family or household, do not have a conflict of interest;

(b) Ensure that employees and individuals administering or representing APS programs, and members of an employee or individual's immediate family or household, do not have a personal financial interest in an entity to which an APS program may refer adults for services;

(c) Establish monitoring and oversight procedures to identify conflicts of interest; and

(d) Prohibit avoidable dual relationships and ensure that appropriate safeguards are established should a dual relationship be unavoidable;

(1) In the case of an APS program petitioning for or serving as guardian, it is an unavoidable dual relationship only if all less restrictive alternatives to guardianship have been considered and either:

(i) A Court has instructed the APS program to petition for or serve as guardian; or

(ii) There is no other qualified individual or entity available to petition for or serve as guardian;

(2) For all dual relationships, the APS program must document the dual relationship in the case record and describe the mitigation strategies it will take to address the conflict of interest.

#### § 1324.405 Accepting reports.

(a) The State entity shall establish standardized policies and procedures for receiving reports of adult maltreatment and self-neglect 24 hours per day,

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7 calendar days per week, using multiple methods of reporting, including at least one online method, to ensure accessibility.

(b) The State entity shall establish standardized policies and procedures for APS to accept reports of alleged adult maltreatment and self-neglect by mandated reporters as defined in § 1324.401 that:

(1) Share with the mandated reporter who made such report to APS whether a case has been opened as a result of the report at the request of the mandated reporter; and

(2) Obtain the consent of the adult to share such information prior to its release.

(c) The State entity shall comply with all applicable State and Federal confidentiality laws and establish and adhere to standardized policies and procedures to maintain the confidentiality of adults, reporters, and information provided in a report.

#### **§ 1324.406 Coordination with other entities.**

(a) State entities shall establish policies and procedures, consistent with State law, to ensure coordination and to detect, prevent, address, and remedy adult maltreatment and self-neglect with other appropriate entities, including but not limited to:

(1) Other APS programs in the State, including Tribal APS programs, when authority over APS is divided between different jurisdictions or agencies;

(2) Other governmental agencies that investigate allegations of adult maltreatment, including, but not limited to:

(i) The State Medicaid agency, for the purposes of coordination with respect to critical incidents and other issues;

(ii) State nursing home licensing and certification;

(iii) State department of health and licensing and certification; and

(iv) Tribal governments;

(3) Law enforcement agencies with jurisdiction to investigate suspected crimes related to adult maltreatment: State or local police agencies, Tribal law enforcement, State Medicaid Fraud Control Units, State securities and financial regulators, Federal financial

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and securities enforcement agencies, and Federal law enforcement agencies;

(4) Organizations with authority to advocate on behalf of adults who experience alleged adult maltreatment, such as the State Long-Term Care Ombudsman Program, and/or investigate allegations of adult maltreatment, such as the Protection and Advocacy Systems;

(5) Emergency management systems, and;

(6) Banking and financial institutions.

(b) Policies and procedures must:

(1) Address coordination and collaboration to detect, prevent, address, and remedy adult maltreatment and self-neglect during all stages of a response conducted by APS or by other agencies and organizations with authority and jurisdiction to respond to reports of adult maltreatment and/or self-neglect;

(2) Address information sharing on the status and resolution of response between the APS system and other entities responsible in the State or other jurisdiction for response, to the extent permissible under applicable State law;

(3) Facilitate information exchanges, quality assurance activities, cross-training, development of formal multidisciplinary and cross agency teams, co-location of staff within appropriate agencies through memoranda of understanding, data sharing agreements, or other less formal arrangements; and

(4) Address other activities as determined by the State entity.

#### **§ 1324.407 APS program performance.**

The State entity shall develop policies and procedures for the collection and maintenance of data on APS system response. The State entity shall:

(a) Collect and report annually to ACL such APS system-wide data as required by the Assistant Secretary for Aging; and

(b) Develop policies and procedures to ensure that the APS system retains individual case data obtained from APS investigations for a minimum of 5 years.

#### **§ 1324.408 State plans.**

(a) State entities must develop and submit to the Director of the Office of Elder Justice and Adult Protective

Services, the position designated by 42 U.S.C. 3011(e)(1), a State APS plan that meets the requirements set forth by the Assistant Secretary for Aging.

(b) The State plan shall be developed by the State entity receiving the Federal award under 42 U.S.C. 1397m-1 in collaboration with APS programs and other State APS entities, if applicable.

(c) The State plan shall be updated at least every 5 years but may be updated more frequently as determined by the State entity.

(d) The State plan shall contain an assurance that all policies and procedures required herein will be developed and adhered to by the State APS system.

(e) State plans will be reviewed and approved by the Director of the Office of Elder Justice and Adult Protective Services. Any State dissatisfied with the final decision of the Director of the Office of Elder Justice and Adult Protective Services may appeal to the Deputy Assistant Secretary for Aging not later than 30 calendar days after the date of the Director of the Office of Elder Justice and Adult Protective Services' final decision and will be afforded the opportunity for a hearing before the Deputy Assistant Secretary. If the State is dissatisfied with the final decision of the Deputy Assistant Secretary for Aging, it may appeal to the Assistant Secretary for Aging not later than 30 calendar days after the date of the Deputy Assistant Secretary for Aging's decision.

## PART 1325—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

Sec.

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AUTHORITY: 42 U.S.C. 15001 *et seq.*

SOURCE: 80 FR 44807, July 27, 2015, unless otherwise noted. Redesignated at 81 FR 35645, June 3, 2016.

### § 1325.1 General.

Except as specified in § 1325.4, the requirements in this part are applicable to the following programs and projects:

(a) Federal Assistance to State Councils on Developmental Disabilities;

(b) Protection and Advocacy for Individuals with Developmental Disabilities;

(c) Projects of National Significance; and

(d) National Network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service.

[80 FR 44807, July 27, 2015, as amended at 81 FR 35647, June 3, 2016]

### § 1325.2 Purpose of the regulations.

These regulations implement the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 *et seq.*).

### § 1325.3 Definitions.

For the purposes of parts 1325 through 1328 of this chapter, the following definitions apply:

**ACL.** The term “ACL” means the Administration for Community Living within the U.S. Department of Health and Human Services.

**Act.** The term “Act” means the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act of 2000) (42 U.S.C. 15001 *et seq.*).

**Accessibility.** The term “Accessibility” means that programs funded under the DD Act of 2000 and facilities which are used in those programs meet applicable requirements of section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), its implementing regulation, 45 CFR part 84, the Americans with Disabilities Act of 1990, as amended, Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), and its implementing regulation, 45 CFR part 80.

(1) For programs funded under the DD Act of 2000, information shall be provided to applicants and program participants in plain language and in a manner that is accessible and timely to:

(i) Individuals with disabilities, including accessible Web sites and the provision of auxiliary aids and services at no cost to the individual; and

(ii) Individuals who are limited English proficient through the provision of language services at no cost to the individual, including:

(A) Oral interpretation;

(B) Written translations; and

(C) Taglines in non-English languages indicating the availability of language services.

*AIDD.* The term “AIDD” means the Administration on Intellectual and Developmental Disabilities, within the Administration for Community Living at the U.S. Department of Health and Human Services.

*Advocacy activities.* The term “advocacy activities” means active support of policies and practices that promote systems change efforts and other activities that further advance self-determination and inclusion in all aspects of community living (including housing, education, employment, and other aspects) for individuals with developmental disabilities, and their families.

*Areas of emphasis.* The term “areas of emphasis” means the areas related to quality assurance activities, education activities and early intervention activities, child care-related activities, health-related activities, employment-related activities, housing-related activities, transportation-related activities, recreation-related activities, and other services available or offered to individuals in a community, including formal and informal community supports that affect their quality of life.

*Assistive technology device.* The term “assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with developmental disabilities.

*Assistive technology service.* The term “assistive technology service” means any service that directly assists an individual with a developmental disability in the selection, acquisition, or use of an assistive technology device. Such term includes: Conducting an evaluation of the needs of an individual with a developmental disability, including a functional evaluation of the individual in the individual’s customary environment; purchasing, leasing, or otherwise providing for the ac-

quisition of an assistive technology device by an individual with a developmental disability; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing an assistive technology device; coordinating and using another therapy, intervention, or service with an assistive technology device, such as a therapy, intervention, or service associated with an education or rehabilitation plan or program; providing training or technical assistance for an individual with a developmental disability, or, where appropriate, a family member, guardian, advocate, or authorized representative of an individual with a developmental disability; and providing training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of, an individual with developmental disabilities.

*Capacity building activities.* The term “capacity building activities” means activities (e.g. training and technical assistance) that expand and/or improve the ability of individuals with developmental disabilities, families, supports, services and/or systems to promote, support and enhance self-determination, independence, productivity and inclusion in community life.

*Center.* The term “Center” means a University Center for Excellence in Developmental Disabilities Education, Research, and Service (UCEDD) established under subtitle D of the Act.

*Child care-related activities.* The term “child care-related activities” means advocacy, capacity building, and systemic change activities that result in families of children with developmental disabilities having access to and use of child care services, including before-school, after-school, and out-of-school services, in their communities.

*Culturally competent.* The term “culturally competent,” used with respect to services, supports, and other assistance means that services, supports, or other assistance that are conducted or provided in a manner that is responsive

to the beliefs, interpersonal styles, attitudes, language, and behaviors of individuals who are receiving the services, supports or other assistance, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program involved.

*Department.* The term “Department” means the U.S. Department of Health and Human Services.

*Developmental disability.* The term “developmental disability” means a severe, chronic disability of an individual that:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the individual attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(vi) Self-direction;

(vii) Capacity for independent living; and

(viii) Economic self-sufficiency.

(5) Reflects the individual’s need for a combination and sequence of special, interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(6) An individual from birth to age nine, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1) through (5) of this definition, if the individual, without services and supports, has a high probability of meeting those criteria later in life.

*Early intervention activities.* The term “early intervention activities” means advocacy, capacity building, and systemic change activities provided to infants and young children described in the definition of “developmental disability” and their families to enhance the development of the individuals to maximize their potential, and the ca-

capacity of families to meet the special needs of the individuals.

*Education activities.* The term “education activities” means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities being able to access appropriate supports and modifications when necessary, to maximize their educational potential, to benefit from lifelong educational activities, and to be integrated and included in all facets of student life.

*Employment-related activities.* The term “employment-related activities” means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities acquiring, retaining, or advancing in paid employment, including supported employment or self-employment, in integrated settings in a community.

*Family support services.* The term “family support services” means services, supports, and other assistance, provided to families with a member or members who have developmental disabilities, that are designed to: Strengthen the family’s role as primary caregiver; prevent inappropriate out-of-the-home placement of the members and maintain family unity; and reunite, whenever possible, families with members who have been placed out of the home. This term includes respite care, provision of rehabilitation technology and assistive technology, personal assistance services, parent training and counseling, support for families headed by aging caregivers, vehicular and home modifications, and assistance with extraordinary expenses associated with the needs of individuals with developmental disabilities.

*Fiscal year.* The term “fiscal year” means the Federal fiscal year unless otherwise specified.

*Governor.* The term “Governor” means the chief executive officer of a State, as that term is defined in the Act, or his or her designee who has been formally designated to act for the Governor in carrying out the requirements of the Act and the regulations.



*Health-related activities.* The term “health-related activities” means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of coordinated health, dental, mental health, and other human and social services, including prevention activities, in their communities.

*Housing-related activities.* The term “housing-related activities” means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of housing and housing supports and services in their communities, including assistance related to renting, owning, or modifying an apartment or home.

*Inclusion.* The term “inclusion”, used with respect to individuals with developmental disabilities, means the acceptance and encouragement of the presence and participation of individuals with developmental disabilities, by individuals without disabilities, in social, educational, work, and community activities, that enable individuals with developmental disabilities to have friendships and relationships with individuals and families of their own choice; live in homes close to community resources, with regular contact with individuals without disabilities in their communities; enjoy full access to and active participation in the same community activities and types of employment as individuals without disabilities; and take full advantage of their integration into the same community resources as individuals without disabilities, living, learning, working, and enjoying life in regular contact with individuals without disabilities.

*Individualized supports.* The term “individualized supports” means supports that: Enable an individual with a developmental disability to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life; designed to enable such individual to control such individual’s environment, permitting the most independent life possible; and prevent placement into a more restrictive living arrangement than is necessary and enable such indi-

vidual to live, learn, work, and enjoy life in the community; and include early intervention services, respite care, personal assistance services, family support services, supported employment services support services for families headed by aging caregivers of individuals with developmental disabilities, and provision of rehabilitation technology and assistive technology, and assistive technology services.

*Integration.* The term “integration,” means exercising the equal rights of individuals with developmental disabilities to access and use the same community resources as are used by and available to other individuals.

*Not-for-profit.* The term “not-for-profit,” used with respect to an agency, institution or organization, means an agency, institution, or organization that is owned or operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

*Personal assistance services.* The term “personal assistance services” means a range of services provided by one or more individuals designed to assist an individual with a disability to perform daily activities, including activities on or off a job, that such individual would typically perform if such individual did not have a disability. Such services shall be designed to increase such individual’s control in life and ability to perform everyday activities, including activities on or off a job.

*Prevention activities.* The term “prevention activities” means activities that address the causes of developmental disabilities and the exacerbation of functional limitation, such as activities that: Eliminate or reduce the factors that cause or predispose individuals to developmental disabilities or that increase the prevalence of developmental disabilities; increase the early identification of problems to eliminate circumstances that create or increase functional limitations; and mitigate against the effects of developmental disabilities throughout the lifespan of an individual.

*Productivity.* The term “productivity” means engagement in income-

producing work that is measured by increased income, improved employment status, or job advancement, or engagement in work that contributes to a household or community.

*Protection and Advocacy (P&A) Agency.* The term “Protection and Advocacy (P&A) Agency” means a protection and advocacy system established in accordance with section 143 of the Act.

*Quality assurance activities.* The term “quality assurance activities” means advocacy, capacity building, and systemic change activities that result in improved consumer and family-centered quality assurance and that result in systems of quality assurance and consumer protection that include monitoring of services, supports, and assistance provided to an individual with developmental disabilities that ensures that the individual will not experience abuse, neglect, sexual or financial exploitation, or violation of legal or human rights; and will not be subject to the inappropriate use of restraints or seclusion; include training in leadership, self-advocacy, and self-determination for individuals with developmental disabilities, their families, and their guardians to ensure that those individuals will not experience abuse, neglect, sexual or financial exploitation, or violation of legal or human rights; and will not be subject to the inappropriate use of restraints or seclusion; or include activities related to inter-agency coordination and systems integration that result in improved and enhanced services, supports, and other assistance that contribute to and protect the self-determination, independence, productivity, and integration and inclusion in all facets of community life of individuals with developmental disabilities.

*Rehabilitation technology.* The term “rehabilitation technology” means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by individuals with developmental disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. Such term includes rehabilitation engineering, and the provision of

assistive technology devices and assistive technology services.

*Required planning documents.* The term “required planning documents” means the State plans required by §1326.30 of this chapter for the State Council on Developmental Disabilities, the Annual Statement of Goals and Priorities required by §1326.22(c) of this chapter for P&As, and the five-year plan and annual report required by §1328.7 of this chapter for UCEDDs.

*Secretary.* The term “Secretary” means the Secretary of the U.S. Department of Health and Human Services.

*Self-determination activities.* The term “self-determination activities” means activities that result in individuals with developmental disabilities, with appropriate assistance, having the ability and opportunity to communicate and make personal decisions; the ability and opportunity to communicate choices and exercise control over the type and intensity of services, supports, and other assistance the individuals receive; the authority to control resources to obtain needed services, supports, and other assistance; opportunities to participate in, and contribute to, their communities; and support, including financial support, to advocate for themselves and others to develop leadership skills through training in self-advocacy to participate in coalitions, to educate policymakers, and to play a role in the development of public policies that affect individuals with developmental disabilities.

*State.* The term “State”:

(1) Except as applied to the University Centers of Excellence in Developmental Disabilities Education, Research and Service in section 155 of the Act, includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(2) For the purpose of UCEDDs in section 155 of the Act and part 1388 of this chapter, “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and Guam.

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*State Council on Developmental Disabilities (SCDD).* The term “State Council on Developmental Disabilities (SCDD)” means a Council established under section 125 of the DD Act.

*Supported employment services.* The term “supported employment services” means services that enable individuals with developmental disabilities to perform competitive work in integrated work settings, in the case of individuals with developmental disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of significant disabilities; and who, because of the nature and severity of their disabilities, need intensive supported employment services or extended services in order to perform such work.

*Systemic change activities.* The term “systemic change activities” means a sustainable, transferable and replicable change in some aspect of service or support availability, design or delivery that promotes positive or meaningful outcomes for individuals with developmental disabilities and their families.

*Transportation-related activities.* The term “transportation-related activities” means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of transportation.

*UCEDD.* The term “UCEDD” means University Centers for Excellence in Developmental Disabilities Education, Research, and Service, also known by the term “Center” under section 102(5) of the Act.

*Unserved and underserved.* The term “unserved and underserved” includes populations such as individuals from racial and ethnic minority backgrounds, disadvantaged individuals, individuals with limited English proficiency, individuals from underserved geographic areas (rural or urban), and specific groups of individuals within the population of individuals with developmental disabilities, including individuals who require assistive technology in order to participate in community life.

[80 FR 44807, July 27, 2015, as amended at 81 FR 35647, June 3, 2016]

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### § 1325.4 Rights of individuals with developmental disabilities.

(a) Section 109 of the Act, Rights of Individuals with Developmental Disabilities (42 U.S.C. 15009), is applicable to the SCDD.

(b) In order to comply with section 124(c)(5)(H) of the Act (42 U.S.C. 15024(c)(5)(H)), regarding the rights of individuals with developmental disabilities, the State participating in the SCDD program must meet the requirements of 45 CFR 1326.30(f).

(c) Applications from UCEDDs also must contain an assurance that the human rights of individuals assisted by this program will be protected consistent with section 101(c) (see section 154(a)(3)(D) of the Act).

[80 FR 44807, July 27, 2015, as amended at 85 FR 72911, Nov. 16, 2020]

### § 1325.5 [Reserved]

### § 1325.6 Employment of individuals with disabilities.

Each grantee which receives Federal funding under the Act must meet the requirements of section 107 of the Act (42 U.S.C. 15007) regarding affirmative action. The grantee must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such: Advertising, recruitment, employment, rates of pay or other forms of compensation, selection for training, including apprenticeship, upgrading, demotion or transfer, and layoff or termination. This obligation is in addition to the requirements of 45 CFR part 84, subpart B, prohibiting discrimination in employment practices on the basis of disability in programs receiving assistance from the Department. Recipients of funds under the Act also may be bound by the provisions of the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 42 U.S.C. 12101 *et seq.*) with respect to employment of individuals with disabilities. Failure to comply with section 107 of the Act may result in loss of Federal funds under the Act. If a compliance action is taken, the State will be

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given reasonable notice and an opportunity for a hearing as provided in subpart E of 45 CFR part 1326.

[80 FR 44807, July 27, 2015, as amended at 81 FR 35647, June 3, 2016]

### § 1325.7 Reports to the Secretary.

All grantee submission of plans, applications and reports must label goals, activities and results clearly in terms of the following: Area of emphasis, type of activity (advocacy, capacity building, systemic change), and categories of measures of progress.

### § 1325.8 Formula for determining allotments.

The Secretary, or his or her designee, will allocate funds appropriated under the Act for the State Councils on Developmental Disabilities and the P&As as directed in sections 122 and 142 of the Act (42 U.S.C. 15022 and 15042).

### § 1325.9 Grants administration requirements.

(a) The following parts of this title and title 2 CFR apply to grants funded under parts 1326 and 1328 of this chapter, and to grants for Projects of National Significance under section 162 of the Act (42 U.S.C. 15082):

(1) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

(2) 45 CFR part 46—Protection of Human Subjects.

(3) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Award.

(4) 2 CFR part 376—Nonprocurement Debarment and Suspension.

(5) 45 CFR part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of title VI of the Civil Rights Act of 1964.

(5) 45 CFR part 81—Practice and Procedure for Hearings under part 80 of this title.

(6) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance.

(7) 45 CFR part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance.

(8) 45 CFR part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

(9) 45 CFR part 93—New Restrictions on Lobbying.

(b) The Departmental Appeals Board also has jurisdiction over appeals by any grantee that has received grants under the UCEDD programs or for Projects of National Significance. The scope of the Board's jurisdiction concerning these appeals is described in 45 CFR part 16.

(c) The Departmental Appeals Board also has jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Secretary, or his or her designee, with respect to specific expenditures incurred by the States or by contractors or sub grantees of States. This jurisdiction relates to funds provided under the two formula programs—subtitle B of the Act—Federal Assistance to State Councils on Developmental Disabilities, and subtitle C of the Act—Protection and Advocacy for Individuals with Developmental Disabilities. Appeals filed by States shall be decided in accordance with 45 CFR part 16.

(d) In making audits and examination to any books, documents, papers, and transcripts of records of SCDDs, the P&As, the UCEDDs and the Projects of National Significance grantees and sub grantees, as provided for in 45 CFR part 75, the Department will keep information about individual clients confidential to the maximum extent permitted by law and regulations.

(e)(1) The Department or other authorized Federal officials may access client and case eligibility records or other records of a P&A system for audit purposes, and for purposes of monitoring system compliance pursuant to section 103(b) of the Act. However, such information will be limited pursuant to section 144(c) of the Act. No personal identifying information such as name, address, and social security number will be obtained. Only eligibility information will be obtained regarding the type and level of disability of individuals being served by the P&A and the nature of the issue

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concerning which the system represented an individual.

(2) Notwithstanding paragraph (e)(1) of this section, if an audit, monitoring review, evaluation, or other investigation by the Department produces evidence that the system has violated the Act or the regulations, the system will bear the burden of proving its compliance. The system's inability to establish compliance because of the confidentiality of records will not relieve it of this responsibility. The P&A may elect to obtain a release regarding personal information and privacy from all individuals requesting or receiving services at the time of intake or application. The release shall state that only information directly related to client and case eligibility will be subject to disclosure to officials of the Department.

[80 FR 44807, July 27, 2015, as amended at 81 FR 35647, June 3, 2016]

**PART 1326—DEVELOPMENTAL DISABILITIES FORMULA GRANT PROGRAMS**

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**AUTHORITY:** 42 U.S.C. 15001 *et seq.*

**SOURCE:** 80 FR 44807, July 27, 2015, unless otherwise noted. Redesignated at 81 FR 35645, June 3, 2016.

**Subpart A—Basic Requirements****§ 1326.1 General.**

All rules under this subpart are applicable to both the State Councils on Developmental Disabilities and the agency designated as the State Protection and Advocacy (P&As) System.

**§ 1326.2 Obligation of funds.**

(a) Funds which the Federal Government allots under this part during a Federal fiscal year are available for obligation by States for a two-year period beginning with the first day of the Federal fiscal year in which the grant is awarded.

(b)(1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment, or when the State Council on Developmental Disabilities enters into an Interagency Agreement with an agency of State government for acquisition of personal property or for the performance of work.

(2) A State incurs an obligation for personal services, for services performed by public utilities, for travel or for rental of real or personal property on the date it receives the services, its personnel takes the travel, or it uses the rented property.

(c)(1) A Protection & Advocacy System may elect to treat entry of an appearance in judicial and administrative proceedings on behalf of an individual with a developmental disability as a basis for obligating funds for the litigation costs. The amount of the funds obligated must not exceed a reasonable estimate of the costs, and the way the estimate was calculated must be documented.

(2) For the purpose of this paragraph (c), *litigation costs* means expenses for court costs, depositions, expert witness fees, travel in connection with a case and similar costs, and costs resulting from litigation in which the agency has represented an individual with developmental disabilities (*e.g.*, monitoring court orders, consent decrees), but not for salaries of employees of the P&A. All funds made available for Federal assistance to State Councils on Developmental Disabilities and to the P&As

obligated under this paragraph (c) are subject to the requirement of paragraph (a) of this section. These funds, if reobligated, may be reobligated only within a two-year period beginning with the first day of the Federal fiscal year in which the funds were originally awarded.

**§ 1326.3 Liquidation of obligations.**

(a) All obligations incurred pursuant to a grant made under the Act for a specific Federal fiscal year, must be liquidated within two years of the close of the Federal fiscal year in which the grant was awarded.

(b) The Secretary, or his or her designee, may waive the requirements of paragraph (a) of this section when State law impedes implementation or the amount of obligated funds to be liquidated is in dispute.

(c) Funds attributable to obligations which are not liquidated in accordance with the provisions of this section revert to the Federal Government.

**§ 1326.4 [Reserved]****Subpart B—Protection and Advocacy for Individuals With Developmental Disabilities (PADD)****§ 1326.19 Definitions.**

As used in this subpart and subpart C of this part, the following definitions apply:

*Abuse.* The term “abuse” means any act or failure to act which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with developmental disabilities, and includes but is not limited to such acts as: Verbal, nonverbal, mental and emotional harassment; rape or sexual assault; striking; the use of excessive force when placing such an individual in bodily restraints; the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations, or any other practice which is likely to cause immediate physical or psychological harm or result in long term harm if such practices continue. In addition, the P&A may determine, in its discretion that a

violation of an individual's legal rights amounts to abuse, such as if an individual is subject to significant financial exploitation.

*American Indian Consortium.* The term “American Indian Consortium” means any confederation of 2 or more recognized American Indian Tribes, created through the official resident population of 150,000 enrolled tribal members and a contiguous territory of Indian lands in two or more States.

*Complaint.* The term “complaint” includes, but is not limited to, any report or communication, whether formal or informal, written or oral, received by the P&A system, including media accounts, newspaper articles, electronic communications, telephone calls (including anonymous calls) from any source alleging abuse or neglect of an individual with a developmental disability.

*Designating official.* The term “designating official” means the Governor or other State official, who is empowered by the State legislature or Governor to designate the State official or public or private agency to be accountable for the proper use of funds by and conduct of the agency designated to administer the P&A system.

*Full investigation.* The term “full investigation” means access to service providers, individuals with developmental disabilities and records authorized under these regulations, that are necessary for a P&A system to make a determination about whether alleged or suspected instances of abuse and neglect are taking place or have taken place. Full investigations may be conducted independently or in cooperation with other agencies authorized to conduct similar investigations.

*Legal guardian, Conservator, and Legal representative.* The terms “legal guardian,” “conservator,” and “legal representative” all mean a parent of a minor, unless the State has appointed another legal guardian under applicable State law, or an individual appointed and regularly reviewed by a State court or agency empowered under State law to appoint and review such officers, and having authority to make all decisions on behalf of individuals with developmental disabilities. It does not include persons acting only as

a representative payee, persons acting only to handle financial payments, executors and administrators of estates, attorneys or other persons acting on behalf of an individual with developmental disabilities only in individual legal matters, or officials or their designees responsible for the provision of services, supports, and other assistance to an individual with developmental disabilities.

*Neglect.* The term “neglect” means a negligent act or omission by an individual responsible for providing services, supports or other assistance which caused or may have caused injury or death to an individual with a developmental disability(ies) or which placed an individual with developmental disability(ies) at risk of injury or death, and includes acts or omissions such as failure to: establish or carry out an appropriate individual program plan or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or health care to an individual with developmental disabilities; or provide a safe environment which also includes failure to maintain adequate numbers of trained staff or failure to take appropriate steps to prevent self-abuse, harassment, or assault by a peer.

*Probable cause.* The term “probable cause” means a reasonable ground for belief that an individual with developmental disability(ies) has been, or may be, subject to abuse or neglect, or that the health or safety of the individual is in serious and immediate jeopardy. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect.

*State Protection and Advocacy System.* The term “State Protection and Advocacy System” is synonymous with the term “P&A” used elsewhere in this regulation, and the terms “System” and “Protection and Advocacy System” used in this part and in subpart C of this part.

**§ 1326.20 Agency designated as the State Protection and Advocacy System.**

(a) The designating official must designate the State official or public or private agency to be accountable for proper use of funds and conduct of the Protection and Advocacy System.

(b) An agency of the State or private agency providing direct services, including guardianship services, may not be designated as the agency to administer the Protection and Advocacy System.

(c) In the event that an entity outside of the State government is designated to carry out the program, the designating official or entity must assign a responsible State official to receive, on behalf of the State, notices of disallowances and compliance actions as the State is accountable for the proper and appropriate expenditure of Federal funds.

(d)(1) Prior to any redesignation of the agency which administers and operates the State Protection and Advocacy System, the designating official must give written notice of the intention to make the redesignation to the agency currently administering and operating the State Protection and Advocacy System by registered or certified mail. The notice must indicate that the proposed redesignation is being made for good cause. The designating official also must publish a public notice of the proposed action. The agency and the public shall have a reasonable period of time, but not less than 45 days, to respond to the notice.

(2) The public notice must include:

(i) The Federal requirements for the State Protection and Advocacy System for individuals with developmental disabilities (section 143 of the Act); and where applicable, the requirements of other Federal advocacy programs administered by the State Protection and Advocacy System;

(ii) The goals and function of the State's Protection and Advocacy System including the current Statement of Goals and Priorities;

(iii) The name and address of the agency currently designated to administer and operate the State Protection and Advocacy System, and an indica-

tion of whether the agency also operates other Federal advocacy programs;

(iv) A description of the current agency operating and administering the Protection and Advocacy System including, as applicable, descriptions of other Federal advocacy programs it operates;

(v) A clear and detailed explanation of the good cause for the proposed redesignation;

(vi) A statement suggesting that interested persons may wish to write the current agency operating and administering the State Protection and Advocacy System at the address provided in paragraph (d)(2)(iii) of this section to obtain a copy of its response to the notice required by paragraph (d)(1) of this section. Copies must be in a format accessible to individuals with disabilities (including plain language), and language assistance services will be provided to individuals with limited English proficiency, such as translated materials or interpretation, upon request;

(vii) The name of the new agency proposed to administer and operate the State Protection and Advocacy System under the Developmental Disabilities Program. This agency will be eligible to administer other Federal advocacy programs;

(viii) A description of the system which the new agency would administer and operate, including a description of all other Federal advocacy programs the agency would operate;

(ix) The timetable for assumption of operations by the new agency and the estimated costs of any transfer and start-up operations; and

(x) A statement of assurance that the proposed new designated State Protection and Advocacy System will continue to serve existing clients and cases of the current P&A system or refer them to other sources of legal advocacy as appropriate, without disruption.

(3) The public notice as required by paragraph (d)(1) of this section, must be in a format accessible to individuals with disabilities, and language assistance services will be provided to individuals with limited English proficiency, such as translated materials



or interpretation, upon request to individuals with developmental disabilities or their representatives. The designating official must provide for publication of the notice of the proposed redesignation using the State register, statewide newspapers, public service announcements on radio and television, or any other legally equivalent process. Copies of the notice must be made generally available to individuals with developmental disabilities and mental illness who live in residential facilities through posting or some other means.

(4) After the expiration of the public comment period required in paragraph (d)(1) of this section, the designating official must conduct a public hearing on the redesignation proposal. After consideration of all public and agency comments, the designating official must give notice of the final decision to the currently designated agency and the public through the same means used under paragraph (d)(3) of this section. This notice must include a clear and detailed explanation of the good cause finding. If the notice to the currently designated agency states that the redesignation will take place, it also must inform the agency of its right to appeal this decision to the Secretary, or his or her designee, the authority to hear appeals by the Secretary, or his or her designee, and provide a summary of the public comments received in regard to the notice of intent to redesignate and the results of the public hearing and its responses to those comments. The redesignation shall not be effective until 10 working days after notifying the current agency that administers and operates the State Protection and Advocacy System or, if the agency appeals, until the Secretary, or his or her designee, has considered the appeal.

(e)(1) Following notification as indicated in paragraph (d)(4) of this section, the agency that administers and operates the State Protection and Advocacy System which is the subject of such action, may appeal the redesignation to the Secretary, or his or her designee. To do so, the agency that administers and operates the State Protection and Advocacy System must submit an appeal in writing to the Sec-

retary, or his or her designee, within 20 days of receiving official notification under paragraph (d)(4) of this section, with a separate copy sent by registered or certified mail to the designating official who made the decision concerning redesignation.

(2) In the event that the agency subject to redesignation does exercise its right to appeal under paragraph (e)(1) of this section, the designating official must give public notice of the Secretary's, or his or her designated person's, final decision regarding the appeal through the same means utilized under paragraph (d)(3) of this section within 10 working days of receipt of the Secretary's, or his or her designee's, final decision under paragraph (e)(6) of this section.

(3) The designating official within 10 working days from the receipt of a copy of the appeal must provide written comments to the Secretary, or his or her designee, (with a copy sent by registered or certified mail to the Protection and Advocacy agency appealing under paragraph (e)(1) of this section), or withdraw the redesignation. The comments must include a summary of the public comments received in regard to the notice of intent to redesignate and the results of the public hearing and its responses to those comments.

(4) In the event that the designating official withdraws the redesignation while under appeal pursuant to paragraph (e)(1) of this section, the designating official must notify the Secretary, or his or her designee, and the current agency, and must give public notice of his or her decision through the same means utilized under paragraph (d)(3) of this section.

(5) As part of their submission under paragraph (e)(1) or (3) of this section, either party may request, and the Secretary, or his or her designee, may grant an opportunity for a meeting with the Secretary, or his or her designee, at which representatives of both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the designating official under paragraph (e)(2) of this section. The Secretary, or

his or her designee, will promptly notify the parties of the date and place of the meeting.

(6) Within 30 days of the informal meeting under paragraph (e)(5) of this section, or, if there is no informal meeting under paragraph (e)(5) of this section, within 30 days of the submission under paragraph (e)(3) of this section, the Secretary, or his or her designee, will issue to the parties a final written decision on whether the redesignation was for good cause as defined in paragraph (d)(1) of this section. The Secretary, or his or her designee, will receive comments on the record from agencies administering the Federal advocacy programs that will be directly affected by the proposed redesignation. The P&A and the designating official will have an opportunity to comment on the submissions of the Federal advocacy programs. The Secretary, or his or her designee, shall consider the comments of the Federal programs, the P&A and the designating official in making his final decision on the appeal.

(f)(1) Within 30 days after the redesignation becomes effective under paragraph (d)(4) of this section, the designating official must submit an assurance to the Secretary, or his or her designee, that the newly designated agency that will administer and operate the State Protection and Advocacy System meets the requirements of the statute and the regulations.

(2) In the event that the agency administering and operating the State Protection and Advocacy System subject to redesignation does not exercise its rights to appeal within the period provided under paragraph (e)(1) of this section, the designating official must provide to the Secretary, or his or her designee, documentation that the agency was redesignated for good cause. Such documentation must clearly demonstrate that the Protection and Advocacy agency subject to redesignation was not redesignated for any actions or activities which were carried out under section 143 of the Act, this regulation or any other Federal advocacy program's legislation or regulations.

**§ 1326.21 Requirements and authority of the State Protection and Advocacy System.**

(a) In order for a State to receive Federal funding for Protection and Advocacy activities under this subpart, as well as for the State Council on Developmental Disabilities activities (subpart D of this part), the Protection and Advocacy System must meet the requirements of section 143 and 144 of the Act (42 U.S.C. 15043 and 15044) and that system must be operational.

(b) Allotments must be used to supplement and not to supplant the level of non-Federal funds available in the State for activities under the Act, which shall include activities on behalf of individuals with developmental disabilities to remedy abuse, neglect, and violations of rights as well as information and referral activities.

(c) A P&A shall not implement a policy or practice restricting the remedies that may be sought on behalf of individuals with developmental disabilities or compromising the authority of the P&A to pursue such remedies through litigation, legal action or other forms of advocacy. Under this requirement, States may not establish a policy or practice, which requires the P&A to: Obtain the State's review or approval of the P&A's plans to undertake a particular advocacy initiative, including specific litigation (or to pursue litigation rather than some other remedy or approach); refrain from representing individuals with particular types of concerns or legal claims, or refrain from otherwise pursuing a particular course of action designed to remedy a violation of rights, such as educating policymakers about the need for modification or adoption of laws or policies affecting the rights of individuals with developmental disabilities; restrict the manner of the P&A's investigation in a way that is inconsistent with the System's required authority under the DD Act; or similarly interfere with the P&A's exercise of such authority. The requirements of this paragraph (c) shall not prevent P&As, including those functioning as agencies within State governments, from developing case or client acceptance criteria as part of the annual priorities identified by the P&A as described in § 1326.23(c).

Clients must be informed at the time they apply for services of such criteria.

(d) A Protection and Advocacy System shall be free from hiring freezes, reductions in force, prohibitions on staff travel, or other policies, imposed by the State, to the extent that such policies would impact system program staff or functions funded with Federal funds, and would prevent the system from carrying out its mandates under the Act.

(e) A Protection and Advocacy System shall have sufficient staff, qualified by training and experience, to carry out the responsibilities of the system in accordance with the priorities of the system and requirements of the Act. These responsibilities include the investigation of allegations of abuse, neglect and representations of individuals with developmental disabilities regarding rights violations.

(f) A Protection and Advocacy System may exercise its authority under State law where the State authority exceeds the authority required by the Developmental Disabilities Assistance and Bill of Rights Act of 2000. However, State law must not diminish the required authority of the Protection and Advocacy System as set by the Act.

(g) Each Protection and Advocacy System that is a public system without a multimember governing or advisory board must establish an advisory council in order to provide a voice for individuals with developmental disabilities. The Advisory Council shall advise the Protection and Advocacy System on program policies and priorities. The Advisory Council and Governing Board shall be comprised of a majority of individuals with disabilities who are eligible for services, have received or are receiving services, parents, family members, guardians, advocates, or authorized representatives of such individuals.

(h) Prior to any Federal review of the State program, a 30-day notice and an opportunity for public comment must be published in the FEDERAL REGISTER. Reasonable effort shall be made by AIDD to seek comments through notification to major disability advocacy groups, the State Bar, disability law resources, the State Councils on Developmental Disabilities, and the Univer-

sity Centers for Excellence in Developmental Disabilities Education, Research, and Service, for example, through newsletters and publication of those organizations. The findings of public comments may be consolidated if sufficiently similar issues are raised and they shall be included in the report of the onsite visit.

(i) Before the Protection and Advocacy System releases information to individuals not otherwise authorized to receive it, the Protection and Advocacy System must obtain written consent from the client requesting assistance or his or her guardian.

(j) *Contracts for program operations.* (1) An eligible P&A system may contract for the operation of part of its program with another public or private non-profit organization with demonstrated experience working with individuals with developmental disabilities, provided that:

(i) The eligible P&A system institutes oversight and monitoring procedures which ensure that any and all subcontractors will be able to meet all applicable terms, conditions and obligations of the Federal grant, including but not limited to the ability to pursue all forms of litigation under the DD Act;

(ii) The P&A exercises appropriate oversight to ensure that the contracting organization meets all applicable responsibilities and standards which apply to P&As, including but not limited to, the confidentiality provisions in the DD Act and regulations, ethical responsibilities, program accountability and quality controls;

(2) Any eligible P&A system should work cooperatively with existing advocacy agencies and groups and, where appropriate, consider entering into contracts for protection and advocacy services with organizations already working on behalf of individuals with developmental disabilities.

[80 FR 44807, July 27, 2015, as amended at 81 FR 35647, June 3, 2016]

**§ 1326.22 Periodic reports: State Protection and Advocacy System.**

(a) By January 1 of each year, each State Protection and Advocacy System shall submit to AIDD, an Annual Program Performance Report. In order to

be accepted, the Report must meet the requirements of section 144(e) of the Act (42 U.S.C. 15044), the applicable regulation and include information on the System's program necessary for the Secretary, or his or her designee, to comply with section 105(1), (2), and (3) of the Act (42 U.S.C. 15005). The Report shall describe the activities, accomplishments, and expenditures of the system during the preceding fiscal year. Reports shall include a description of the system's goals and the extent to which the goals were achieved, barriers to their achievement; the process used to obtain public input, the nature of such input, and how such input was used; the extent to which unserved or underserved individuals or groups, particularly from ethnic or racial groups or geographic regions (*e.g.*, rural or urban areas) were the target of assistance or service; and other such information on the Protection and Advocacy System's activities requested by AIDD.

(b) Financial status reports (standard form 425) must be submitted by the agency administering and operating the State Protection and Advocacy System semiannually.

(c) By January 1 of each year, the State Protection and Advocacy System shall submit to AIDD, an Annual Statement of Goals and Priorities, (SGP), for the coming fiscal year as required under section 143(a)(2)(C) of the Act (42 U.S.C. 15043). In order to be accepted by AIDD, an SGP must meet the requirements of section 143 of the Act.

(1) The SGP is a description and explanation of the system's goals and priorities for its activities, selection criteria for its individual advocacy and training activities, and the outcomes it strives to accomplish. The SGP is developed through data driven strategic planning. If changes are made to the goals or the indicators of progress established for a year, the SGP must be amended to reflect those changes. The SGP must include a description of how the Protection and Advocacy System operates, and where applicable, how it coordinates the State Protection and Advocacy program for individuals with developmental disabilities with other Protection and Advocacy programs administered by the State Protection and

Advocacy System. This description must include the System's processes for intake, internal and external referrals, and streamlining of advocacy services. If the System will be requesting or requiring fees or donations from clients as part of the intake process, the SGP must state that the system will be doing so. The description also must address collaboration, the reduction of duplication and overlap of services, the sharing of information on service needs, and the development of statements of goals and priorities for the various advocacy programs.

(2) Priorities as established through the SGP serve as the basis for the Protection and Advocacy System to determine which cases are selected in a given fiscal year. Protection and Advocacy Systems have the authority to turn down a request for assistance when it is outside the scope of the SGP, but they must inform individuals when this is the basis for turning them down.

(d) Each fiscal year, the Protection and Advocacy System shall:

(1) Obtain formal public input on its Statement of Goals and Priorities;

(2) At a minimum, provide for a broad distribution of the proposed Statement of Goals and Priorities for the next fiscal year in a manner accessible to individuals with developmental disabilities and their representatives, allowing at least 45 days from the date of distribution for comment;

(3) Provide to the State Councils on Developmental Disabilities and the University Centers for Excellence in Developmental Disabilities Education, Research and Service a copy of the proposed Statement of Goals and Priorities for comment concurrently with the public notice;

(4) Incorporate or address any comments received through public input and any input received from the State Councils on Developmental Disabilities and the University Centers for Excellence in Developmental Disabilities Education, Research and Service in the final Statement submitted; and

(5) Address how the Protection and Advocacy System, State Councils on

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Developmental Disabilities, and University Centers for Excellence in Developmental Disabilities Education Research and Service will collaborate with each other and with other public and private entities.

### § 1326.23 Non-allowable costs for the State Protection and Advocacy System.

(a) Federal financial participation is not allowable for:

(1) Costs incurred for activities on behalf of individuals with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace. Such activities include but are not limited to: Preparation of wills, divorce decrees, and real estate proceedings. Allowable costs in such cases would include the Protection and Advocacy System providing disability-related technical assistance information and referral to appropriate programs and services; and

(2) Costs not allowed under other applicable statutes, Departmental regulations and issuances of the Office of Management and Budget.

(b) Attorneys' fees are considered program income pursuant to 45 CFR part 75 and must be added to the funds committed to the program and used to further the objectives of the program. This requirement shall apply to all attorneys' fees, including those earned by contractors and those received after the project period in which they were earned.

### § 1326.24 Allowable litigation costs.

Allotments may be used to pay the otherwise allowable costs incurred by a Protection and Advocacy System in bringing lawsuits in its own right to redress incidents of abuse or neglect, discrimination and other rights violations impacting the ability of individuals with developmental disabilities to obtain access to records and when it appears on behalf of named plaintiffs or a class of plaintiff for such purposes.

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### Subpart C—Access to Records, Service Providers, and Individuals With Developmental Disabilities

#### § 1326.25 Access to records.

(a) Pursuant to sections 143(a)(2), (A)(i), (B), (I), and (J) of the Act, and subject to the provisions of this section, a Protection and Advocacy (P&A) System, and all of its authorized agents, shall have access to the records of individuals with developmental disabilities under the following circumstances:

(1) If authorized by an individual who is a client of the system, or who has requested assistance from the system, or by such individual's legal guardian, conservator or other legal representative.

(2) In the case of an individual to whom all of the following conditions apply:

(i) The individual, due to his or her mental or physical condition, is unable to authorize the system to have access;

(ii) The individual does not have a legal guardian, conservator or other legal representative, or the individual's guardian is the State (or one of its political subdivisions); and

(iii) The individual has been the subject of a complaint to the P&A system, or the P&A system has probable cause (which can be the result of monitoring or other activities including media reports and newspaper articles) to believe that such individual has been subject to abuse and neglect.

(3) In the case of an individual, who has a legal guardian, conservator, or other legal representative, about whom a complaint has been received by the system or, as a result of monitoring or other activities, the system has determined that there is probable cause to believe that the individual with developmental disability has been subject to abuse or neglect, whenever the following conditions exist:

(i) The P&A system has made a good faith effort to contact the legal guardian, conservator, or other legal representative upon prompt receipt (within the timelines set forth in paragraph (c) of this section) of the contact information (which is required to include

but not limited to name, address, telephone numbers, and email address) of the legal guardian, conservator, or other legal representative;

(ii) The system has offered assistance to the legal guardian, conservator, or other legal representative to resolve the situation; and

(iii) The legal guardian, conservator, or other legal representative has failed or refused to provide consent on behalf of the individual.

(4) If the P&A determines there is probable cause to believe that the health or safety of an individual is in serious and immediate jeopardy, no consent from another party is needed.

(5) In the case of death, no consent from another party is needed. Probable cause to believe that the death of an individual with a developmental disability resulted from abuse or neglect or any other specific cause is not required for the P&A system to obtain access to the records. Any individual who dies in a situation in which services, supports, or other assistance are, have been, or may customarily be provided to individuals with developmental disabilities shall, for the purposes of the P&A system obtaining access to the individual's records, be deemed an "individual with a developmental disability."

(b) Individual records to which P&A systems must have access under section 143(a)(2), (A)(i), (B), (I), and (J) of the Act (whether written or in another medium, draft, preliminary or final, including handwritten notes, electronic files, photographs or video or audiotape records) shall include, but shall not be limited to:

(1) Individual records prepared or received in the course of providing intake, assessment, evaluation, education, training and other services; supports or assistance, including medical records, financial records, and monitoring and other reports prepared or received by a service provider. This includes records stored or maintained at sites other than that of the service provider, as well as records that were not prepared by the service provider, but received by the service provider from other service providers.

(2) Reports prepared by a Federal, State or local governmental agency, or

a private organization charged with investigating incidents of abuse or neglect, injury or death. The organizations whose reports are subject to this requirement include, but are not limited to, agencies in the foster care systems, developmental disabilities systems, prison and jail systems, public and private educational systems, emergency shelters, criminal and civil law enforcement agencies such as police departments, agencies overseeing juvenile justice facilities, juvenile detention facilities, all pre- and post-adjudication juvenile facilities, State and Federal licensing and certification agencies, and private accreditation organizations such as the Joint Commission on the Accreditation of Health Care Organizations or by medical care evaluation or peer review committees, regardless of whether they are protected by federal or state law. The reports subject to this requirement describe any or all of the following:

(i) The incidents of abuse, neglect, injury, and/or death;

(ii) The steps taken to investigate the incidents;

(iii) Reports and records, including personnel records, prepared or maintained by the service provider in connection with such reports of incidents; or,

(iv) Supporting information that was relied upon in creating a report including all information and records that describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings;

(3) Discharge planning records; and

(4) Information in professional, performance, building or other safety standards, and demographic and statistical information relating to a service provider.

(c) The time period in which the P&A system must be given access to records of individuals with developmental disabilities under sections 143(a)(2)(A)(i), (B), (I), and (J) of the Act, and subject to the provisions of this section, varies depending on the following circumstances:

(1) If the P&A system determines that there is probable cause to believe that the health or safety of the individual with a developmental disability

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is in serious and immediate jeopardy, or in any case of the death of an individual with a developmental disability, access to the records of the individual with a developmental disability, as described in paragraph (b) of this section shall be provided (including the right to inspect and copy records as specified in paragraph (d) of this section) to the P&A system within 24 hours of receipt of the P&A system's written request for the records without the consent of another party.

(2) In all other cases, access to records of individuals with developmental disabilities shall be provided to the P&A system within three business days after the receipt of such a written request from the P&A system.

(d) A P&A shall be permitted to inspect and copy information and records, subject to a reasonable charge to offset duplicating costs. If the service provider or its agents copy the records for the P&A system, it may not charge the P&A system an amount that would exceed the amount customarily charged other non-profit or State government agencies for reproducing documents. At its option, the P&A may make written notes when inspecting information and records, and may use its own photocopying equipment to obtain copies. If a party other than the P&A system performs the photocopying or other reproduction of records, it shall provide the photocopies or reproductions to the P&A system within the time frames specified in paragraph (c) of this section. In addition, where records are kept or maintained electronically they shall be provided to the P&A electronically.

(e) The Health Insurance Portability and Accountability Act Privacy Rule permits the disclosure of protected health information (PHI) without the authorization of the individual to a P&A system to the extent that such disclosure is required by law and the disclosure complies with the requirements of that law.

(f) Educational agencies, including public, private, and charter schools, as well as, public and private residential and non-residential schools, must provide a P&A with the name of and contact information for the parent or guardian of a student for whom the

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P&A has probable cause to obtain records under the DD Act.

### § 1326.26 Denial or delay of access to records.

If a P&A system's access is denied or delayed beyond the deadlines specified in § 1326.25, the P&A system shall be provided, within one business day after the expiration of such deadline, with a written statement of reasons for the denial or delay. In the case of a denial for alleged lack of authorization, the name, address and telephone number of individuals with developmental disabilities and legal guardians, conservators, or other legal representative will be included in the aforementioned response. All of the above information shall be provided whether or not the P&A has probable cause to suspect abuse or neglect, or has received a complaint.

[80 FR 44807, July 27, 2015, as amended at 81 FR 35647, June 3, 2016]

### § 1326.27 Access to service providers and individuals with developmental disabilities.

(a) Access to service providers and individuals with developmental disabilities shall be extended to all authorized agents of a P&A system.

(b) The P&A system shall have reasonable unaccompanied access to individuals with developmental disabilities at all times necessary to conduct a full investigation of an incident of abuse or neglect.

(1) Such access shall be afforded upon request, by the P&A system when:

(i) An incident is reported or a complaint is made to the P&A system;

(ii) The P&A system determines that there is probable cause to believe that an incident has or may have occurred; or

(iii) The P&A system determines that there is or may be imminent danger of serious abuse or neglect of an individual with a developmental disability.

(2) A P&A system shall have reasonable unaccompanied access to public and private service providers, programs in the State, and to all areas of the service provider's premises that are used by individuals with developmental disabilities or are accessible to them. Such access shall be provided without

advance notice and made available immediately upon request. This authority shall include the opportunity to interview any individual with developmental disability, employee, or other persons, including the person thought to be the victim of such abuse, who might be reasonably believed by the system to have knowledge of the incident under investigation. The P&A may not be required to provide the name or other identifying information regarding the individual with developmental disability or staff with whom it plans to meet; neither may the P&A be required to justify or explain its interaction with such persons.

(c) In addition to the access required under paragraph (b) of this section, a P&A system shall have reasonable unaccompanied access to service providers for routine circumstances. This includes areas which are used by individuals with developmental disabilities and are accessible to individuals with developmental disabilities at reasonable times, which at a minimum shall include normal working hours and visiting hours. A P&A also shall be permitted to attend treatment planning meetings concerning individuals with developmental disabilities with the consent of the individual or his or her guardian, conservator or other legal representative, except that no consent is required if the individual, due to his or mental or physical condition, is unable to authorize the system to have access to a treatment planning meeting; and the individual does not have a legal guardian, conservator or other legal representative, or the individual's guardian is the State (or one of its political subdivisions).

(1) Access to service providers shall be afforded immediately upon an oral or written request by the P&A system. Except where complying with the P&A's request would interfere with treatment or therapy to be provided, service providers shall provide access to individuals for the purpose covered by this paragraph. If the P&A's access to an individual must be delayed beyond 24 hours to allow for the provision of treatment or therapy, the P&A shall receive access as soon as possible thereafter. In cases where a service provider denies a P&A access to an in-

dividual with a developmental disability on the grounds that such access would interfere with the individual's treatment or therapy, the service provider shall, no later than 24 hours of the P&A's request, provide the P&A with a written statement from a physician stating that P&A access to the individual will interfere with the individual's treatment and therapy, and the time and circumstances under which the P&A can interview the individual. If the physician states that the individual cannot be interviewed in the next 24 hours, the P&A and the service provider shall engage in a good faith interactive process to determine when and under what circumstances the P&A can interview the individual. If the P&A and the service provider are unable to agree upon the time and circumstance, they shall select a mutually agreeable independent physician who will determine when and under what circumstances the individual may be interviewed. The expense of the independent physician's services shall be paid for by the service provider. Individuals with developmental disabilities subject to the requirements in this paragraph include adults and minors who have legal guardians or conservators.

(2) P&A activities shall be conducted so as to minimize interference with service provider programs, respect individuals with developmental disabilities' privacy interests, and honor a recipient's request to terminate an interview. This access is for the purpose of:

(i) Providing information, training, and referral for programs addressing the needs of individuals with developmental disabilities, information and training about individual rights, and the protection and advocacy services available from the P&A system, including the name, address, and telephone number of the P&A system. P&As shall be permitted to post, in an area which individuals with developmental disabilities receive services, a poster which states the protection and advocacy services available from the P&A system, including the name, address and telephone number of the P&A system.



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(ii) Monitoring compliance with respect to the rights and safety of individuals with developmental disabilities; and

(iii) Access including, but is not limited to inspecting, viewing, photographing, and video recording all areas of a service provider's premises or under the service provider's supervision or control which are used by individuals with developmental disabilities or are accessible to them. This authority does not include photographing or video recording individuals with developmental disabilities unless they consent or State laws allow such activities.

(d) Unaccompanied access to individuals with developmental disabilities including, but not limited to, the opportunity to meet and communicate privately with individuals regularly, both formally and informally, by telephone, mail and in person. This authority shall also include the opportunity to meet, communicate with, or interview any individual with a developmental disability, including a person thought to be the subject of abuse, who might be reasonably believed by the P&A system to have knowledge of an incident under investigation or non-compliance with respect to the rights and safety of individuals with developmental disabilities. Except as otherwise required by law the P&A shall not be required to provide the name or other identifying information regarding the individual with a disability with whom it plans to meet; neither may the P&A be required to justify or explain its interaction with such persons.

**§ 1326.28 Confidentiality of State Protection and Advocacy System records.**

(a) A P&A shall, at minimum, comply with the confidentiality provisions of all applicable Federal and State laws.

(b) Records maintained by the P&A system are the property of the P&A system which must protect them from loss, damage, tampering, unauthorized use, or tampering. The P&A system must:

(1) Except as provided elsewhere in this section, keep confidential all records and information, including in-

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formation contained in any automated electronic database pertaining to:

(i) Clients;

(ii) Individuals who have been provided general information or technical assistance on a particular matter;

(iii) The identity of individuals who report incidents of abuse or neglect, or who furnish information that forms the basis for a determination that probable cause exists; and

(iv) Names of individuals who have received services, supports or other assistance, and who provided information to the P&A for the record.

(v) Peer review records.

(2) Have written policies governing the access, storage, duplication and release of information from client records, including the release of information peer review records.

(3) Obtain written consent from the client, or from his or her legal representative; individuals who have been provided general information or technical assistance on a particular matter; and individuals who furnish reports or information that form the basis for a determination of probable cause, before releasing information concerning such individuals to those not otherwise authorized to receive it.

(c) Nothing in this subpart shall prevent the P&A system from issuing a public report of the results of an investigation which maintains the confidentiality of the individuals listed in paragraph (a)(1) of this section, or reporting the results of an investigation in a manner which maintains the confidentiality of such individuals, to responsible investigative or enforcement agencies should an investigation reveal information concerning the service provider, its staff, or employees warranting possible sanctions or corrective action. This information may be reported to agencies responsible for service provider licensing or accreditation, employee discipline, employee licensing or certification, or criminal investigation or prosecution.

(d) Notwithstanding the confidentiality requirements of this section, the P&A may make a report to investigative or enforcement agencies, as described in paragraph (b) of this section, which reveals the identity of an

individual with developmental disability, and information relating to his or her status or treatment:

(1) When the system has received a complaint that the individual has been or may be subject to abuse and neglect, or has probable cause (which can be the result of monitoring or other activities including media reports and newspaper articles) to believe that such individual has been or may be subject to abuse or neglect;

(2) When the system determines that there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy; or

(3) In any case of the death of an individual whom the system believes may have had a developmental disability.

#### **Subpart D—Federal Assistance to State Councils on Developmental Disabilities**

##### **§ 1326.30 State plan requirements.**

(a) In order to receive Federal funding under this subpart, each State Developmental Disabilities Council must prepare and submit a State plan which meets the requirements of sections 124 and 125 of the Act (42 U.S.C. 15024 and 15025), and the applicable regulation. Development of the State plan and its periodic updating are the responsibility of the State Council on Developmental Disabilities. As provided in section 124(d) of the Act, the Council shall provide opportunities for public input and review (in accessible formats and plain language requirements), and will consult with the Designated State Agency to determine that the plan is consistent with applicable State laws, and obtain appropriate State plan assurances.

(b) Failure to comply with the State plan requirements may result in the loss of Federal funds as described in section 127 of the Act (42 U.S.C. 15027). The Secretary, or his or her designee, must provide reasonable notice and an opportunity for a hearing to the Council and the Designated State Agency before withholding any payments for planning, administration, and services.

(c) The State plan must be submitted through the designated system by AIDD which is used to collect quantifi-

able and qualifiable information from the State Councils on Developmental Disabilities. The plan must:

(1) Identify the agency or office in the State designated to support the Council in accordance with section 124(c)(2) and 125(d) of the Act. The Designated State Agency shall provide required assurances and support services requested from and negotiated with the Council.

(2) For a year covered by the State plan, include for each area of emphasis under which a goal or goals have been identified, the measures of progress the Council has established or is required to apply in its progress in furthering the purpose of the Developmental Disabilities Assistance and Bill of Rights Act through advocacy, capacity building, and systemic change activities.

(3) Provide for the establishment and maintenance of a Council in accordance with section 125 of the Act and describe the membership of such Council. The non-State agency members of the Council shall be subject to term limits to ensure rotating membership.

(d) The State plan must be updated during the five-year period when substantive changes are contemplated in plan content, including changes under paragraph (c)(2) of this section.

(e) The State plan may provide for funding projects to demonstrate new approaches to direct services that enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities. Direct service demonstrations must be short-term, with a strategy to locate on-going funding from other sources after five years. Any State desiring to receive assistance beyond five years, under this subtitle, shall include in the State plan the information listed in paragraphs (e)(1) through (3) of this section, and AIDD reserves the right as the overseeing agency to deny the continuation of the demonstration project beyond five years.

(1) The estimated period for the project's continued duration;

(2) Justifications of why the project cannot be funded by the State or other sources and should receive continued funding; and

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(3) Provide data outcomes showing evidence of success.

(f) The State plan may provide for funding of other demonstration projects or activities, including but not limited to outreach, training, technical assistance, supporting and educating communities, interagency collaboration and coordination, coordination with related councils, committees and programs, barrier elimination, systems design and redesign, coalition development and citizen participation, and informing policymakers. Demonstrations must be short-term, with a strategy to locate on-going funding from other sources after five years. Any State desiring to receive assistance beyond five years, under this subtitle, shall include in the State plan the information listed in paragraphs (f)(1) through (3) of this section, and AIDD reserves the right as the overseeing agency to deny the continuation of the demonstration project beyond five years.

(1) The estimated period for the project's continued duration;

(2) Justifications on why the project cannot be funded by the State or other resources and should receive continued funding; and

(3) Provide data showing evidence of success.

(g) The State plan must contain assurances that are consistent with section 124 of the Act (42 U.S.C. 15024).

## § 1326.31 State plan submittal and approval.

(a) The Council shall issue a public notice about the availability of the proposed State plan or State plan amendment(s) for comment. The notice shall be published in formats accessible to individuals with developmental disabilities and the general public (*e.g.* public forums, Web sites, newspapers, and other current technologies) and shall provide a 45-day period for public review and comment. The Council shall take into account comments submitted within that period, and respond in the State plan to significant comments and suggestions. A summary of the Council's responses to State plan comments shall be submitted with the State plan and made available for public review. This document shall be made available in accessible formats upon request.

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(b) The State plan or amendment must be submitted to AIDD 45 days prior to the fiscal year for which it is applicable.

(c) Failure to submit an approvable State plan or amendment prior to the Federal fiscal year for which it is applicable may result in the loss of Federal financial participation. Plans received during a quarter of the Federal fiscal year are approved back to the first day of the quarter so costs incurred from that point forward are approvable. Costs resulting from obligations incurred during the period of the fiscal year for which an approved plan is not in effect are not eligible for Federal financial participation.

(d) The Secretary, or his or her designee, must approve any State plan or plan amendment provided it meets the requirements of the Act and this regulation.

## § 1326.32 Periodic reports: Federal assistance to State Councils on Developmental Disabilities.

(a) The Governor or appropriate State financial officer must submit financial status reports (AIDD-02B) on the programs funded under this subpart semiannually.

(b) By January 1 of each year, the State Council on Developmental Disabilities shall submit to AIDD, an Annual Program Performance Report through the system established by AIDD. In order to be accepted by AIDD, reports must meet the requirements of section 125(c)(7) of the Act (42 U.S.C. 15025) and the applicable regulations, include the information on its program necessary for the Secretary, or his or her designee, to comply with section 105(1), (2), and (3) of the Act (42 U.S.C. 15005), and any other information requested by AIDD. Each Report shall contain information about the progress made by the Council in achieving its goals including:

(1) A description of the extent to which the goals were achieved;

(2) A description of the strategies that contributed to achieving the goals;

(3) To the extent to which the goals were not achieved, a description of factors that impeded the achievement;

(4) Separate information on the self-advocacy goal described in section 124(c)(4)(A)(ii) of the Act (42 U.S.C. 15024);

(5) As appropriate, an update on the results of the comprehensive review and analysis of the extent to which services, supports, and other assistance are available to individuals with developmental disabilities and their families, including the extent of unmet needs for services, supports, and other assistance for those individuals and their families, in the State as required in section 124(c)(3) of the Act (42 U.S.C. 15024);

(6) Information on individual satisfaction with Council supported or conducted activities;

(7) A description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) receive;

(8) To the extent available, a description of the adequacy of health care and other services, supports, and assistance received by individuals with developmental disabilities served through home and community-based waivers (authorized under section 1915(c) of the Social Security Act);

(9) An accounting of the funds paid to the State awarded under the DD Council program;

(10) A description of resources made available to carry out activities to assist individuals with developmental disabilities directly attributable to Council actions;

(11) A description of resources made available for such activities that are undertaken by the Council in collaboration with other entities; and

(12) A description of the method by which the Council will widely disseminate the annual report to affected constituencies and the general public and will assure that the report is available in accessible formats.

(c) Each Council must include in its Annual Program Performance Report information on its achievement of the measures of progress.

#### **§ 1326.33 Protection of employees interests.**

(a) Based on section 124(c)(5)(J) of the Act (42 U.S.C. 15024(c)(5)(J)), the State plan must assure fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide community living activities. The State must inform employees of the State's decision to provide for community living activities. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives.

(b) Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. To the maximum extent practicable, these arrangements must include provisions for:

(1) The preservation of rights and benefits;

(2) Guaranteeing employment to employees affected by action under the plan to provide alternative community living arrangements; and

(3) Employee training and retraining programs.

#### **§ 1326.34 Designated State Agency.**

(a) The Designated State Agency shall provide the required assurances and other support services as requested and negotiated by the Council. These include:

(1) Provision of financial reporting and other services as provided under section 125(d)(3)(D) of the Act; and

(2) Information and direction, as appropriate, on procedures on the hiring, supervision, and assignment of staff in accordance with State law.

(b) If the State Council on Developmental Disabilities requests a review by the Governor (or State legislature, if applicable) of the Designated State Agency, the Council must provide documentation of the reason for change, and recommend a new preferred Designated State Agency by the Governor (or State legislature, if applicable).

(c) After the review is completed by the Governor (or State legislature, if

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applicable), and if no change is made, a majority of the non-State agency members of the Council may appeal to the Secretary, or his or her designee, for a review of the Designated State Agency if the Council's independence as an advocate is not assured because of the actions or inactions of the Designated State agency.

(d) The following steps apply to the appeal of the Governor's (or State legislature, if applicable) designation of the Designated State Agency.

(1) Prior to an appeal to the Secretary, or his or her designee, the State Council on Developmental Disabilities, must give a 30 day written notice, by certified mail, to the Governor (or State legislature, if applicable) of the majority of non-State members' intention to appeal the designation of the Designated State Agency.

(2) The appeal must clearly identify the grounds for the claim that the Council's independence as an advocate is not assured because of the action or inactions of the Designated State Agency.

(3) Upon receipt of the appeal from the State Council on Developmental Disabilities, the Secretary, or his or her designee, will notify the State Council on Developmental Disabilities and the Governor (or State legislature, if applicable), by certified mail, that the appeal has been received and will be acted upon within 60 days. The Governor (or State legislature, if applicable) shall within 10 working days from the receipt of the Secretary's, or his or her designated person's, notification provide written comments to the Secretary, or his or her designee, (with a copy sent by registered or certified mail to the Council) on the claims in the Council's appeal. Either party may request, and the Secretary, or his or her designee, may grant, an opportunity for an informal meeting with the Secretary, or his or her designee, at which representatives from both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the Governor (or State legislature, if applicable). The Secretary, or his or her designee, will promptly notify the parties of the date and place of the meeting.

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(4) The Secretary, or his or her designee, will review the issue(s) and provide a final written decision within 60 days following receipt of the appeal from the State Council on Developmental Disabilities. If the determination is made that the Designated State Agency should be redesignated, the Governor (or State legislature, if applicable) must provide written assurance of compliance within 45 days from receipt of the decision.

(5) Anytime during this appeals process the State Council on Developmental Disabilities may withdraw such request if resolution has been reached with the Governor (or State legislature, if applicable) on the Designated State Agency. The Governor (or State legislature, if applicable) must notify the Secretary, or his or her designee, in writing of such a decision.

(e) The Designated State Agency may authorize the Council to contract with State agencies other than the Designated State Agency to perform functions of the Designated State Agency.

### **§ 1326.35 Allowable and non-allowable costs for Federal assistance to State Councils on Developmental Disabilities.**

(a) Under this subpart, Federal funding is available for costs resulting from obligations incurred under the approved State plan for the necessary expenses of administering the plan, which may include the establishment and maintenance of the State Council, and all programs, projects, and activities carried out under the State plan.

(b) Expenditures which are not allowable for Federal financial participation are:

(1) Costs incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to the rights of individuals with developmental disabilities in section 109 of the Act (42 U.S.C. 15009).

(2) Costs incurred for activities not provided for in the approved State plan; and

(3) Costs not allowed under other applicable statutes, Departmental regulations, or issuances of the Office of Management and Budget.

(c) Expenditure of funds that supplant State and local funds are not allowed. Supplanting occurs when State or local funds previously used to fund activities under the State plan are replaced by Federal funds for the same purpose. However, supplanting does not occur if State or local funds are replaced with Federal funds for a particular activity or purpose in the approved State plan if the replaced State or local funds are then used for other activities or purposes in the approved State plan.

(d) For purposes of determining aggregate minimum State share of expenditures, there are three categories of expenditures:

(1) Expenditures for projects or activities undertaken directly by the Council and Council staff to implement State plan activities, as described in section 126(a)(3) of the Act, require no non-Federal aggregate of the necessary costs of such activities.

(2) Expenditures for projects whose activities or products target individuals with developmental disabilities who live in urban or rural poverty areas, as determined by the Secretary, or his or her designee, but not carried out directly by the Council and Council staff, as described in section 126(a)(2) of the Act, shall have non-Federal funding of at least 10 percent in the aggregate of the necessary costs of such projects.

(3) All other projects not directly carried out by the Council and Council staff shall have non-Federal funding of at least 25 percent in the aggregate of the necessary costs of such projects.

(e) The Council may vary the non-Federal funding required on a project-by-project, activity-by-activity basis (both poverty and non-poverty activities), including requiring no non-Federal funding from particular projects or activities as the Council deems appropriate so long as the requirement for aggregate non-Federal funding is met.

#### **§ 1326.36 Final disapproval of the State plan or plan amendments.**

The Department will disapprove any State plan or plan amendment only after the following procedures have been complied with:

(a) The State plan has been submitted to AIDD for review. If after contacting the State on issues with the plan with no resolution, a detailed written analysis of the reasons for recommending disapproval shall be prepared and provided to the State Council and State Designated Agency.

(b) Once the Secretary, or his or her designee, has determined that the State plan, in whole or in part, is not approvable, notice of this determination shall be sent to the State with appropriate references to the records, provisions of the statute and regulations, and all relevant interpretations of applicable laws and regulations. The notification of the decision must inform the State of its right to appeal in accordance with subpart E of this part.

(c) The Secretary's, or his or her designee's, decision has been forwarded to the State Council and its Designated State Agency by certified mail with a return receipt requested.

(d) A State has filed its request for a hearing with the Secretary, or his or her designee, within 21 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the Secretary, or his or her designee. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing. Otherwise the date of receipt shall be considered the date of filing.

### **Subpart E—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance With Developmental Disabilities State Plans, Reports, and Federal Requirements**

#### **GENERAL**

#### **§ 1326.80 Definitions.**

For purposes of this subpart:

*Payment or allotment.* The term "payment" or "allotment" means an amount provided under part B or C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000. This term includes Federal funds provided under the Act irrespective of whether the State must match the Federal portion of the expenditure.

## **§ 1326.81**

This term shall include funds previously covered by the terms “Federal financial participation,” “the State’s total allotment,” “further payments,” “payments,” “allotment” and “Federal funds.”

*Presiding officer.* The term “presiding officer” means anyone designated by the Secretary to conduct any hearing held under this subpart. The term includes the Secretary, or the Secretary’s designee, if the Secretary or his or her designee presides over the hearing. For purposes of this subpart the Secretary’s “designee” refers to a person, such as the Administrator of ACL, who has been delegated broad authority to carry out all or some of the authorizing statute. The term designee does not refer to a presiding officer designated only to conduct a particular hearing or hearings.

## **§ 1326.81 Scope of rules.**

(a) The rules of procedures in this subpart govern the practice for hearings afforded by the Department to States pursuant to sections 124, 127, and 143 of the Act. (42 U.S.C. 15024, 15027 and 15043).

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues that are, or otherwise would be, considered at the hearing. Negotiation and resolution of issues are not part of the hearing, and are not governed by the rules in this subpart, except as otherwise provided in this subpart.

## **§ 1326.82 Records to the public.**

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding are subject to public inspection.

## **§ 1326.83 Use of gender and number.**

As used in this subpart, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing either gender may be applied to the other gender or to organizations.

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## **§ 1326.84 Suspension of rules.**

Upon notice to all parties, the Secretary or the Secretary’s designee may modify or waive any rule in this subpart, unless otherwise expressly provided, upon determination that no party will be unduly prejudiced and justice will be served.

## **§ 1326.85 Filing and service of papers.**

(a) All papers in the proceedings must be filed with the designated individual in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

(b) Copies of papers in the proceedings must be served on all parties by personal delivery or by mail. Service on the party’s designated representative is deemed service upon the party.

## **PRELIMINARY MATTERS—NOTICE AND PARTIES**

## **§ 1326.90 Notice of hearing or opportunity for hearing.**

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Secretary, or his or her designee, to the State Council on Developmental Disabilities and the Designated State Agency, or to the State Protection and Advocacy System or designating official. The notice must state the time and place for the hearing and the issues that will be considered. The notice must be published in the FEDERAL REGISTER.

## **§ 1326.91 Time of hearing.**

The hearing must be scheduled not less than 30 days, nor more than 60 days after the notice of the hearing is mailed to the State.

## **§ 1326.92 Place.**

The hearing must be held on a date and at a time and place determined by the Secretary, or his or her designee with due regard for convenience, and necessity of the parties or their representatives. The site of the hearing shall be accessible to individuals with disabilities.

## **§ 1326.93 Issues at hearing.**

(a) Prior to a hearing, the Secretary or his or her designee may notify the State in writing of additional issues

which will be considered at the hearing. That notice must be published in the FEDERAL REGISTER. If that notice is mailed to the State less than 20 days before the date of the hearing, the State or any other party, at its request, must be granted a postponement of the hearing to a date 20 days after the notice was mailed or such later date as may be agreed to by the Secretary or his or her designee.

(b) If any issue is resolved in whole or in part, but new or modified issues are presented, the hearing must proceed on the new or modified issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Secretary, or his or her designee, finds that the State has come into compliance with Federal requirements on any issue in whole or in part, he or she must remove the issue from the proceedings in whole or in part as may be appropriate. If all issues are removed the Secretary, or his or her designee, must terminate the hearing.

(2) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements under part B of the Act, of the State plan or the activities of the State Protection and Advocacy System, the Secretary, or his or her designee, must provide all parties other than the Department and the State (see § 1326.94(b)) with the statement of his or her intention to remove an issue from the hearing and the reasons for that decision. A copy of the proposed State plan provision or document explaining changes in the activities of the State's Protection and Advocacy System on which the State and the Secretary, or his or her designee, have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program under part B of the Act, with the State plan or with Federal requirements, or compliance of the State Protection and Advocacy System with Federal requirements, the same procedure

set forth in paragraph (c)(2) of this section must be followed with respect to any report or evidence resulting in a conclusion by the Secretary, or his or her designee, that a State has achieved compliance.

(e) The issues considered at the hearing must be limited to those issues of which the State is notified as provided in § 1326.90 and paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section, and may not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

[80 FR 44807, July 27, 2015, as amended at 81 FR 35647, June 3, 2016; 85 FR 72911, Nov. 16, 2020]

#### **§ 1326.94 Request to participate in hearing.**

(a) The Department, the State, the State Council on Developmental Disabilities, the Designated State Agency, and the State Protection and Advocacy System, as appropriate, are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties if the issues to be considered at the hearing have caused them injury and their interests are relevant to the issues in the hearing.

(2) Any individual or group wishing to participate as a party must file a petition with the designated individual within 15 days after notice of the hearing has been published in the FEDERAL REGISTER, and must serve a copy on each party of record at that time in accordance with § 1326.85(b). The petition must concisely state:

(i) Petitioner's interest in the proceeding;

(ii) Who will appear for petitioner;

(iii) The issues the petitioner wishes to address; and

(iv) Whether the petitioner intends to present witnesses.

(c)(1) Any interested person or organization wishing to participate as amicus curiae must file a petition with the designated individual before the commencement of the hearing. The petition must concisely state:

(i) The petitioner's interest in the hearing;



## § 1326.100

(ii) Who will represent the petitioner; and

(iii) The issues on which the petitioner intends to present argument.

(2) The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings and that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(3) An amicus curiae may present a brief oral statement at the hearing at the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing and must serve a copy on each party. It also may submit a brief or written statement at such time as the parties submit briefs and must serve a copy on each party.

[80 FR 44807, July 27, 2015, as amended at 81 FR 35647, June 3, 2016]

### HEARING PROCEDURES

#### § 1326.100 Who presides.

(a) The presiding officer at a hearing must be the Secretary, his or her designee, or another person specifically designated for a particular hearing or hearings.

(b) The designation of a presiding officer must be in writing. A copy of the designation must be served on all parties and amici curiae.

#### § 1326.101 Authority of presiding officer.

(a) The presiding officer has the duty to conduct a fair hearing, avoid delay, maintain order, and make a record of the proceedings. The presiding officer has all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon notice to the parties. This includes the power to continue the hearing in whole or in part;

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceedings;

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their posi-

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tions with respect to the issues in the proceeding;

(4) Administer oaths and affirmations;

(5) Rule on motions and other procedural items on matters pending before him or her, including issuance of protective orders or other relief to a party against whom discovery is sought;

(6) Regulate the course of the hearing and conduct of counsel therein;

(7) Examine witnesses;

(8) Receive, rule on, exclude, or limit evidence or discovery;

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him or her;

(10) If the presiding officer is the Secretary, or his or her designee, make a final decision;

(11) If the presiding officer is a person other than the Secretary or his or her designee, the presiding officer shall certify the entire record, including recommended findings and proposed decision, to the Secretary or his or her designee; and

(12) Take any action authorized by the rules in this subpart or 5 U.S.C. 551–559.

(b) The presiding officer does not have authority to compel the production of witnesses, papers, or other evidence by subpoena.

(c) If the presiding officer is a person other than the Secretary or his or her designee, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In case of any noncompliance, he or she shall recommend whether payments or allotments should be withheld with respect to the entire State plan or the activities of the State's Protection and Advocacy System, or whether the payments or allotments should be withheld only with respect to those parts of the program affected by such noncompliance.

#### § 1326.102 Rights of parties.

All parties may:

(a) Appear by counsel, or other authorized representative, in all hearing proceedings;

(b) Participate in any prehearing conference held by the presiding officer;

(c) Agree to stipulations of facts which will be made a part of the record;

(d) Make opening statements at the hearing;

(e) Present relevant evidence on the issues at the hearing;

(f) Present witnesses who then must be available for cross-examination by all other parties;

(g) Present oral arguments at the hearing; and

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

#### § 1326.103 Discovery.

The Department and any party named in the notice issued pursuant to § 1326.90 has the right to conduct discovery (including depositions) against opposing parties as provided by the Federal Rules of Civil Procedure. There is no fixed rule on priority of discovery. Upon written motion, the presiding officer must promptly rule upon any objection to discovery action. The presiding officer also has the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may issue any order and impose any sanction other than contempt orders authorized by Rule 37 of the Federal Rules of Civil Procedure.

[80 FR 44807, July 27, 2015, as amended at 85 FR 72911, Nov. 16, 2020]

#### § 1326.104 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather, it must be presented in statements, memoranda, or briefs, as directed by the presiding officer. Brief opening statements, which shall be limited to a statement of the party's position and what it intends to prove, may be made at hearings.

#### § 1326.105 Evidence.

(a) *Testimony.* Testimony by witnesses at the hearing is given orally

under oath or affirmation. Witnesses must be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, must be exchanged at the prehearing conference or at a different time prior to the hearing if the presiding officer requires it.

(c) *Rules of evidence.* Technical rules of evidence do not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination are applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his or her direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record is open to examination by the parties and opportunity must be given to refute facts and arguments advanced on either side of the issues.

#### § 1326.106 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or rebellious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

#### § 1326.107 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing is placed in the correspondence section of the docket of the proceeding. This material is not deemed part of the evidence or record in the hearing.

#### § 1326.108 Official transcript.

The Department will designate the official reporter for all hearings. The official transcript of testimony taken,

together with any stipulations, exhibits, briefs, or memoranda of law filed with them is filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance. Transcripts must be taken by stenotype machine and not be voice recording devices, unless otherwise agreed by all of the parties and the presiding officer.

**§ 1326.109 Record for decision.**

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, constitute the exclusive record for decision.

POST-HEARING PROCEDURES, DECISIONS

**§ 1326.110 Post-hearing briefs.**

The presiding officer must fix the time for filing post-hearing briefs. This time may not exceed 30 days after termination of the hearing and receipt of the transcript. Briefs may contain proposed findings of fact and conclusions of law. If permitted, reply briefs may be filed no later than 15 days after filing of the post-hearing briefs.

**§ 1326.111 Decisions following hearing.**

(a) If the Secretary, or his or her designee, is the presiding officer, he or she must issue a decision within 60 days after the time for submission of post-hearing briefs has expired.

(b)(1) If the presiding officer is another person designated for a particular hearing or hearings, he or she must, within 30 days after the time for submission of post-hearing briefs has expired, certify the entire record to the Secretary (or his or her designee) including the recommended findings and proposed decision.

(2) The Secretary, or his or her designee, must serve a copy of the rec-

ommended findings and proposed decision upon all parties and amici.

(3) Any party may, within 20 days, file exceptions to the recommended findings and proposed decision and supporting brief or statement with the Secretary, or his or her designee.

(4) The Secretary, or his or her designee, must review the recommended decision and, within 60 days of its issuance, issue his or her own decision.

(c) If the Secretary, or his or her designee, concludes:

(1) In the case of a hearing pursuant to sections 124, 127, or 143 of the Act, that a State plan or the activities of the State's Protection and Advocacy System does not comply with Federal requirements, he or she shall also specify whether the State's payment or allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan or the activities of the State's Protection and Advocacy System not affected by the noncompliance.

(2) In the case of a hearing pursuant to section 127 of the Act that the State is not complying with the requirements of the State plan, he or she also must specify whether the State's payment or allotment will be made available to the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan not affected by such noncompliance. The Secretary, or his or her designee, may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Secretary, or his or her designee, under this section is the final decision of the Secretary and constitutes "final agency action" within the meaning of 5 U.S.C. 704 and the "Secretary's action" within the meaning of section 128 of the Act (42 U.S.C. 15028). The Secretary's, or his or her designee's, decision must be promptly served on all parties and amici.

**§ 1326.112 Effective date of decision by the Secretary.**

(a) If, in the case of a hearing pursuant to section 124 of the Act, the Secretary, or his or her designee, concludes that a State plan does not comply with Federal requirements, and the decision provides that the payment or allotment will be authorized but limited to parts of the State plan not affected by such noncompliance, the decision must specify the effective date for the authorization of the payment or allotment.

(b) In the case of a hearing pursuant to sections 127 or 143 of the Act, if the Secretary, or his or her designee, concludes that the State is not complying with the requirements of the State plan or if the activities of the State's Protection and Advocacy System do not comply with Federal requirements, the decision that further payments or allotments will not be made to the State, or will be limited to the parts of the State plan or activities of the State Protection and Advocacy System not affected, must specify the effective date for withholding payments or allotments.

(c) The effective date may not be earlier than the date of the decision of the Secretary, or his or her designee, and may not be later than the first day of the next calendar quarter.

(d) The provision of this section may not be waived pursuant to § 1326.84.

[80 FR 44807, July 27, 2015, as amended at 85 FR 72911, Nov. 16, 2020]

**PART 1327—DEVELOPMENTAL DISABILITIES PROJECTS OF NATIONAL SIGNIFICANCE**

AUTHORITY: 42 U.S.C. 15001 *et seq.*

SOURCE: 80 FR 44807, July 27, 2015, unless otherwise noted. Redesignated at 81 FR 35645, June 3, 2016.

**§ 1327.1 General requirements.**

(a) All projects funded under this part must be of national significance and serve or relate to individuals with developmental disabilities to comply with subtitle E of the Act, sections 161–163 (42 U.S.C. 15081–15083).

(b) In general, Projects of National Significance (PNS) provide technical assistance, collect data, demonstrate exemplary and innovative models, disseminate knowledge at the local and national levels, and otherwise meet the goals of Projects of National Significance section 161 (42 U.S.C. 15081).

(c) Projects of National Significance may engage in one or more of the types of activities provided in section 161(2) of the Act.

(d) In general, eligible applicants for PNS funding are public and private non-profit entities, 42 U.S.C. 15082, such as institutions of higher learning, State and local governments, and Tribal governments. The program announcements will specifically state any further eligibility requirements for the priority areas in the fiscal year.

(e) Faith-based organizations are eligible to apply for PNS funding, providing that the faith-based organizations meet the specific eligibility criteria contained in the program announcement for the fiscal year.

**PART 1328—THE NATIONAL NETWORK OF UNIVERSITY CENTERS FOR EXCELLENCE IN DEVELOPMENTAL DISABILITIES, EDUCATION, RESEARCH, AND SERVICE**

Sec.

1328.1 Definitions.

1328.2 Purpose.

1328.3 Core functions.

1328.4 National training initiatives on critical and emerging needs.

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1328.7 Five-year plan and annual report.

AUTHORITY: 42 U.S.C. 15001 *et seq.*

SOURCE: 80 FR 44807, July 27, 2015, unless otherwise noted. Redesignated at 81 FR 35645, June 3, 2016.

**§ 1328.1 Definitions.**

*States.* For the purpose of this part, “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and Guam.

## § 1328.2

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### § 1328.2 Purpose.

(a) The Secretary, or his or her designee awards grants to eligible entities designated as University Centers for Excellence in Developmental Disabilities Education, Research, and Service (“UCEDDs”, or “Centers”) in each State to pay for the Federal share of the cost of the administration and operation of the Centers. Centers shall:

(1) Provide leadership in, advise Federal, State, and community policymakers about, and promote opportunities for individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life.

(2) Be interdisciplinary education, research, and public service units of universities or public not-for-profit entities associated with universities that engage in core functions, described in §1328.3, addressing, directly or indirectly, one or more of the areas of emphasis, as defined in §1325.3 of this chapter.

(b) To conduct National Training Initiatives on Critical and Emerging Needs as described in §1328.4.

[80 FR 44807, July 27, 2015, as amended at 81 FR 35647, June 3, 2016; 85 FR 72911, Nov. 16, 2020]

### § 1328.3 Core functions.

The Centers described in §1328.2 must engage in the core functions referred to in this section, which shall include:

(a) Provision of interdisciplinary pre-service preparation and continuing education of students and fellows, which may include the preparation and continuing education of leadership, direct service, clinical, or other personnel to strengthen and increase the capacity of States and communities to achieve the purpose of the DD Act of 2000.

(b) Provision of community services:

(1) That provide training or technical assistance for individuals with developmental disabilities, their families, professionals, paraprofessionals, policymakers, students, and other members of the community; and

(2) That may provide services, supports, and assistance for the persons listed in paragraph (b)(1) of this section

through demonstration and model activities.

(c) Conduct of research, which may include basic or applied research, evaluation, and the analysis of public policy in areas that affect or could affect, either positively or negatively, individuals with developmental disabilities and their families.

(d) Dissemination of information related to activities undertaken to address the purpose of the DD Act of 2000, especially dissemination of information that demonstrates that the network authorized under Subtitle D of the Act is a national and international resource that includes specific substantive areas of expertise that may be accessed and applied in diverse settings and circumstances.

[80 FR 44807, July 27, 2015, as amended at 81 FR 35647, June 3, 2016; 85 FR 72911, Nov. 16, 2020]

### § 1328.4 National training initiatives on critical and emerging needs.

(a) Supplemental grant funds for National Training Initiatives (NTIs) on critical and emerging needs may be reserved when each Center described in section 152 of the DD Act has received a grant award of at least \$500,000, adjusted for inflation.

(b) The grants shall be awarded to Centers to pay for the Federal share of the cost of training initiatives related to the unmet needs of individuals with developmental disabilities and their families.

(c) The grants shall be awarded on a competitive basis, and for periods of not more than 5 years.

### § 1328.5 Applications.

(a) To be eligible to receive a grant under §1388.2 for a Center, an entity shall submit to the Secretary, or his or her designee, an application at such time, in such manner, and containing such information, as the Secretary, or his or her designee, may require for approval.

(b) Each application shall describe a five-year plan that must include:

(1) Projected goal(s) related to one or more areas of emphasis described in §1325.3 of this chapter for each of the core functions.

(2) Measures of progress.

(c) The application shall contain or be supported by reasonable assurances that the entity designated as the Center will:

(1) Meet the measures of progress;

(2) Address the projected goals, and carry out goal-related activities, based on data driven strategic planning and in a manner consistent with the objectives of subtitle D of the Act, that:

(i) Are developed in collaboration with the Consumer Advisory Committee established pursuant to paragraph (c)(5) of this section;

(ii) Are consistent with, and to the extent feasible complement and further, the Council goals contained in the State plan submitted under section 124 of the DD Act of 2000 and the goals of the Protection and Advocacy System established under section 143 of the DD Act of 2000; and

(iii) Will be reviewed and revised annually as necessary to address emerging trends and needs.

(3) Use the funds made available through the grant to supplement, and not supplant, the funds that would otherwise be made available for activities described in § 1328.2(a)(1) and (2).

(4) Protect, consistent with the policy specified in section 101(c) of the DD Act of 2000 the legal and human rights of all individuals with developmental disabilities (especially those individuals under State guardianship who are involved in activities carried out under programs assisted under subtitle D of the Act).

(5) Establish a Consumer Advisory Committee:

(i) Of which a majority of the members shall be individuals with developmental disabilities and family members of such individuals;

(ii) That is comprised of:

(A) Individuals with developmental disabilities and related disabilities;

(B) Family members of individuals with developmental disabilities;

(C) A representative of the State Protection and Advocacy System;

(D) A representative of the State Council on Developmental Disabilities;

(E) A representative of a self-advocacy organization described in section 124(c)(4)(A)(ii)(I) of the DD Act of 2000 (42 U.S.C. 15024(c)(4)(A)(ii)(I)); and

(F) Representatives of organizations that may include parent training and information centers assisted under section 671 or 672 of the Individuals with Disabilities Education Act (20 U.S.C. 1471, 1472), entities carrying out activities authorized under section 104 or 105 of the Assistive Technology Act of 1998 (29 U.S.C. 3003, 3004), relevant State agencies, and other community groups concerned with the welfare of individuals with developmental disabilities and their families.

(iii) That reflects the racial and ethnic diversity of the State;

(iv) That shall:

(A) Consult with the Director of the Center regarding the development of the five-year plan;

(B) Participate in an annual review of, and comment on, the progress of the Center in meeting the projected goals contained in the plan;

(C) Make recommendations to the Director of the Center regarding any proposed revisions of the plan that might be necessary; and

(v) Meet as often as necessary to carry out the role of the committee, but at a minimum twice during each grant year.

(6) To the extent possible, utilize the infrastructure and resources obtained through funds made available under the grant to leverage additional public and private funds to successfully achieve the projected goals developed in the five-year plan;

(7) Have a director with appropriate academic credentials, demonstrated leadership, expertise regarding developmental disabilities, significant experience in managing grants and contracts, and the ability to leverage public and private funds; and

(i) Allocate adequate staff time to carry out activities related to each of the core functions described in § 1328.3.

(ii) [Reserved]

(8) Educate, and disseminate information related to the purpose of the DD Act of 2000 to the legislature of the State in which the Center is located, and to Members of Congress from such State.

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(d) All applications submitted under this section shall be subject to technical and qualitative review by peer review groups as described under paragraph (d)(1) of this section.

(1) Each peer review group shall include such individuals with disabilities and parents, guardians, or advocates of or for individuals with developmental disabilities, as are necessary to carry out this section.

(2) [Reserved]

(e)(1) The Federal share of the cost of administration or operation of a Center, or the cost of carrying out a training initiative, supported by a grant made under subtitle D of the Act may not be more than 75 percent of the necessary cost of such project, as determined by the Secretary, or his or her designee.

(2) In the case of a project whose activities or products target individuals with developmental disabilities who live in an urban or rural poverty area, as determined by the Secretary, or his or her designee, the Federal share of the cost of the project may not be more than 90 percent of the necessary costs of the project, as determined by the Secretary, or his or her designee.

[80 FR 44807, July 27, 2015, as amended at 81 FR 35647, June 3, 2016; 85 FR 72911, Nov. 16, 2020]

EDITORIAL NOTE: At 85 FR 72911, Nov. 16, 2020, § 1328.5 was amended in part by removing the reference “1388.2” and adding in its place “45 CFR 1328.2”; however, the amendment could not be incorporated due to inaccurate amendatory instruction.

### § 1328.6 Governance and administration.

(a) The UCEDD must be associated with, or an integral part of, a university and promote the independence, productivity, integration, and inclusion of individuals with developmental disabilities and their families.

(b) The UCEDD must have a written agreement or charter with the university, or affiliated university that specifies the UCEDD designation as an official university component, the relationships between the UCEDD and other university components, the university commitment to the UCEDD, and the UCEDD commitment to the university.

(c) Within the university, the UCEDD must maintain the autonomy and organizational structure required to carry out the UCEDD mission and provide for the mandated activities.

(d) The UCEDD Director must report directly to, or be, a University Administrator who will represent the interests of the UCEDD within the University.

(e) The University must demonstrate its support for the UCEDD through the commitment of financial and other resources.

(f) UCEDD senior professional staff, including the UCEDD Director, Associate Director, Training Director, and Research Coordinator, must hold faculty appointments in appropriate academic departments of the host or an affiliated university, consistent with university policy. UCEDD senior professional staff must contribute to the university by participation on university committees, collaboration with other university departments, and other university community activities.

(g) UCEDD faculty and staff must represent the broad range of disciplines and backgrounds necessary to implement the full inclusion of individuals with developmental disabilities in all aspects of society, consonant with the spirit of the Americans with Disabilities Act (ADA).

(h) The management practices of the UCEDD, as well as the organizational structure, must promote the role of the UCEDD as a bridge between the University and the community. The UCEDD must actively participate in community networks and include a range of collaborating partners.

(i) The UCEDD’s Consumer Advisory Committee must meet regularly. The membership of the Consumer Advisory Committee must reflect the racial and ethnic diversity of the State or community in which the UCEDD is located. The deliberations of the Consumer Advisory Committee must be reflected in UCEDD policies and programs.

(j) The UCEDD must maintain collaborative relationships with the SCDD and P&A. In addition, the UCEDD must be a permanent member of the SCDD and regularly participate in Council meetings and activities, as prescribed by the Act.

(k) The UCEDD must maintain collaborative relationships and be an active participant with the UCEDD network and individual organizations.

(l) The UCEDD must demonstrate the ability to leverage additional resources.

(m) The university must demonstrate that the UCEDD have adequate space to carry out the mandated activities.

(n) The UCEDD physical facility and all program initiatives conducted by the UCEDD must be accessible to individuals with disabilities as provided for by section 504 of the Rehabilitation Act and Titles II and III of the Americans with Disabilities Act.

(o) The UCEDD must integrate the mandated core functions into its activities and

programs and must have a written plan for each core function area.

(p) The UCEDD must have in place a long range planning capability to enable it to respond to emergent and future developments in the field.

(q) The UCEDD must utilize state-of-the-art methods, including the active participation of individuals, families and others of UCEDD programs and services to evaluate programs. The UCEDD must refine and strengthen its programs based on evaluation findings.

(r) The UCEDD Director must demonstrate commitment to the field of developmental disabilities, leadership, and vision in carrying out the mission of the UCEDD.

(s) The UCEDD must meet the "Employment of Individuals with Disabilities" requirements as described in section 107 of the Act.

#### **§ 1328.7 Five-year plan and annual report.**

(a) As required by section 154(a)(2) of the DD Act of 2000 (42 U.S.C. 15064), the application for core funding for a UCEDD shall describe a five-year plan, including a projected goal or goals related to one or more areas of emphasis for each of the core functions in section 153(a)(2) of the DD Act of 2000 (42 U.S.C.15063).

(1) For each area of emphasis under which a goal has been identified, the UCEDD must state in its application the measures of progress with the requirements of the law and applicable

regulation, in accordance with current practice.

(2) If changes are made to the measures of progress established for a year, the five-year plan must be amended to reflect those changes and approved by AIDD upon review.

(3) By July 30 of each year, a UCEDD shall submit an Annual Report, using the system established or funded by AIDD. In order to be accepted by AIDD, an Annual Report must meet the requirements of section 154(e) of the Act (42 U.S.C. 15064) and, the applicable regulations, and include the information necessary for the Secretary, or his or her designee, to comply with section 105(1), (2), and (3) of the Act (42 U.S.C. 15005) and any other information requested by AIDD. The Report shall include information on progress made in achieving the UCEDD's goals for the previous year, including:

(i) The extent to which the goals were achieved;

(ii) A description of the strategies that contributed to achieving the goals;

(iii) The extent to which the goals were not achieved;

(iv) A detailed description of why goals were not met; and

(v) An accounting of the manner in which funds paid to the UCEDD for a fiscal year were expended.

(4) The Report also must include information on proposed revisions to the goals and a description of successful efforts to leverage funds, other than funds under the Act, to pursue goals consistent with the UCEDD program.

(5) Each UCEDD must include in its Annual Report information on its achievement of the measures of progress.

(b) [Reserved]

## **PART 1329—STATE INDEPENDENT LIVING SERVICES AND CENTERS FOR INDEPENDENT LIVING**

### **Subpart A—General Provisions**

Sec.

1329.1 Programs covered.

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1329.3 Applicability of other regulations.

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1329.10 Authorized use of funds for Independent Living Services.

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### Subpart C—Centers for Independent Living Program

1329.20 Centers for Independent Living (CIL) program.

1329.21 Continuation awards to entities eligible for assistance under the CIL program.

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1329.23 Compliance reviews.

1329.24 Training and technical assistance to Centers for Independent Living.

AUTHORITY: 29 U.S.C. 709; 42 U.S.C. 3515e.

SOURCE: 81 FR 74694, Oct. 27, 2016, unless otherwise noted.

### Subpart A—General Provisions

#### § 1329.1 Programs covered.

This part includes general requirements applicable to the conduct of the following programs authorized under title VII, chapter 1 of the Rehabilitation Act of 1973, as amended:

(a) Independent Living Services (ILS), title VII, chapter 1, part B (29 U.S.C. 796e to 796e-3).

(b) The Centers for Independent Living (CIL), title VII, chapter 1, part C (29 U.S.C. 796f to 796f-6).

#### § 1329.2 Purpose.

The purpose of title VII of the Act is to promote a philosophy of independent living (IL), including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and to promote the integration and full inclusion of individuals with disabilities into the mainstream of American society by:

(a) Providing financial assistance to States for providing, expanding, and improving the provision of IL services;

(b) Providing financial assistance to develop and support statewide networks of Centers for Independent Living (Centers or CILs);

(c) Providing financial assistance to States, with the goal of improving the independence of individuals with disabilities, for improving working relationships among—

(1) State Independent Living Services;

(2) Centers for Independent Living;

(3) Statewide Independent Living Councils (SILCs or Councils) established under section 705 of the Act (29 U.S.C. 796d);

(4) State vocational rehabilitation (VR) programs receiving assistance under Title 1 of the Act (29 U.S.C. 720 *et seq.*);

(5) State programs of supported employment services receiving assistance under Title VI of the Act (29 U.S.C. 795g *et seq.*);

(6) Client assistance programs (CAPs) receiving assistance under section 112 of the Act (29 U.S.C. 732);

(7) Programs funded under other titles of the Act;

(8) Programs funded under other Federal laws; and

(9) Programs funded through non-Federal sources with the goal of improving the independence of individuals with disabilities.

#### § 1329.3 Applicability of other regulations.

Several other regulations apply to all activities under this part. These include but are not limited to:

(a) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

(b) 45 CFR part 46—Protection of Human Subjects.

(c) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards.

(d) 45 CFR part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

(e) 45 CFR part 81—Practice and Procedure for Hearings under Part 80 of this Title.

(f) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs Activities Receiving Federal Financial Assistance.

(g) 45 CFR part 86—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

(h) 45 CFR part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

(i) 45 CFR part 93—New Restrictions on Lobbying.

(j) 2 CFR part 376—Nonprocurement Debarment and Suspension.

(k) 2 CFR part 382—Requirements for Drug-Free Workplace (Financial Assistance).

#### § 1329.4 Definitions.

For the purposes of this part, the following definitions apply:

*Act* means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended. *Part B* refers to part B of chapter 1 of title VII of the Act (29 U.S.C. 796e to 796e-3). *Part C* refers to part C of chapter 1 of title VII, of the Act (29 U.S.C. 796f to 796f-6).

*Administrative support services* means services and supports provided by the designated State entity under Part B, and to Part C CILs administered by the State under section 723 of the Act in support of the goals, objectives and related activities under an approved State Plan for Independent Living (SPIL). Such support includes any costs associated with contracts and subgrants including fiscal and programmatic oversight, among other services.

*Administrator* means the Administrator of the Administration for Community Living (ACL) of the Department of Health and Human Services.

*Advocacy* means pleading an individual's cause or speaking or writing in support of an individual. To the extent permitted by State law or the rules of the agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. Advocacy may—

(1) Involve representing an individual—

(i) Before private entities or organizations, government agencies (whether State, local, or Federal), or in a court of law (whether State or Federal); or

(ii) In negotiations or mediation, in formal or informal administrative proceedings before government agencies (whether State, local, or Federal), or in legal proceedings in a court of law; and

(2) Be on behalf of—

(i) A single individual, in which case it is individual advocacy;

(ii) A group or class of individuals, in which case it is *systems advocacy*; or

(iii) Oneself, in which case it is *self advocacy*.

*Attendant care* means a personal assistance service provided to an individual with significant disabilities in performing a variety of tasks required to meet essential personal needs in areas such as bathing, communicating, cooking, dressing, eating, home-making, toileting, and transportation.

*Center for independent living* (“Center”) means a consumer-controlled, community-based, cross-disability, nonresidential, private non-profit agency for individuals with significant disabilities (regardless of age or income) that—

(1) Is designed and operated within a local community by individuals with disabilities;

(2) Provides an array of IL services as defined in section 7(18) of the Act, including, at a minimum, independent living core services as defined in this section; and

(3) Complies with the standards set out in Section 725(b) and provides and complies with the assurances in section 725(c) of the Act and § 1329.5.

*Completed their secondary education* means, with respect to the Independent Living Core Services that facilitate the transition of youth who are individuals with significant disabilities in section 7(17)(e)(iii) of the Act, that an eligible youth has received a diploma; has received a certificate of completion for high school or other equivalent document marking the completion of participation in high school; or has exceeded the age of eligibility for services under IDEA.

*Consumer control* means, with respect to a Center or eligible agency, that the Center or eligible agency vests power and authority in individuals with disabilities, including individuals who are or have been recipients of IL services, in terms of the management, staffing, decision making, operation, and provision of services. Consumer control, with respect to an individual, means that the individual with a disability asserts control over his or her personal life choices, and in addition, has control over his or her independent living plan (ILP), making informed choices about content, goals and implementation.

*Cross-disability* means, with respect to services provided by a Center, that a Center provides services to individuals with all different types of significant disabilities, including individuals with significant disabilities who are members of unserved or underserved populations by programs under Title VII. Eligibility for services shall be determined by the Center, and shall not be based on the presence of any one or more specific significant disabilities.

*Designated State entity (DSE)* is the State agency designated in the State Plan for Independent Living (SPIL) that acts on behalf of the State to provide the functions described in title VII, chapter 1 of the Act.

*Eligible agency* means a consumer-controlled, community-based, cross-disability, nonresidential, private, non-profit agency.

*Independent living core services* mean, for purposes of services that are supported under the ILS or CIL programs—

- (1) Information and referral services;
- (2) Independent Living skills training;
- (3) Peer counseling, including cross-disability peer counseling;
- (4) Individual and systems advocacy;
- (5) Services that:

- (i) Facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences, with the requisite supports and services. This process may include providing services and supports that a consumer identifies are needed to move that person from an institutional set-

ting to community based setting, including systems advocacy required for the individual to move to a home of his or her choosing;

- (ii) Provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community. A determination of who is at risk of entering an institution should include self-identification by the individual as part of the intake or goal-setting process; and

- (iii) Facilitate the transition of youth who are individuals with significant disabilities, who were eligible for individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)), and who have completed their secondary education or otherwise left school, to postsecondary life. Individuals who have reached the age of 18 and are still receiving services in accordance with an Individualized Education Program (IEP) under IDEA have not “completed their secondary education.”

*Independent living service* includes the independent living core services and such other services as described in section 7(18) of the Act.

*Individual with a disability* means an individual who—

- (1) Has a physical or mental impairment that substantially limits one or more major life activities of such individual;

- (2) Has a record of such an impairment; or

- (3) Is regarded as having such an impairment, as described in section 3(3) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(3)).

*Individual with a significant disability* means an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment, respectively.

*Majority* means more than 50 percent.

*Minority group* means American Indian, Alaskan Native, Asian American, Black or African American (not of Hispanic origin), Hispanic or Latino (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), and Native Hawaiian or other Pacific Islander.

*Nonresidential* means, with respect to a Center, that the Center does not operate or manage housing or shelter for individuals as an IL service on either a temporary or long-term basis unless the housing or shelter is—

- (1) Incidental to the overall operation of the Center;
- (2) Necessary so that the individual may receive an IL service; and
- (3) Limited to a period not to exceed eight weeks during any six-month period.

*Peer relationships* mean relationships involving mutual support and assistance among individuals with significant disabilities who are actively pursuing IL goals.

*Peer role models* mean individuals with significant disabilities whose achievements can serve as a positive example for other individuals with significant disabilities.

*Personal assistance services* mean a range of services, paid or unpaid, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities that the individual would typically perform if the individual did not have a disability. These services must be designed to increase the individual's control in life and ability to perform everyday activities and include but are not limited to: Getting up and ready for work or going out into the community (including bathing and dressing), cooking, cleaning or running errands, engaging in social relationships including parenting.

*Service provider* means a Center for Independent Living that receives financial assistance under Part B or C of chapter 1 of title VII of the Act, or any other entity or individual that provides IL services under a grant or contract from the DSE pursuant to Section 704(f) of the Act. A designated State entity (DSE) may directly provide IL services to individuals with significant

disabilities only as specifically authorized in the SPIL.

*State* includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*State plan* means the State Plan for Independent Living (SPIL) required under Section 704 of the Act.

*Unserved and underserved groups or populations* include populations such as individuals from racial and ethnic minority backgrounds, disadvantaged individuals, individuals with limited English proficiency, and individuals from underserved geographic areas (rural or urban).

*Youth with a significant disability* means an individual with a significant disability who—

- (1) Is not younger than 14 years of age; and
- (2) Is not older than 24 years of age.

#### § 1329.5 Indicators of minimum compliance.

To be eligible to receive funds under this part, a Center must comply with the standards in section 725(b) and assurances in section 725(c) of the Act, with the indicators of minimum compliance, and the requirements contained in the terms and conditions of the grant award.

#### § 1329.6 Reporting.

(a) A Center must submit a performance report in a manner and at a time described by the Administrator, consistent with section 704(m)(4)(D) of the Act, 29 U.S.C. 796c(m)(4)(D).

(b) The DSE must submit a report in a manner and at a time described by the Administrator, consistent with section 704(c)(4) of the Act, 29 U.S.C. 796c(c)(4).

(c) The Administrator may require such other reports as deemed necessary to carry out the responsibilities set forth in section 706 of the Act, 29 U.S.C. 796d-1.

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### § 1329.7 Enforcement and appeals procedures.

(a) *Process for Centers for Independent Living.* (1) If the Director of the Independent Living Administration (Director) determines that, as the result of the Onsite Compliance Review process defined in section 706(c)(2), or other review activities, any Center receiving funds under this part, other than a Center that is provided Part C funding by the State under section 723 of the Act, is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and of this part, the Director must provide notice to the Center pursuant to guidance determined by the Administrator.

(2) The Director may offer technical assistance to the Center to develop a corrective action plan or to take such other steps as are necessary to come into compliance with the standards and assurances.

(3) The Center may request a preliminary appeal to the Director in a form and manner determined by the Administrator. The Director shall review the appeal request and provide written notice of the determination within a timely manner.

(4) Where there is a determination that falls within 45 CFR part 16, appendix A, C.a.(1)–(4), the Center may appeal an unfavorable decision by the Director to the Administrator within a time and manner established by the Administrator. The Administrator shall review the appeal request and provide written notice of the determination within a timely manner.

(5) The Administrator may take steps to enforce a corrective action plan or to terminate funding if the Administrator determines that the Center remains out of compliance.

(6) Written notice of the determination by the Administrator shall constitute a final determination for purposes of 45 CFR part 16. A Center that receives such notice of a determination that falls within 45 CFR part 16, appendix A, C.a.(1)–(4), may appeal to the Departmental Appeals Board pursuant to the provisions of 45 CFR part 16.

(7) A Center that is administered by the State under Section 723 of the Act must first exhaust any State process before going through the process de-

scribed in paragraphs (a)(1) through (6) of this section.

(b) *Process for States.* (1) If the Director of the Independent Living Administration determines that a State is out of compliance with sections 704, 705, 713 or other pertinent sections of the Act, the Director must provide notice to the State pursuant to guidance determined by the Administrator.

(2) The Director may offer technical assistance to the State to develop a corrective action plan or to take such other steps as are necessary to ensure that the State comes in to compliance.

(3) Where there is a determination that falls within 45 CFR part 16, appendix A, C.a.(1)–(4), the State may seek an appeal consistent with the steps set forth in paragraphs (a)(3) and (4) of this section.

(4) The Administrator may take steps to enforce statutory or regulatory requirements or to terminate funding if the Administrator determines that the State remains out of compliance.

(5) Written notice of the determination by the Administrator shall constitute a final determination for purposes of 45 CFR part 16 with regard to the types of determinations set forth in 45 CFR part 16, appendix A, C.a.(1)–(4). A State that receives such notice may appeal to the Departmental Appeals Board pursuant to the provisions of 45 CFR part 16.

### Subpart B—Independent Living Services

#### § 1329.10 Authorized use of funds for Independent Living Services.

(a) The State:

(1) May use funds received under this part to support the SILC resource plan described in section 705(e) of the Act but may not use more than 30 percent of the funds unless an approved SPIL so specifies pursuant to § 1329.15(c);

(2) May retain funds under section 704(c)(5) of the Act; and

(3) Shall distribute the remainder of the funds received under this part in a manner consistent with the approved State plan for the activities described in paragraph (b) of this section.

(b) The State may use the remainder of the funds described in paragraph (a)(3) of this section to—

(1) Provide to individuals with significant disabilities the independent living (IL) services required by section 704(e) of the Act, particularly those in unserved areas of the State;

(2) Demonstrate ways to expand and improve IL services;

(3) Support the operation of Centers for Independent Living (Centers) that are in compliance with the standards and assurances in section 725 (b) and (c) of the Act;

(4) Support activities to increase the capacities of public or nonprofit agencies and organizations and other entities to develop comprehensive approaches or systems for providing IL services;

(5) Conduct studies and analyses, gather information, develop model policies and procedures, and present information, approaches, strategies, findings, conclusions, and recommendations to Federal, State, and local policy makers in order to enhance IL services for individuals with significant disabilities;

(6) Train individuals with disabilities and individuals providing services to individuals with disabilities, and other persons regarding the IL philosophy; and

(7) Provide outreach to populations that are unserved or underserved by programs under title VII of the Act, including minority groups and urban and rural populations.

**§ 1329.11 DSE eligibility and application.**

(a) Any designated State entity (DSE) identified by the State and included in the signed SPIL pursuant to section 704(c) is eligible to apply for assistance under this part in accordance with section 704 of the Act, 29 U.S.C. 796c.

(b) To receive financial assistance under Parts B and C of chapter 1 of title VII, a State shall submit to the Administrator and obtain approval of a State plan that meets the requirements of section 704 of the Act, 29 U.S.C. 796c.

(c) Allotments to states are determined in accordance with section 711 of the Act, 29 U.S.C. 796e.

**§ 1329.12 Role of the designated State entity.**

(a) A DSE that applies for and receives assistance must:

(1) Receive, account for, and disburse funds received by the State under Part B and Part C in a State under section 723 of the Act based on the State plan;

(2) Provide administrative support services for a program under Part B, as directed by the approved State plan, and for CILs under Part C when administered by the State under section 723 of the Act, 29 U.S.C. 796f-2;

(3) Keep such records and afford such access to such records as the Administrator finds to be necessary with respect to the programs;

(4) Submit such additional information or provide such assurances as the Administrator may require with respect to the programs; and

(5) Retain not more than 5 percent of the funds received by the State for any fiscal year under Part B, for the performance of the services outlined in paragraphs (a)(1) through (4) of this section. For purposes of these regulations, the 5 percent cap on funds for administrative expenses applies only to the Part B funds allocated to the State and to the State's required 10 percent Part B match. It does not apply to other program income funds, including, but not limited to, payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes, any other federal funds, or to other funds allocated by the State for IL purposes.

(b) The DSE must also carry out its other responsibilities under the Act, including, but not limited to:

(1) Allocating funds for the delivery of IL services under Part B of the Act as directed by the SPIL; and

(2) Allocating the necessary and sufficient resources needed by the SILC to fulfill its statutory duties and authorities under section 705(c), consistent with the approved State Plan.

(c) Fiscal and accounting requirements: The DSE must adopt fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of and accounting for federal funds provided to CILs, SILCs, and/or other services providers under

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the ILS program. The DSE must comply with all applicable federal and State laws and regulations, including those in 45 CFR part 75.

### **§ 1329.13 Allotment of Federal funds for State independent living (IL) services.**

(a) The allotment of Federal funds for State IL services for each State is computed in accordance with the requirements of section 711(a)(1) of the Act.

(b) Notwithstanding paragraph (a) of this section, the allotment of Federal funds for Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands is computed in accordance with section 711(a)(2) of the Act.

(c) The Administrator shall reserve between 1.8 percent and 2 percent of appropriated funds to provide, either directly or through grants, contracts, or cooperative agreements, training and technical assistance to SILCs. Training and technical assistance funds shall be administered in accordance with section 711A of the Act.

### **§ 1329.14 Establishment of a SILC.**

(a) To be eligible to receive assistance under this part, each State shall establish and maintain a SILC that meets the requirements of section 705 of the Act, including composition and appointment of members.

(b) The SILC shall not be established as an entity within a State agency, including the DSE. The SILC shall be independent of and autonomous from the DSE and all other State agencies.

### **§ 1329.15 Duties of the SILC.**

(a) The duties of the SILC are those set forth in section 705(c), (d), and (e) of the Act.

(1) The SILC shall develop the SPIL in accordance with guidelines developed by the Administrator;

(2) The SILC shall monitor, review and evaluate the implementation of the SPIL on a regular basis as determined by the SILC and set forth in the SPIL;

(3) The SILC shall meet regularly, and ensure that such meetings are open to the public and sufficient advance notice of such meetings is provided;

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(4) The SILC shall submit to the Administrator such periodic reports as the Administrator may reasonably request, and keep such records, and afford such access to such records, as the Administrator finds necessary to verify the information in such reports; and

(5) The SILC shall, as appropriate, coordinate activities with other entities in the State that provide services similar to or complementary to independent living services, such as entities that facilitate the provision of or provide long-term community-based services and supports.

(b) In carrying out the duties under this section, the SILC may provide contact information for the nearest appropriate CIL. Sharing of such information shall not constitute the direct provision of independent living services as defined in section 705(c)(3) of the Act.

(c) The SILC, in conjunction with the DSE, shall prepare a plan for the provision of resources, including staff and personnel that are necessary and sufficient to carry out the functions of the SILC.

(1) The resource plan amount shall be commensurate, to the extent possible, with the estimated costs related to SILC fulfilment of its duties and authorities consistent with the approved State Plan.

(2) Available resources include: Innovation and Expansion (I&E) funds authorized by 29 U.S.C. 721(a)(18); Independent Living Part B funds; State matching funds; other public funds (such as Social Security reimbursement funds); and private sources.

(3) In accordance with § 1329.10(a)(1), no more than 30 percent of the State's allocation of Part B and Part B State matching funds may be used to fund the resource plan, unless the approved SPIL provides that more than 30 percent is needed and justifies the greater percentage.

(4) No conditions or requirements may be included in the SILC's resource plan that may compromise the independence of the SILC.

(5) The SILC is responsible for the proper expenditure of funds and use of resources that it receives under the resource plan.

(6) A description of the SILC's resource plan must be included in the State plan. The plan should include:

- (i) Staff/personnel;
- (ii) Operating expenses;
- (iii) Council compensation and expenses;
- (iv) Meeting expenses, including public hearing expenses, such as meeting space, alternate formats, interpreters, and other accommodations;
- (v) Resources to attend and/or secure training for staff and Council members; and
- (vi) Other costs as appropriate.

(d) The SILC shall carry out the activities in paragraph (a), to better serve individuals with significant disabilities and help achieve the purpose of section 701 of the Act.

(e) The SILC shall, consistent with State law, supervise and evaluate its staff and other personnel as may be necessary to carry out its functions under this section.

#### § 1329.16 Authorities of the SILC.

(a) The SILC may conduct the following discretionary activities, as authorized and described in the approved State Plan:

(1) Work with Centers for Independent Living to coordinate services with public and private entities to improve services provided to individuals with disabilities;

(2) Conduct resource development activities to support the activities described in the approved SPIL and/or to support the provision of independent living services by Centers for Independent Living; and

(3) Perform such other functions, consistent with the purpose of this part and comparable to other functions described in section 705(c) of the Act, as the Council determines to be appropriate and authorized in the approved SPIL.

(b) In undertaking the foregoing duties and authorities, the SILC shall:

(1) Coordinate with the CILs in order to avoid conflicting or overlapping activities within the CILs' established service areas;

(2) Not engage in activities that constitute the direct provision of IL services to individuals, including the IL core services; and

(3) Comply with Federal prohibitions against lobbying.

#### § 1329.17 General requirements for a State plan.

(a) The State may use funds received under Part B to support the Independent Living Services program and to meet its obligations under the Act, including the section 704(e) requirements that apply to the provision of independent living services. The State plan must stipulate that the State will provide IL services, directly and/or through grants and contracts, with Federal, State or other funds, and must describe how and to whom those funds will be disbursed for this purpose.

(b) In order to receive financial assistance under this part, a State shall submit to the Administrator a State plan for independent living.

(1) The State plan must contain, in the form prescribed by the Administrator, the information set forth in section 704 of the Act, including designation of an Agency to serve as the designated State entity, and such other information requested by the Administrator.

(2) The State plan must contain the assurances set forth in section 704(m) of the Act.

(3) The State plan must be signed in accordance with the provisions of this section.

(4) The State plan must be submitted 90 days before the completion date of the proceeding plan, and otherwise in the time frame and manner prescribed by the Administrator.

(5) The State plan must be approved by the Administrator.

(c) The State plan must cover a period of not more than three years and must be amended whenever necessary to reflect any material change in State law, organization, policy, or agency operations that affects the administration of the State plan.

(d) The State plan must be jointly—

(1) Developed by the chairperson of the SILC, and the directors of the CILs, after receiving public input from individuals with disabilities and other stakeholders throughout the State; and

(2) Signed by the—



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(i) Chairperson of the SILC, acting on behalf of and at the direction of the SILC;

(ii) The director of the DSE, signifying agreement to execute the responsibilities of the DSE identified in section 704(c) of the Act; and

(iii) Not less than 51 percent of the directors of the CILs in the State. For purposes of this provision, if a legal entity that constitutes the “CIL” has multiple Part C grants considered as separate Centers for all other purposes, for SPIL signature purposes, it is only considered as one Center. CILs with service areas in more than one State that meet the other applicable requirements are eligible to participate in SPIL development and sign the SPIL in each of the relevant States.

(e) The State plan must provide for the review and revision of the plan, not less than once every three years, to ensure the existence of appropriate planning, financial support and coordination, and other assistance to meet the requirements of section 704(a) of the Act.

(f) The public, including people with disabilities and other stakeholders throughout the State, must have an opportunity to comment on the State plan prior to its submission to the Administrator and on any revisions to the approved State plan. Meeting this standard for public input from individuals with disabilities requires providing reasonable modifications in policies, practices, or procedures; effective communication and appropriate auxiliary aids and services for individuals with disabilities, which may include the provision of qualified interpreters and information in alternate formats, free of charge.

(1) The requirement for public input in this section may be met by holding public meetings before a preliminary draft State plan is prepared and by providing a preliminary draft State plan for comment prior to submission.

(2) To meet the public input standard of this section, a public meeting requires:

(i) Accessible, appropriate and sufficient notice provided at least 30 days prior to the public meeting through various media available to the general public, such as Web sites, newspapers

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and public service announcements, and through specific contacts with appropriate constituency groups.

(ii) All notices, including notices published on a Web site, and other written materials provided at or prior to public meetings must be available upon request in accessible formats.

(g) The State plan must identify those provisions that are State-imposed requirements. For purposes of this section, a State-imposed requirement includes any State law, regulation, rule, or policy relating to the DSE’s administration or operation of IL programs under Title VII of the Act, including any rule or policy implementing any Federal law, regulation, or guideline that is beyond what would be required to comply with the regulations in this part.

(h) The State plan must address how the specific requirements in the Act and in paragraph (f) of this section will be met.

### Subpart C—Centers for Independent Living Program

#### § 1329.20 Centers for Independent Living (CIL) program.

State allotments of Part C, funds shall be based on section 721(c) of the Act, and distributed to Centers within the State in accordance with the order of priorities in sections 722(e) and 723(e) of the Act.

#### § 1329.21 Continuation awards to entities eligible for assistance under the CIL program.

(a) In any State in which the Administrator has approved the State plan required by section 704 of the Act, an eligible agency funded under Part C in fiscal year 2015 may receive a continuation award in FY 2016 or a succeeding fiscal year if the Center has—

(1) Complied during the previous project year with the standards and assurances in section 725 of the Act and the terms and conditions of its grant; and

(2) Submitted an approvable annual performance report demonstrating that the Center meets the indicators of minimum compliance referenced in in § 1329.5.

(b) If an eligible agency administers more than one Part C grant, each of the Center grants must meet the requirements of paragraph (a) of this section to receive a continuation award.

(c) A designated State entity (DSE) that operated a Center in accordance with section 724(a) of the Act in fiscal year (FY) 2015 is eligible to continue receiving assistance under this part in FY 2016 or a succeeding fiscal year if, for the fiscal year for which assistance is sought—

(1) No nonprofit private agency submits and obtains approval of an acceptable application under section 722 or 723 of the Act to operate a Center for that fiscal year before a date specified by the Administrator; or

(2) After funding all applications so submitted and approved, the Administrator determines that funds remain available to provide that assistance.

(d) A Center operated by the DSE under section 724(a) of the Act must comply with paragraphs (a), (b), and (c) of this section to receive continuation funding, except for the requirement that the Center be a private nonprofit agency.

(e) A designated State entity that administered Part C funds and awarded grants directly to Centers within the State under section 723 of the Act in fiscal year (FY) 2015 is eligible to continue receiving assistance under section 723 in FY 2016 or a succeeding fiscal year if the Administrator determines that the amount of State funding earmarked by the State to support the general operation of Centers during the preceding fiscal year equaled or exceeded the amount of federal funds allotted to the State under section 721(c) of the Act for that fiscal year.

(f) A DSE may apply to administer Part C funds under section 723 in the time and in the manner that the Administrator may require, consistent with section 723(a)(1)(A) of the Act.

(g) Grants awarded by the DSE under section 723 of the Act are subject to the requirements of paragraphs (a) and (b) of this section and the order of priorities in section 723(e) of the Act, unless the DSE and the SILC jointly agree on another order of priorities.

#### **§ 1329.22 Competitive awards to new Centers for Independent Living.**

(a) Subject to the availability of funds and in accordance with the order of priorities in section 722(e) of the Act and the State Plan's design for the statewide network of Centers, an eligible agency may receive Part C funding as a new Center for Independent Living in a State, if the eligible agency:

(1) Submits to the Administrator an application at the time and manner required in the funding opportunity announcement (FOA) issued by the Administrator which contains the information and meets the selection criteria established by the Administrator in accordance with section 722(d) of the Act;

(2) Proposes to serve a geographic area that has been designated as a priority unserved or underserved in the State Plan for Independent Living and that is not served by an existing Part C-funded Center; and

(3) Is determined by the Administrator to be the most qualified applicant to serve the designated priority area consistent with the State plan setting forth the design of the State for establishing a statewide network of Centers for independent living.

(b) An existing Part C-funded Center may apply to serve the designated unserved or underserved areas if it proposes the establishment of a separate and complete Center (except that the governing board of the existing center may serve as the governing board of the new Center) at a different geographic location, consistent with the requirements in the FOA.

(c) An eligible agency located in a bordering, contiguous State may be eligible for a new CIL award if the Administrator determines, based on the submitted application, that the agency:

(1) Is the most qualified applicant meeting the requirements in paragraphs (a) and (b) of this section; and

(2) Has the expertise and resources necessary to serve individuals with significant disabilities who reside in the bordering, contiguous State, in accordance with the requirements of the Act and these regulations.

(d) If there are insufficient funds under the State's allotment to fund a new Center, the Administrator may—

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(1) Use the excess funds in the State to assist existing Centers consistent with the State plan; or

(2) Reallot these funds in accordance with section 721(d) of the Act.

### § 1329.23 Compliance reviews.

(a) Centers receiving Part C funding shall be subject to periodic reviews, including on-site reviews, in accordance with sections 706(c), 722(g), and 723(g) of the Act and guidance set forth by the Administrator, to verify compliance with the standards and assurances in section 725(b) and (c) of the Act and the grant terms and conditions. The Administrator shall annually conduct reviews of at least 15 percent of the Centers.

(b) A copy of each review under this section shall be provided, in the case of section 723(g), by the director of the DSE to the Administrator and to the SILC, and in the case of section 722(g), by the Administrator to the SILC and the DSE.

### § 1329.24 Training and technical assistance to Centers for Independent Living.

The Administrator shall reserve between 1.8% and 2% of appropriated funds to provide training and technical assistance to Centers through grants, contracts or cooperative agreements, consistent with section 721(b) of the Act. The training and technical assistance funds shall be administered in accordance with section 721(b) of the Act.

## PART 1330—NATIONAL INSTITUTE FOR DISABILITY, INDEPENDENT LIVING, AND REHABILITATION RESEARCH

### Subpart A—Disability, Independent Living, and Rehabilitation Research Projects and Centers Program

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1330.40 Spinal cord injuries program.

AUTHORITY: 29 U.S.C. 709, 3343.

SOURCE: 81 FR 29159, May 11, 2016, unless otherwise noted.

## Subpart A—Disability, Independent Living, and Rehabilitation Research Projects and Centers Program

### § 1330.1 General.

(a) The Disability, Independent Living, and Rehabilitation Research Projects and Centers Program provides grants to establish and support:

(1) The following Disability, Independent Living, and Rehabilitation Research and Related Projects:

(i) Disability, Independent Living, and Rehabilitation Research Projects;

(ii) Field-Initiated Projects;

(iii) Advanced Rehabilitation Research Training Projects; and

(2) The following Disability, Independent Living, and Rehabilitation Research Centers:

(i) Rehabilitation Research and Training Centers;

(ii) Rehabilitation Engineering Research Centers.

(b) The purpose of the Disability, Independent Living, and Rehabilitation Research Projects and Centers Program is to plan and conduct research, development, demonstration projects, training, dissemination, and related activities, including international activities, to:

(1) Develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, education, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and

(2) Improve the effectiveness of services authorized under the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*

#### § 1330.2 Eligibility for assistance and other regulations and guidance.

(a) Unless otherwise stated in this part or in a determination by the NIDILRR Director, the following entities are eligible for an award under this program:

- (1) States.
- (2) Public or private agencies, including for-profit agencies.
- (3) Public or private organizations, including for-profit organizations.
- (4) Institutions of higher education.
- (5) Indian tribes and tribal organizations.

(b) Other sources of regulation which may apply to awards under this part include but are not limited to:

- (1) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board.
- (2) 45 CFR part 46—Protection of Human Subjects.
- (3) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards.
- (4) 2 CFR parts 376 and 382—Nonprocurement Debarment and Suspension and Requirements for Drug-Free Workplace (Financial Assistance).
- (5) 45 CFR part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.
- (6) 45 CFR part 81—Practice and Procedure for Hearings under part 80 of this title.
- (7) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance.
- (8) 45 CFR part 86—Nondiscrimination on the Basis of Sex in Education

Programs or Activities Receiving Federal Financial Assistance.

(9) 45 CFR part 87—Equal Treatment of Faith-Based Organizations.

(10) 45 CFR part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

(11) 45 CFR part 93—New Restrictions on Lobbying.

#### § 1330.3 Definitions.

As used in this part:

(a) *Secretary* means the Secretary of the Department of Health and Human Services.

(b) *Administrator* means the Administrator of the Administration for Community Living.

(c) *Director* means the Director of the National Institute on Disability, Independent Living, and Rehabilitation Research.

(d) *Research* is classified on a continuum from basic to applied:

(1) *Basic research* is research in which the investigator is concerned primarily with gaining new knowledge or understanding of a subject without reference to any immediate application or utility.

(2) *Applied research* is research in which the investigator is primarily interested in developing new knowledge, information, or understanding which can be applied to a predetermined rehabilitation problem or need.

(e) *Development activities* use knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes.

(f) *Products* encompass models, methods, tools, applications, and devices, but are not necessarily limited to these types.

#### § 1330.4 Stages of research.

For any Disability, Independent Living, and Rehabilitation Research Projects and Centers Program competition, the Department may require in the application materials for the competition that the applicant identify the stage(s) of research in which it will focus the work of its proposed project

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or center. The four stages of research are:

(a) *Exploration and discovery* mean the stage of research that generates hypotheses or theories through new and refined analyses of data, producing observational findings and creating other sources of research-based information. This research stage may include identifying or describing the barriers to and facilitators of improved outcomes of individuals with disabilities, as well as identifying or describing existing practices, programs, or policies that are associated with important aspects of the lives of individuals with disabilities. Results achieved under this stage of research may inform the development of interventions or lead to evaluations of interventions or policies. The results of the exploration and discovery stage of research may also be used to inform decisions or priorities;

(b) *Intervention development* means the stage of research that focuses on generating and testing interventions that have the potential to improve outcomes for individuals with disabilities. Intervention development involves determining the active components of possible interventions, developing measures that would be required to illustrate outcomes, specifying target populations, conducting field tests, and assessing the feasibility of conducting a well-designed intervention study. Results from this stage of research may be used to inform the design of a study to test the efficacy of an intervention;

(c) *Intervention efficacy* means the stage of research during which a project evaluates and tests whether an intervention is feasible, practical, and has the potential to yield positive outcomes for individuals with disabilities. Efficacy research may assess the strength of the relationships between an intervention and outcomes, and may identify factors or individual characteristics that affect the relationship between the intervention and outcomes. Efficacy research can inform decisions about whether there is sufficient evidence to support “scaling-up” an intervention to other sites and contexts. This stage of research may include assessing the training needed for wide-scale implementation of the

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intervention, and approaches to evaluation of the intervention in real-world applications; and

(d) *Scale-up evaluation* means the stage of research during which a project analyzes whether an intervention is effective in producing improved outcomes for individuals with disabilities when implemented in a real-world setting. During this stage of research, a project tests the outcomes of an evidence-based intervention in different settings. The project examines the challenges to successful replication of the intervention, and the circumstances and activities that contribute to successful adoption of the intervention in real-world settings. This stage of research may also include well-designed studies of an intervention that has been widely adopted in practice, but lacks a sufficient evidence base to demonstrate its effectiveness.

### § 1330.5 Stages of development.

For any Disability, Independent Living, and Rehabilitation Research Projects and Centers Program competition, the Department may require in the notice inviting applications for the competition that the applicant identify the stage(s) of development in which it will focus the work of its proposed project or center. The three stages of development are:

(a) *Proof of concept* means the stage of development where key technical challenges are resolved. Stage activities may include recruiting study participants, verifying product requirements; implementing and testing (typically in controlled contexts) key concepts, components, or systems, and resolving technical challenges. A technology transfer plan is typically developed and transfer partner(s) identified; and plan implementation may have started. Stage results establish that a product concept is feasible.

(b) *Proof of product* means the stage of development where a fully-integrated and working prototype, meeting critical technical requirements is created. Stage activities may include recruiting study participants, implementing and iteratively refining the prototype, testing the prototype in natural or less-controlled contexts, and

verifying that all technical requirements are met. A technology transfer plan is typically ongoing in collaboration with the transfer partner(s). Stage results establish that a product embodiment is realizable.

(c) *Proof of adoption* means the stage of development where a product is substantially adopted by its target population and used for its intended purpose. Stage activities typically include completing product refinements; and continued implementation of the technology transfer plan in collaboration with the transfer partner(s). Other activities include measuring users' awareness of the product, opinion of the product, decisions to adopt, use, and retain products; and identifying barriers and facilitators impacting product adoption. Stage results establish that a product is beneficial.

### **Subpart B—Requirements for Awardees**

#### **§ 1330.10 General requirements for awardees.**

(a) In carrying out a research activity under this program, an awardee must:

(1) Identify one or more hypotheses or research questions;

(2) Based on the hypotheses or research question identified, perform an intensive systematic study in accordance with its approved application directed toward:

(i) New or full scientific knowledge; or

(ii) Understanding of the subject or problem being studied.

(b) In carrying out a development activity under this program, an awardee must create, using knowledge and understanding gained from research, models, methods, tools, systems, materials, devices, applications, or standards that are adopted by and beneficial to the target population. Development activities span one or more stages of development.

(c) In carrying out a training activity under this program, an awardee shall conduct a planned and systematic sequence of supervised instruction that is designed to impart predetermined skills and knowledge.

(d) In carrying out a demonstration activity under this program, an awardee shall apply results derived from previous research, testing, or practice to determine the effectiveness of a new strategy or approach.

(e) In carrying out a utilization activity under this program, a grantee must relate research findings to practical applications in planning, policy making, program administration, and delivery of services to individuals with disabilities.

(f) In carrying out a dissemination activity under this program, a grantee must systematically distribute information or knowledge through a variety of ways to potential users or beneficiaries.

(g) In carrying out a technical assistance activity under this program, a grantee must provide expertise or information for use in problem-solving.

#### **§ 1330.11 Individuals with disabilities from minority backgrounds.**

(a) If the director so indicates in the application materials or elsewhere, an applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

(b) The approaches an applicant may take to meet this requirement may include one or more of the following:

(1) Proposing project objectives addressing the needs of individuals with disabilities from minority backgrounds.

(2) Demonstrating that the project will address a problem that is of particular significance to individuals with disabilities from minority backgrounds.

(3) Demonstrating that individuals from minority backgrounds will be included in study samples in sufficient numbers to generate information pertinent to individuals with disabilities from minority backgrounds.

(4) Drawing study samples and program participant rosters from populations or areas that include individuals from minority backgrounds.

(5) Providing outreach to individuals with disabilities from minority backgrounds to ensure that they are aware

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of rehabilitation services, clinical care, or training offered by the project.

(6) Disseminating materials to or otherwise increasing the access to disability information among minority populations.

### **Subpart C—Selection of Awardees**

#### **§ 1330.20 Peer review purpose.**

The purpose of peer review is to insure that:

(a) Those activities supported by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) are of the highest scientific, administrative, and technical quality; and

(b) Activity results may be widely applied to appropriate target populations and rehabilitation problems.

#### **§ 1330.21 Peer review process.**

(a) The Director refers each application for an award governed by these regulations in this part to a peer review panel established by the Director.

(b) Peer review panels review applications on the basis of the applicable selection criteria in § 1330.23.

#### **§ 1330.22 Composition of peer review panel.**

(a) The Director selects as members of a peer review panel scientists and other experts in disability, independent living, rehabilitation or related fields who are qualified, on the basis of training, knowledge, or experience, to give expert advice on the merit of the applications under review.

(b) The scientific peer review process shall be conducted by individuals who are not Department of Health and Human Services employees.

(c) In selecting members to serve on a peer review panel, the Director may take into account the following factors:

(1) The level of formal scientific or technical education completed by potential panel members.

(2) The extent to which potential panel members have engaged in scientific, technical, or administrative activities appropriate to the category of applications that the panel will consider; the roles of potential panel mem-

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bers in those activities; and the quality of those activities.

(3) The recognition received by potential panel members as reflected by awards and other honors from scientific and professional agencies and organizations outside the Department.

(4) Whether the panel includes knowledgeable individuals with disabilities, or parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities.

(5) Whether the panel includes individuals from diverse populations.

#### **§ 1330.23 Evaluation process.**

(a) The Director selects one or more of the selection criteria to evaluate an application:

(1) The Director establishes selection criteria based on statutory provisions that apply to the Program which may include, but are not limited to:

(i) Specific statutory selection criteria;

(ii) Allowable activities;

(iii) Application content requirements; or

(iv) Other pre-award and post-award conditions; or

(2) The Director may use a combination of selection criteria established under paragraph (a)(1) of this section and selection criteria from § 1330.24 to evaluate a competition.

(3) For Field-Initiated Projects, the Director does not consider § 1330.24(b) (Responsiveness to the Absolute or Competitive Priority) in evaluating an application.

(b) In considering selection criteria in § 1330.24, the Director selects one or more of the factors listed in the criteria, but always considers the factors in § 1330.24(n) regarding people with disabilities, and members of groups that have traditionally been underrepresented based on race, ethnicity, national origin, sex (including sexual orientation and gender identity), or age.

(c) The maximum possible score for an application is 100 points.

(d) In the application package or a notice published in the FEDERAL REGISTER, the Director informs applicants of:

(1) The selection criteria chosen and the maximum possible score for each of the selection criteria; and

(2) The factors selected for considering the selection criteria and if points are assigned to each factor, the maximum possible score for each factor under each criterion. If no points are assigned to each factor, the Director evaluates each factor equally.

(e) For all instances in which the Director chooses to allow field-initiated research and development, the selection criteria in §1330.25 will apply, including the requirement that the applicant must achieve a score of 85 percent or more of maximum possible points.

[81 FR 29159, May 11, 2016, as amended at 87 FR 50003, Aug. 15, 2022]

#### § 1330.24 Selection criteria.

In addition to criteria established under §1330.23(a)(1), the Director may select one or more of the following criteria in evaluating an application:

(a) *Importance of the problem.* In determining the importance of the problem, the Director considers one or more of the following factors:

(1) The extent to which the applicant clearly describes the need and target population.

(2) The extent to which the proposed activities further the purposes of the Rehabilitation Act.

(3) The extent to which the proposed activities address a significant need of individuals with disabilities.

(4) The extent to which the proposed activities address a significant need of rehabilitation service providers.

(5) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities.

(6) The extent to which the applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to a trainee population in which there is a need for more qualified researchers.

(7) The extent to which the proposed project will have beneficial impact on the target population.

(b) *Responsiveness to an absolute or competitive priority.* In determining the application's responsiveness to the application package or the absolute or competitive priority published in the FEDERAL REGISTER, the Director con-

siders one or more of the following factors:

(1) The extent to which the applicant addresses all requirements of the absolute or competitive priority.

(2) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority.

(c) *Design of research activities.* In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art.

(2) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which:

(i) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art;

(ii) Each research hypothesis or research question, as appropriate, is theoretically sound and based on current knowledge;

(iii) Each sample is drawn from an appropriate, specified population and is of sufficient size to address the proposed hypotheses or research questions, as appropriate, and to support the proposed data analysis methods;

(iv) The source or sources of the data and the data collection methods are appropriate to address the proposed hypotheses or research questions and to support the proposed data analysis methods;

(v) The data analysis methods are appropriate;

(vi) Implementation of the proposed research design is feasible, given the current state of the science and the time and resources available;

(vii) Input of individuals with disabilities and other key stakeholders is used to shape the proposed research activities; and

(viii) The applicant identifies and justifies the stage of research being proposed and the research methods associated with the stage.



(3) The extent to which anticipated research results are likely to satisfy the original hypotheses or answer the original research questions, as appropriate, and could be used for planning additional research, including generation of new hypotheses or research questions, where applicable.

(4) The extent to which the stage of research is identified and justified in the description of the research project(s) being proposed.

(5) The extent to which research activities use appropriate engineering knowledge and techniques to collect, analyze, or synthesize research data.

(d) *Design of development activities.* In determining the extent to which the project design is likely to be effective in accomplishing project objectives, the Director considers one or more of the following factors:

(1) The extent to which the proposed project identifies a significant need and a well-defined target population for the new or improved product;

(2) The extent to which the proposed project methodology is meritorious, including consideration of the extent to which:

(i) The proposed project shows awareness of the state-of-the-art for current, related products;

(ii) The proposed project employs appropriate concepts, components, or systems to develop the new or improved product;

(iii) The proposed project employs appropriate samples in tests, trials, and other development activities;

(iv) The proposed project conducts development activities in appropriate environment(s);

(v) Input from individuals with disabilities and other key stakeholders is obtained to establish and guide proposed development activities; and

(vi) The applicant identifies and justifies the stage(s) of development for the proposed project; and activities associated with each stage.

(3) The new product will be developed and tested in an appropriate environment.

(4) The extent to which development activities apply appropriate engineering knowledge and techniques to achieve development objectives.

(e) *Design of demonstration activities.* In determining the extent to which the design of demonstration activities is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the proposed demonstration activities build on previous research, testing, or practices.

(2) The extent to which the proposed demonstration activities include the use of proper methodological tools and theoretically sound procedures to determine the effectiveness of the strategy or approach.

(3) The extent to which the proposed demonstration activities include innovative and effective strategies or approaches.

(4) The extent to which the proposed demonstration activities are likely to contribute to current knowledge and practice and be a substantial addition to the state-of-the-art.

(5) The extent to which the proposed demonstration activities can be applied and replicated in other settings.

(f) *Design of training activities.* In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety.

(2) The extent to which the proposed training methods are of sufficient quality, intensity, and duration.

(3) The extent to which the proposed training content:

(i) Covers all of the relevant aspects of the subject matter; and

(ii) If relevant, is based on new knowledge derived from research activities of the proposed project.

(4) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials.

(5) The extent to which the proposed training materials and methods are accessible to individuals with disabilities.

(6) The extent to which the applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees, including those who are individuals with disabilities.

(7) The extent to which the applicant is able to carry out the training activities, either directly or through another entity.

(8) The extent to which the proposed didactic and classroom training programs emphasize scientific methodology and are likely to develop highly qualified researchers.

(9) The extent to which the quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to develop highly qualified researchers.

(10) The extent to which the type, extent, and quality of the proposed research experience, including the opportunity to participate in advanced-level research, are likely to develop highly qualified researchers.

(11) The extent to which the opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(g) *Design of dissemination activities.* In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the content of the information to be disseminated:

(i) Covers all of the relevant aspects of the subject matter; and

(ii) If appropriate, is based on new knowledge derived from research activities of the project.

(2) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format.

(3) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration.

(4) The extent to which the materials and information to be disseminated and the methods for dissemination are

appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter.

(5) The extent to which the information to be disseminated will be accessible to individuals with disabilities.

(h) *Design of utilization activities.* In determining the extent to which the design of utilization activities is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the potential new users of the information or technology have a practical use for the information and are likely to adopt the practices or use the information or technology, including new devices.

(2) The extent to which the utilization strategies are likely to be effective.

(3) The extent to which the information or technology is likely to be of use in other settings.

(i) *Design of technical assistance activities.* In determining the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration.

(2) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter.

(3) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information.

(4) The extent to which the technical assistance is accessible to individuals with disabilities.

(j) *Plan of operation.* In determining the quality of the plan of operation, the Director considers one or more of the following factors:

(1) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within

budget, including clearly defined responsibilities, and timelines for accomplishing project tasks.

(2) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective.

(k) *Collaboration*. In determining the quality of collaboration, the Director considers one or more of the following factors:

(1) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project.

(2) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant.

(3) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities.

(l) *Adequacy and reasonableness of the budget*. In determining the adequacy and the reasonableness of the proposed budget, the Director considers one or more of the following factors:

(1) The extent to which the costs are reasonable in relation to the proposed project activities.

(2) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities.

(3) The extent to which the applicant is of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner.

(m) *Plan of evaluation*. In determining the quality of the plan of evaluation, the Director considers one or more of the following factors:

(1) The extent to which the plan of evaluation provides for periodic assessment of progress toward:

(i) Implementing the plan of operation; and

(ii) Achieving the project's intended outcomes and expected impacts.

(2) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments.

(3) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that:

(i) Are clearly related to the intended outcomes of the project and expected impacts on the target population; and

(ii) Are objective, and quantifiable or qualitative, as appropriate.

(n) *Project staff*. In determining the quality of the applicant's project staff, the Director considers one or more of the following factors:

(1) The extent to which the applicant encourages applications for employment from people with disabilities, who may include but are not limited to people with disabilities who have the greatest support needs.

(2) The extent to which the applicant encourages applications for employment from people who are members of other groups that have traditionally been underrepresented in research professions based on race, ethnicity, national origin, sex (including sexual orientation and gender identity), or age.

(3) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities.

(4) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project.

(5) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas.

(6) The extent to which the project staff includes outstanding scientists in the field.

(7) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority.

(o) *Adequacy and accessibility of resources*. In determining the adequacy and accessibility of the applicant's resources to implement the proposed project, the Director considers one or more of the following factors:

(1) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate.

(2) The quality of an applicant's past performance in carrying out a grant.

(3) The extent to which the applicant has appropriate access to populations and organizations representing individuals with disabilities to support advanced disability, independent living and clinical rehabilitation research.

(4) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project.

(p) *Quality of the project design.* In determining the quality of the design of the proposed project, the Director considers one or more of the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The quality of the methodology to be employed in the proposed project.

(3) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(4) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(5) The extent to which the proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products.

(6) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(7) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(8) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

[81 FR 29159, May 11, 2016, as amended at 87 FR 50003, Aug. 15, 2022]

#### **§ 1330.25 Additional considerations for field-initiated priorities.**

(a) The Director reserves funds to support field-initiated applications funded under this part when those applications have been awarded points totaling 85 percent or more of the maximum possible points under the procedures described in § 1330.23.

(b) In making a final selection from applications received when NIDILRR uses field-initiated priorities, the Director may consider whether one of the following conditions is met and, if so, use this information to fund an application out of rank order:

(1) The proposed project represents a unique opportunity to advance rehabilitation and other knowledge to improve the lives of individual with disabilities.

(2) The proposed project complements or balances research activity already planned or funded by NIDILRR through its annual priorities or addresses the research in a new and promising way.

(c) If the Director funds an application out of rank order under paragraph (b) of this section, the public will be notified through a notice on the NIDILRR Web site or through other means deemed appropriate by the Director.

### **Subpart D—Disability, Independent Living, and Rehabilitation Research Fellowships**

#### **§ 1330.30 Fellows program.**

(a) The purpose of this program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to perform research on rehabilitation, independent living, and other experiences and outcomes of individuals with disabilities.

(b) The eligibility requirements for the Fellows program are as follows:

(1) Only individuals are eligible to be recipients of Fellowships.

(2) Any individual is eligible for assistance under this program who has training and experience that indicate a potential for engaging in scientific research related to rehabilitation and

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independent living for individuals with disabilities.

(3) This program provides two categories of Fellowships: Merit Fellowships and Distinguished Fellowships.

(i) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to disability and rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

(ii) The Director awards Merit Fellowships to individuals in earlier stages of their careers in research. To be eligible for a Merit Fellowship, an individual must have either advanced professional training or experience in independent study in an area which is directly pertinent to disability and rehabilitation.

(c) Fellowships will be awarded in the form of a grant to eligible individuals.

(d) In making a final selection of applicants to support under this program, the Director considers the extent to which applicants present a unique opportunity to effect a major advance in knowledge, address critical problems in innovative ways, present proposals which are consistent with the Institute's Long-Range Plan, build research capacity within the field, or complement and significantly increases the potential value of already planned research and related activities.

### Subpart E—Special Projects and Demonstrations for Spinal Cord Injuries

#### § 1330.40 Spinal cord injuries program.

(a) This program provides assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, independent living, and rehabilitation services to meet the wide range of needs of individuals with spinal cord injuries.

(b) The agencies and organizations eligible to apply under this program are described in § 1330.2.

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### PART 1331—STATE HEALTH INSURANCE ASSISTANCE PROGRAM

Sec.

- 1331.1 Basis, scope, and definition.
- 1331.2 Eligibility for grants.
- 1331.3 Availability of grants.
- 1331.4 Number and size of grants.
- 1331.5 Limitations.
- 1331.6 Reporting requirements.
- 1331.7 Administration.

AUTHORITY: 42 U.S.C. 1395b–4.

SOURCE: 81 FR 5918, Feb. 4, 2016, unless otherwise noted.

#### § 1331.1 Basis, scope, and definition.

(a) *Basis.* This part implements, in part, the provisions of section 4360 of Public Law 101–508 by establishing a minimum level of funding for grants made to States for the purpose of providing information, counseling, and assistance relating to obtaining adequate and appropriate health insurance coverage to individuals eligible to receive benefits under the Medicare program.

(b) *Scope of part.* This part sets forth the following:

(1) Conditions of eligibility for the grant.

(2) Minimum levels of funding for those States qualifying for the grants.

(3) Reporting requirements.

(c) *Definition.* For purposes of this subpart, the term “State” includes (except where otherwise indicated by the context) the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

#### § 1331.2 Eligibility for grants.

To be eligible for a grant under this subpart, the State must have an approved Medicare supplemental regulatory program under section 1882 of the Act and submit a timely application to ACL that meets the requirements of—

(a) Section 4360 of Public Law 101–508 (42 U.S.C. 1395b–4);

(b) This subpart; and

(c) The applicable solicitation for grant applications issued by ACL.

#### § 1331.3 Availability of grants.

ACL awards grants to States subject to availability of funds, and if applicable, subject to the satisfactory progress

in the State's project during the preceding grant period. The criteria by which progress is evaluated and the performance standards for determining whether satisfactory progress has been made are specified in the terms and conditions included in the notice of grant award sent to each State. ACL advises each State as to when to make application, what to include in the application, and provides information as to the timing of the grant award and the duration of the grant award. ACL also provides an estimate of the amount of funds that may be available to the State.

#### § 1331.4 Number and size of grants.

(a) *General.* For available grant funds, up to and including \$10,000,000, grants will be made to States according to the terms and formula in paragraphs (b) and (c) of this section. For any available grant funds in excess of \$10,000,000, distribution of grants will be at the discretion of ACL, and will be made according to criteria that ACL will communicate to the States via grant solicitation. ACL will provide information to each State as to what must be included in the application for grant funds. ACL awards the following type of grants:

- (1) New program grants.
- (2) Existing program enhancement grants.

(b) *Grant award.* Subject to the availability of funds, each eligible State that submits an acceptable application receives a grant that includes a fixed amount (minimum funding level) and a variable amount.

(1) A fixed portion is awarded to States in the following amounts:

- (i) Each of the 50 States, \$75,000.
- (ii) The District of Columbia, \$75,000.
- (iii) Puerto Rico, \$75,000.
- (iv) American Samoa, \$25,000.
- (v) Guam, \$25,000.
- (vi) The Virgin Islands, \$25,000.

(2) A variable portion which is based on the number and location of Medicare beneficiaries residing in the State is awarded to each State. The variable amount a particular State receives is determined as set forth in paragraph (c) of this section.

(c) *Calculation of variable portion of the grant.* (1) ACL bases the variable portion of the grant on—

(i) The amount of available funds, and

(ii) A comparison of each State with the average of all of the States (except the State being compared) with respect to three factors that relate to the size of the State's Medicare population and where that population resides.

(2) The factors ACL uses to compare States' Medicare populations comprise separate components of the variable amount. These factors, and the extent to which they each contribute to the variable amount, are as follows:

(i) Approximately 75 percent of the variable amount is based on the number of Medicare beneficiaries living in the State as a percentage of all Medicare beneficiaries nationwide.

(ii) Approximately 10 percent of the variable amount is based on the percentage of the State's total population who are Medicare beneficiaries.

(iii) Approximately 15 percent of the variable amount is based on the percentage of the State's Medicare beneficiaries that reside in rural areas ("rural areas" are defined as all areas not included within a metropolitan Statistical Area).

(3) Based on the foregoing four factors (that is, the amount of available funds and the three comparative factors), ACL determines a variable rate for each participating State for each grant period.

(d) *Submission of revised budget.* A State that receives an amount of grant funds under this subpart that differs from the amount requested in the budget submitted with its application must submit a revised budget to ACL, along with its acceptance of the grant award, which reflects the amount awarded.

#### § 1331.5 Limitations.

(a) *Use of grants.* Except as specified in paragraph (b) of this section, and in the terms and conditions in the notice of grant award, a State that receives a grant under this subpart may use the grant for any reasonable expenses for planning, developing, implementing and/or operating the program for which the grant is made as described in the

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solicitation for application for the grant.

(b) *Maintenance of effort.* A State that receives a grant to supplement an existing program (that is, an existing program enhancement grant)—

(1) Must not use the grant to supplant funds for activities that were conducted immediately preceding the date of the initial award of a grant made under this subpart and funded through other sources (including in-kind contributions).

(2) Must maintain the activities of the program at least at the level that those activities were conducted immediately preceding the initial award of a grant made under this subpart.

#### § 1331.6 Reporting requirements.

A State that receives a grant under this subpart must submit at least one annual report to ACL and any additional reports as ACL may prescribe in the notice of grant award. ACL advises the State of the requirements concerning the frequency, timing, and contents of reports in the notice of grant award that it sends to the State.

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#### § 1331.7 Administration.

(a) *General.* Administration of grants will be in accordance with the provisions of this subpart, 45 CFR part 75 (“Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”), the terms of the solicitation, and the terms of the notice of grant award. Except for the minimum funding levels established by § 1331.4(b)(1), in the event of conflict between a provision of the notice of grant award, any provision of the solicitation, or of any regulation enumerated in 45 CFR part 75, the terms of the notice of grant award control.

(b) *Notice.* ACL provides notice to each applicant regarding ACL’s decision on an application for grant funding under § 1331.4.

(c) *Appeal.* Any applicant for a grant under this subpart has the right to appeal ACL’s determination regarding its application. Appeal procedures are governed by the regulations at 45 CFR part 16 (Procedures of the Departmental Grant Appeals Board).

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

### PART 1336—NATIVE AMERICAN PROGRAMS

#### Subpart A—Definitions

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1336.10 Definitions.

#### Subpart B—Purpose of the Native American Programs

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1336.77 Recovery of funds.

AUTHORITY: 42 U.S.C. 2991 *et seq.*

SOURCE: 48 FR 55821, Dec. 15, 1983, unless otherwise noted.

#### Subpart A—Definitions

##### § 1336.10 Definitions.

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

*Act* means the Native American Programs Act of 1974, as amended (42 U.S.C. 2991 *et seq.*).

*Alaskan Native* means a person who is an Alaskan Indian, Eskimo, or Aleut, or any combination thereof. The term also includes any person who is regarded as an Alaskan Native by the Alaskan Native Village or group of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaskan Native by an Alaskan Native Village or group. The term includes any Alaskan Native as so defined, either or both of whose adoptive parents are not Alaskan Natives.

*American Indian or Indian* means any individual who is a member or a descendant of a member of a North American tribe, band, Pueblo or other organized group of native people who are indigenous to the Continental United States, or who otherwise have a special relationship with the United States or a State through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian tribe, group, band, or community of which he or she claims to be a member.

*ANA* means the Administration for Native Americans within the Office of Human Development Services.

*Applicant* means an organization which has applied for financial assistance from ANA.



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*Budget period* means the interval of time into which a project period is divided for budgetary and funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period.

*Economic and social self-sufficiency* means the ability of Native Americans to define and achieve their own economic and social goals.

*Indian tribe* means a distinct political community of Indians which exercises powers of self-government.

*Native American* means American Indian, Indian, Native Hawaiian, and Alaskan Native, as defined in the Act, or in this section.

*Project period* means, for discretionary grants and cooperative agreements, the total time for which the recipient's project or program is approved for support, including any extension, subject to the availability of funds, satisfactory progress, and a determination by HHS that continued funding is in the best interest of the Government.

*Recipient* means an organization which has applied for financial assistance, and to which financial assistance is awarded under this Act. The term includes grantees and recipients of cooperative agreements.

### **Subpart B—Purpose of the Native American Programs**

#### **§ 1336.20 Program purpose.**

The purpose of the Native American Programs authorized by the Native American Programs Act of 1974 is to promote the goal of economic and social self-sufficiency for Native Americans.

### **Subpart C—Native American Projects**

#### **§ 1336.30 Eligibility under sections 804 and 805 of the Native American Programs Act of 1974.**

Financial assistance under sections 804 and 805 may be made to public or

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private agencies including “for-profit” organizations.

[48 FR 55821, Dec. 15, 1983, as amended at 53 FR 23968, June 24, 1988; 53 FR 28223, July 27, 1988; 54 FR 3452, Jan. 24, 1989; 61 FR 42820, Aug. 19, 1996]

#### **§ 1336.31 Project approval procedures.**

(a) Each applicant for financial assistance under section 803 of the Act must submit a work plan that falls within the statutory requirements of the Act and meets the criteria of program announcements published by ANA in the FEDERAL REGISTER. If the proposed project extends beyond one year, a work plan must be submitted for the period of time specified by the Commissioner in the Program Announcement. ANA will determine whether to approve all, part, or none of the requested work plan. Proposed changes to the approved work plan must receive the written approval of ANA prior to implementation by the recipient.

(b) ANA will negotiate the approved project goals, objectives, work plan, and the funding level for each budget period with each recipient.

(c) The evaluation for the purpose of making an approval decision on each proposed work plan will take into account the proposal's conformance with ANA program purposes and the recipient's past performance and accomplishments.

(d) Financial assistance awarded under section 803 may be renewed by ANA to grantees based on acceptable work plans and past performance.

(Approved by the Office of Management and Budget under control number 0980–0016)

#### **§ 1336.32 Grants.**

Generally, financial assistance will be made available for a one-year budget period and subsequent non-competing continuation awards with the same project period will also be for one year. A recipient must submit a separate application to have financial assistance continued for each subsequent year, with the same project period, but the continuation application need only contain budget and a summary progress report.

**§ 1336.33 Eligible applicants and proposed activities which are ineligible.**

(a) Eligibility for the listed programs is restricted to the following specified categories of organizations. In addition, applications from tribal components which are tribally-authorized divisions of a larger tribe must be approved by the governing body of the Tribe. If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served.

(1) Social and Economic Development Strategies (SEDS) and Preservation and Enhancement of Native American Languages:

(i) Federally recognized Indian Tribes;

(ii) Consortia of Indian Tribes;

(iii) Incorporated non-Federally recognized Tribes;

(iv) Incorporated nonprofit multi-purpose community-based Indian organizations;

(v) Urban Indian Centers;

(vi) National and regional incorporated nonprofit Native American organizations with Native American community-specific objectives;

(vii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

(viii) Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

(ix) Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;

(x) Nonprofit Native organizations in Alaska with village specific projects;

(xi) Public and nonprofit private agencies serving Native Hawaiians;

(xii) Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States);

(xiii) Tribally Controlled Community Colleges Tribally Controlled Post-Secondary Vocational Institutions, and

colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders; and

(xiv) Nonprofit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional councils) as recognized by the Bureau of Indian Affairs.

(Statutory authority: Sections 803(a) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991 b(a) and 42 U.S.C. 2991b-3)

(2) Alaska-Specific Social and Economic Development Strategies (SEDS) Projects:

(i) Federally recognized Indian Tribes in Alaska;

(ii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

(iii) Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

(iv) Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and

(v) Nonprofit Native organizations in Alaska with village specific projects.

(3) Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities:

(i) Federally recognized Indian Tribes;

(ii) Incorporated non-Federally and State recognized Tribes;

(iii) Nonprofit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act (IRA) or traditional councils) as recognized by the Bureau of Indian Affairs.

(iv) Nonprofit Alaska Native Regional Associations and/or Corporations with village specific projects; and

(v) Other tribal or village organizations or consortia of Indian Tribes. (Statutory authority: § 8094A of the Department of Defense Appropriations Act, 1994 (Public Law 103-139), § 8094A of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991h(b)).

(4) Improvement of the capability of tribal governing bodies to regulate environmental quality:

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(i) Federally recognized Indian Tribes;

(ii) Incorporated non-Federally and State recognized Indian tribes;

(iii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or nonprofit village consortia;

(iv) Nonprofit Alaska Native Regional Corporations/Associations with village-specific projects;

(v) Other tribal or village organizations or consortia of Indian tribes; and

(vi) Tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs. (Statutory authority: Sections 803(d) of the Native Americans Programs Act of 1974, as amended 42 U.S.C. 2991b(d).)

(b) The following is a nonexclusive list of activities that are ineligible for funding under programs authorized by the Native American Programs Act of 1974:

(1) Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable;

(2) Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS long-range development plan;

(3) The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs;

(4) Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions; however, for Competitive Area 2, Alaska-Specific SEDS Projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place;

(5) The conduct of activities which are not responsive to one or more of the three interrelated ANA goals (Governance Development, Economic Development, and Social Development);

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(6) Proposals from consortia of tribes that are not specific with regard to support from, and roles of member tribes. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes which duplicates activities for which member tribes also receive funding from ANA; and

(7) The purchase of real estate. (Statutory authority: Sections 803B of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b-2)

[61 FR 42820, Aug. 19, 1996]

#### § 1336.34 Notice of ineligibility.

(a) Upon a finding by the Commissioner that an organization which has applied for funding is ineligible or that the activities proposed by an organization are ineligible, the Commissioner shall inform the applicant by certified letter of the decision.

(b) The letter must include the following:

(1) The legal and factual grounds for the Commissioner's finding concerning eligibility;

(2) A copy of the regulations in this part; and

(3) The following statement: This is the final decision of the Commissioner, Administration for Native Americans. It shall be the final decision of the Department unless, within 30 days after receiving this decision as provided in §810(b) of the Native Americans Programs Act of 1974, as amended, and 45 CFR part 1336, you deliver or mail (you should use registered or certified mail to establish the date) a written notice of appeal to the HHS Departmental Appeals Board, 200 Independence Avenue, S.W., Washington, D.C. 20201. You shall attach to the notice a copy of this decision and note that you intend an appeal. The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant's position on such issue(s) along with pertinent facts and reasons in support of the position. We are enclosing a copy of 45

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CFR part 1336 which governs the conduct of appeals under § 810(b). For additional information on the appeals process see 45 CFR 1336.35. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

[61 FR 42821, Aug. 19, 1996]

### § 1336.35 Appeal of ineligibility.

The following steps apply when seeking an appeal on a finding of ineligibility for funding:

(a) An applicant, which has had its application rejected either because it has been found ineligible or because the activities it proposes are ineligible for funding by the Commissioner of ANA, may appeal the Commissioner's ruling to the HHS Departmental Appeals Board, in writing, within 30 days following receipt of ineligibility notification.

(b) The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant's position on such issue(s) along with pertinent facts and reasons in support of the position.

(c) Upon receipt of appeal for reconsideration of a rejected application or activities proposed by an applicant, the Departmental Appeals Board will notify the applicant by certified mail that the appeal has been received.

(d) The applicant's request for reconsideration will be reviewed by the Departmental Appeals Board in accordance with 45 CFR part 16, except as otherwise provided in this part.

(e) The Commissioner shall have 45 days to respond to the applicant's submission under paragraph (a) of this section.

(f) The applicant shall have 20 days to respond to the Commissioner's submission and the parties may be requested to submit additional information within a specified time period before closing the record in the appeal.

(g) The Departmental Appeals Board will review the record in the appeal and provide a final written decision within 30 days following the closing of the record, unless the Board determines for good reason that a decision cannot be issued within this time period and so notifies the parties.

(h) If the Departmental Appeals Board determines that the applicant is eligible or that the activities proposed by the applicant are eligible for funding, such eligibility shall not be effective until the next cycle of grant proposals are considered by the Administration for Native Americans. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

[61 FR 42822, Aug. 19, 1996]

### Subpart D—Evaluation

#### § 1336.40 General.

Progress reports and continuation applications must contain sufficient information for ANA to determine the extent to which the recipient meets ANA project evaluation standards. Sufficient information means information adequate to enable ANA to compare the recipient's accomplishments with the goals and activities of the approved work plan and with ANA project evaluation criteria.

(Approved by the Office of Management and Budget under control numbers 0980-0155 and 0980-0144)

### Subpart E—Financial Assistance Provisions

#### § 1336.50 Financial and administrative requirements.

(a) *General.* The following HHS regulations apply to all grants awarded under this part:

45 CFR Part 16 Department grant appeals process.

45 CFR Part 46 Protection of human subjects.

45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards

45 CFR Part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

45 CFR Part 81 Practice and procedure for hearing under part 80.

45 CFR Part 84 Nondiscrimination on the basis of handicap in federally assisted programs.

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45 CFR Part 86 Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 91 Nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance from HHS.

(b) *Cost sharing or matching*—(1) *Policy*. Recipients of financial assistance under sections 803, 804, and 805 of the Act are required to provide a matching share of 20 percent of the approved cost of the assisted project.

This requirement may be waived in accordance with the criteria in § 1336.50(b)(3). The matching share requirement may be met using either cash or in-kind contributions.

(2) *Application*. If an applicant or recipient wishes to request a waiver of the requirement for a 20 percent non-Federal matching share, the following conditions must be met:

(i) If an applicant for an initial award or an applicant for a non-competing continuation award anticipates that it will be unable to meet the cost-sharing or matching requirement, the applicant may request a waiver of the 20 percent non-Federal matching share. It must include with its application for funding, the submission of a revised SF424A, a written justification that clearly explains why the applicant cannot provide the matching share including the amount of non-Federal share to be waived, and how it meets the criteria indicated in paragraph (b)(3) of this section. For an applicant for an initial award, or an applicant seeking a non-competing continuation award, a request for a waiver must be submitted at the time of the initial application or non-competing continuation (NCC) application.

(ii) If a recipient is unable to contribute part or all of the required non-Federal matching share during a budget period due to an emergency situation such as a natural disaster, man-made disaster, act of terrorism, public health emergency, or other qualifying event, the recipient may request a waiver of all or part of the requirement for a 20 percent non-Federal matching share specified under paragraph (b)(1) of this section. Any requests for an

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emergency waiver may be submitted at any time during a budget period as soon as the adverse effect is known to the recipient and must be submitted in accordance with the requirements specified in paragraph (b)(3) of this section.

(3) *Criteria*. Both of the following criteria must be met for an applicant or recipient to be eligible for a waiver of the non-Federal matching requirement:

(i) Applicant or recipient lacks the available resources to meet part or all of the non-Federal matching requirement. This must be documented by an institutional audit if available, or a full disclosure of applicant's or recipient's total assets and liabilities.

(ii) Applicants or recipients can document that reasonable efforts to obtain cash or in-kind contributions for the purposes of the project from third parties have been unsuccessful, including evidence and the results of such attempts. Evidence of such efforts can include letters from possible sources of funding or any relevant correspondence, indicating that the requested resources are not available for that project. The requests must be appropriate to the source in terms of project purpose, applicant eligibility, and reasonableness of the request.

(4) *Approval*. For a waiver to be approved, ANA must determine that it will not prevent the award of other grants at levels it believes are desirable for the purposes of the program. Waiver of all or part of the non-Federal share shall apply only to the budget period for which application was made.

(c) *Maintenance of effort*. (1) Applications for financial assistance under this Part must include either a statement of compliance with the maintenance of effort requirement contained in section 803(c) of the Act, or a request for a waiver, in accordance with criteria established in this paragraph.

(2) To be eligible for a waiver of the maintenance of effort requirement, the applicant must demonstrate to ANA that the organization whose funds previously supported the project discontinued its support:

(i) As a result of funding limitations; and

(ii) Not as a result of an adverse evaluation of the project's purpose or the manner in which it was conducted; and

(iii) Not because it was anticipated that Federal funds would replace the original source of project funding.

(3) In addition, the applicant must demonstrate in the request for a waiver that the maintenance of effort requirement would result in insurmountable hardship for the recipient or would otherwise be inconsistent with the purposes of this part.

(d) *Delegation of project operations.* (1) Each subgrant awarded to a delegate agency must have specific prior approval by ANA. Such delegation must be formalized by written agreement.

(2) The agreement must specify the activities to be performed by the delegate agency, the time schedule, the policies and procedures to be followed, the dollar limitations, and the costs allowed. The applicant must submit a budget for each delegate agency as part of its application.

(e) *Unallowable costs.* ANA funds may not be used by recipients to purchase real property.

(f) *Office of the Chief Executive.* The costs of salaries and expenses of the Office of Chief Executive of a federally recognized Indian tribal government (as defined in § 75.2 of this title ) are allowable, provided that such costs exclude any portion of salaries and expenses of the Office of Chief Executive that are a cost of general government and provided they are related to a project assisted under this part.

[48 FR 55821, Dec. 15, 1983, as amended at 81 FR 3022, Jan. 20, 2016; 88 FR 12226, Feb. 27, 2023]

#### § 1336.51 Project period.

The Notice of Financial Assistance Awarded will specify the period for which support is intended, although the Department makes funding commitments only for one budget period at a time. Financial assistance under section 803 of the Act may be ongoing, subject to policy decisions and funding limitations.

#### § 1336.52 Appeals.

(a) *Right to appeal.* Recipients whose financial assistance has been suspended

or terminated, or whose non-competing continuation applications for refunding have been denied, may appeal such decisions using the procedures described in this section. Denial of an application for refunding means the refusal to fund a non-competing continuation application for a budget period within a previously approved project period.

(b) *Suspension, termination, and denial of funding.* Procedures for and definitions of suspension and termination of financial assistance are published in 45 CFR 75.371 through 75.380. Appeals from a denial of refunding will be treated the same procedurally as appeals to termination of financial assistance. The term “denial of refunding” does not include policy decisions to eliminate one or more activities of an approved project. A decision not to fund an application at the end of the recipients's project period is not a “denial of refunding” and is not subject to appeal.

(c) *Hearings.* (1) A recipient shall be given an initial written notice at least thirty (30) days prior to the suspension or termination of financial assistance except in emergency situations, which occur when Federal property is in imminent danger of dissipation, or when life, health, or safety is endangered. During this period of time, the recipient has the opportunity to show cause to ANA why such action should not be taken.

(2) A recipient who has received final written notice of termination or denial of refunding, or whose financial assistance will be suspended for more than 30 days, or who has other appealable disputes with ANA as provided by 45 CFR part 16 may request review by the Departmental Grant Appeals Board under the provisions of 45 CFR part 16.

(3) If a recipient appeals a suspension of more than 30 days which subsequently results in termination of financial assistance, both actions may be considered simultaneously by the Departmental Grant Appeals Board.

[48 FR 55821, Dec. 15, 1983, as amended at 81 FR 3022, Jan. 20, 2016]

**Subpart F—Native Hawaiian Revolving Loan Fund Demonstration Project**

AUTHORITY: 88 Stat. 2324, 101 Stat. 976 (42 U.S.C. 2991, *et seq.*).

SOURCE: 53 FR 23969, June 24, 1988; 53 FR 28223, July 27, 1988; 54 FR 3452, Jan. 24, 1989, unless otherwise noted.

**§ 1336.60 Purpose of this subpart.**

(a) The Administration for Native Americans will award a five-year demonstration grant to one agency of the State of Hawaii or to one community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians to develop procedures for and to manage a revolving loan fund for Native Hawaiian individuals and organizations in the State of Hawaii. (section 830A(a)(1))

(b) This subpart sets forth the requirements that the organization or agency selected to administer the revolving loan fund must meet and the terms and conditions applicable to loans made to borrowers from the loan fund.

**§ 1336.61 Purpose of the Revolving Loan Fund.**

The purpose of the Native Hawaiian Revolving Loan Fund is to provide funding not available from other sources on reasonable terms and conditions to:

(a) Promote economic activities which result in expanded opportunities for Native Hawaiians to increase their ownership of, employment in, or income from local economic enterprise;

(b) Assist Native Hawaiians to overcome specific gaps in local capital markets and to encourage greater private-sector participation in local economic development activities; and

(c) Increase capital formation and private-sector jobs for Native Hawaiians. (section 803A(a)(1)(A))

**§ 1336.62 Definitions.**

*Applicant* means an applicant for a loan from the Native Hawaiian Revolving Loan Fund. An applicant must be an individual Native Hawaiian or a Native Hawaiian organization. If the ap-

plicant is a group of people organized for economic development purposes, the applicant ownership must be 100% Native Hawaiian.

*Commissioner* means the Commissioner of the Administration for Native Americans.

*Cooperative association* means an association of individuals organized pursuant to State or Federal law, for the purpose of owning and operating an economic enterprise for profit, with profits distributed or allocated to patrons who are members of the organization.

*Corporation* means an entity organized pursuant to State or Federal law, as a corporation, with or without stock, for the purpose of owning and operating an economic enterprise.

*Default* means failure of a borrower to make scheduled payments on a loan, failure to obtain the lender's approval for disposal of assets mortgaged as security for a loan, or failure to comply with the covenants, obligations or other provisions of a loan agreement.

*Economic enterprise* means any Native Hawaiian-owned, commercial, industrial, agricultural or other business activity established or organized for the purpose of profit.

*Financing statement* means the document filed or recorded in country or State offices pursuant to the provisions of the Uniform Commercial Code as enacted by Hawaii notifying third parties that a lender has a lien on the chattel and/or crops of a borrower.

*Loan Administrator* means either the agency of the State of Hawaii or the community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians selected to administer the revolving loan fund.

*Mortgages* mean mortgages and deeds of trust evidencing an encumbrance of trust or restricted land, mortgages and security agreements executed as evidence of liens against crops and chattels, and mortgages and deeds of trust evidencing a lien on leasehold interests.

*Native Hawaiian* means an individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

*Partnership* means two or more persons engaged in the same business, sharing its profits and risks, and organized pursuant to state or Federal law.

*Profits* mean the net income earned after deducting operating expenses from operating revenues.

*Revolving Loan Fund (RLF)* means all funds that are now or are hereafter a part of the Native Hawaiian Revolving Loan Fund authorized by the Native American Programs Act of 1974, as amended in 1987, and supplemented by sums collected in repayment of loans made, including interest or other charges on loans and any funds appropriated pursuant to section 803A of the Native American Programs Act of 1974, as amended.

**§ 1336.63 General responsibilities of the Loan Administrator.**

(a) The Loan Administrator will make loans to Native Hawaiian organizations and to individual Native Hawaiians for the purpose or promoting economic development among Native Hawaiians in the State of Hawaii. (Section 803(a)(1)(A).)

(b) Prior to any loan being made from the RLF, the Loan Administrator will develop and obtain the Commissioner's approval of the following organizational and administrative materials necessary to implement the RLF:

- (1) Goals and strategies;
- (2) Staffing and organizational responsibilities;
- (3) Preapplication and loan screening processes;
- (4) Loan procedures including application forms;
- (5) Criteria and procedures for loan review, evaluation and decision-making;
- (6) Loan closing procedures; and
- (7) Procedures for loan servicing, monitoring and provision of technical assistance.

(c) The Loan Administrator will set up fiscal management procedures to satisfy the requirements of section 803A of the Native American Programs Act and this subpart.

(d) The Loan Administrator must set up a separate account for the RLF into which all payments, interest, charges, and other amounts collected from

loans made from the RLF will be deposited.

**§ 1336.64 Development of goals and strategies: Responsibilities of the Loan Administrator.**

(a) Prior to the approval of any direct loan under the RLF, the Loan Administrator will develop and obtain the Commissioner's approval for a clear and comprehensive set of goals and strategies for the RLF. The goals will specify the results the Loan Administrator expects to accomplish from the Revolving Loan Fund, define the RLF's role and responsibilities for potential users, and serve as the basis for the development of an organizational strategy and operating plan. The RLF strategies will provide the Loan Administrator with a sound understanding of the economic and market conditions within the Native Hawaiian community.

(b) The following factors shall be considered by the Loan Administrator in developing the RLF's goals:

- (1) Employment needs of the local population;
- (2) Characteristics of the local economic base;
- (3) Characteristics of the local capital base and the gaps in the local availability of business capital;
- (4) Local resources for economic development and their availability; and
- (5) Goals and strategies of other local organizations involved in economic development.

(c) The loan fund strategies developed by the Revolving Loan Fund must include the following:

(1) *Business Targeting Strategy*: to determine which types of businesses are to be targeted by the loan fund. The Loan Administrator will develop procedures to ensure that the loans made are directed to Native Hawaiians.

(2) *Financing Strategy*: to determine the types of financing the loan fund will provide;

(3) *Business Assistance Strategy*: to identify the possible or potential management problems of a borrower and develop a workable plan for providing borrowers with the needed management assistance;

(4) *Marketing Strategy*: to generate applications from potential borrowers



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and to generate the support and participation of local financial institutions;

(5) *Capital Base Management Strategy*: to develop and allocate the financial resources of the fund in the most effective possible way to meet the need or demand for financing; and

(6) *Accountability Strategy*: to develop policies and mechanisms to hold borrowers accountable for providing the public benefits promised (e.g. jobs) in return for financing; to ensure that, until expenditure, loan proceeds are held by the borrower in secured, liquid financial instruments; to hold borrowers accountable for upholding the commitments made prior to the loan; and to develop the methods used by the RLF to enforce these commitments.

### § 1336.65 Staffing and organization of the Revolving Loan Fund: Responsibilities of the Loan Administrator.

Prior to the approval of any direct loan under the RLF, the Loan Administrator must develop and obtain the Commissioner's approval for the RLF's organization table, including:

(a) The structure and composition of the Board of Directors of the RLF;

(b) The staffing requirements for the RLF, with position descriptions and necessary personnel qualifications;

(c) The appointments to the advisory loan review committee; and

(d) The roles and responsibilities of the Board, staff and loan review committee.

### § 1336.66 Procedures and criteria for administration of the Revolving Loan Fund: Responsibilities of the Loan Administrator.

Prior to the approval of any direct loan under the RLF, the Loan Administrator must develop and obtain the Commissioner's approval for the following procedures:

(a) *Preapplication and loan screening procedures*. Some factors to be considered in the loan screening process are:

- (1) General eligibility criteria;
- (2) Potential economic development criteria;
- (3) Indication of business viability;
- (4) The need for RLF financing; and
- (5) The ability to properly utilize financing.

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(b) *Application process*. The application package includes forms, instructions, and policies and procedures for the loan application. The package must also include instructions for the development of a business and marketing plan and a financing proposal from the applicant.

(c) *Loan evaluation criteria and procedures*. The loan evaluation must include the following topics:

(1) General and specific business trends;

(2) Potential market for the product or service;

(3) Marketing strategy;

(4) Management skills of the borrower;

(5) Operational plan of the borrower;

(6) Financial controls and accounting systems;

(7) Financial projections; and

(8) Structure of investment and financing package.

(d) *Loan decision-making process*. Decision-making on a loan application includes the recommendations of the staff, the review by the loan review committee and the decision by the Board.

(e) *Loan closing process*. The guidelines for the loan closing process include the finalization of loan terms; conditions and covenants; the exercise of reasonable and proper care to ensure adherence of the proposed loan and borrower's operations to legal requirements; and the assurance that any requirement for outside financing or other actions on which disbursement is contingent are met by the borrower.

(f) *Loan closing documents*. Documents used in the loan closing process include:

(1) *Term Sheet*: an outline of items to be included in the loan agreement. It should cover the following elements:

(i) Loan terms;

(ii) Security interest;

(iii) Conditions for closing the loan;

(iv) Covenants, including reporting requirements;

(v) Representations and warranties;

(vi) Defaults and remedies; and

(vii) Other provisions as necessary.

(2) *Closing Agenda*: an outline of the loan documents, the background documents, and the legal and other supporting documents required in connection with the loan.

(g) *Loan servicing and monitoring*. The servicing of a loan will include collections, monitoring, and maintenance of an up-to-date information system on loan status.

(1) *Collections*: To include a repayment schedule, invoice for each loan payment, late notices, provisions for late charges.

(2) *Loan Monitoring*: To include regular reporting requirements, periodic analysis of corporate and industry information, scheduled telephone contact and site visits, regular loan review committee oversight of loan status, and systematic internal reports and files.

**§ 1336.67 Security and collateral: Responsibilities of the Loan Administrator.**

The Loan Administrator may require any applicant for a loan from the RLF to provide such collateral as the Loan Administrator determines to be necessary to secure the loan. (Section 803A(b)(3))

(a) *As a Credit Factor*. The availability of collateral security normally is considered an important factor in making loans. The types and amount of collateral security required should be governed by the relative strengths and weaknesses of other credit factors. The taking of collateral as security should be considered with respect to each loan. Collateral security should be sufficient to provide the lender reasonable protection from loss in the case of adversity, but such security or lack thereof should not be used as the primary basis for deciding whether to extend credit.

(b) *Security Interests*. Security interests which may be taken by the lender include, but are not limited to, liens on real or personal property, including leasehold interests; assignments of income and accounts receivable; and liens on inventory or proceeds of inventory sales as well as marketable securities and cash collateral accounts.

(1) *Motor vehicles*. Liens ordinarily should be taken on licensed motor ve-

hicles, boats or aircraft purchased hereunder in order to be able to transfer title easily should the lender need to declare a default or repossess the property.

(2) *Insurance on property secured*. Hazard insurance up to the amount of the loan or the replacement value of the property secured (whichever is less) must be taken naming the lender as beneficiary. Such insurance includes fire and extended coverage, public liability, property damage, and other appropriate types of hazard insurance.

(3) *Appraisals*. Real property serving as collateral security must be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique (including standard reference manuals), and this valuation shall be described in the loan file.

(c) *Additional security*. The lender may require collateral security or additional security at any time during the term of the loan if after review and monitoring an assessment indicates the need for such security.

**§ 1336.68 Defaults, uncollectible loans, liquidations: Responsibilities of the Loan Administrator.**

(a) Prior to making loans from the RLF, the Loan Administrator will develop and obtain the Commissioner's approval for written procedures and definitions pertaining to defaults and collections of payments. (section 803A(b)(4))

(b) The Loan Administrator will provide a copy of such procedures and definitions to each applicant for a loan at the time the application is made. (section 803A(b)(4))

(c) The Loan Administrator will report to the Commissioner whenever a loan recipient is 90 days in arrears in the repayment of principal or interest or has failed to comply with the terms of the loan agreement. After making reasonable efforts to collect amounts payable, as specified in the written procedures, the Loan Administrator shall notify the Commissioner whenever a loan is uncollectible at reasonable cost. The notice shall include recommendations for future action to be taken by the Loan Administrator. (section 803A(c)(1) and (2))

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(d) Upon receiving such notices, the Commissioner will, as appropriate, instruct the Loan Administrator:

(1) To demand the immediate and full repayment of the loan;

(2) To continue with its collection activities;

(3) To cancel, adjust, compromise, or reduce the amount of such loan;

(4) To modify any term or condition of such loan, including any term or condition relating to the rate of interest or the time of payment of any installment of principal or interest, or portion thereof, that is payable under such loan;

(5) To discontinue any further advance of funds contemplated by the loan agreement;

(6) To take possession of any or all collateral given as security and in the case of individuals, corporations, partnerships or cooperative associations, the property purchased with the borrowed funds;

(7) To prosecute legal action against the borrower or against the officers of the borrowing organization;

(8) To prevent further disbursement of credit funds under the control of the borrower;

(9) To assign or sell at a public or private sale, or otherwise dispose of for cash or credit any evidence of debt, contract, claim, personal or real property or security assigned to or held by the Loan Administrator; or

(10) To liquidate or arrange for the operation of economic enterprises financed with the revolving loan until the indebtedness is paid or until the Loan Administrator has received acceptable assurance of its repayment and compliance with the terms of the loan agreement. (Section 803A(c)(2)(B))

**§ 1336.69 Reporting requirements: Responsibilities of the Loan Administrator.**

(a) The Loan Administrator will maintain the following internal information and records:

(1) For each borrower: The loan repayment schedule, log of telephone calls and site visits made with the date and the items discussed, correspondence with the borrower, progress reports and analyses.

(2) Monthly status of all outstanding loans, noting all overdue payments.

(3) Monthly status of the investments of the revolving loan fund monies not currently used for loans.

(4) Monthly records on the revenue generated by the loan fund from interest charges and late charges.

(5) Monthly administrative costs of the management of the loan fund and the sources of the monies to support the administrative costs.

(b) The Loan Administrator must submit a quarterly report to the Commissioner. The report may be in a format of the choice of the Loan Administrator as long as it includes at a minimum the following topics:

(1) For each borrower:

(i) Name of the borrower;

(ii) Economic development purpose(s) of the loan;

(iii) Financing of the loan by source;

(iv) Loan status (current/delinquent/paid);

(v) Principal and interest outstanding; and

(vi) Amount delinquent/defaulted, if any.

(2) Financial status of the RLF:

(i) Administrative cost expenditures;

(ii) Level of base capital;

(iii) Level of current capital;

(iv) Amount of ANA funding;

(v) Matching share;

(vi) Other direct funding of the RLF;

(vii) Program income, including interest on loans, earnings from investments, fee charges;

(viii) Loans made;

(ix) Losses on loans;

(x) Principal and interest outstanding;

(xi) Loans repaid;

(xii) Delinquent loans; and

(xiii) Collateral position of the RLF (the value of collateral as a percent of the outstanding balance on direct loans).

(c) The Loan Administrator must submit a semi-annual report to the Commissioner containing an analysis of the RLF progress to date.

(d) The Loan Administrator must submit to the Department a quarterly SF-269, Financial Status Report, or any equivalent report required by the Department.

**§ 1336.70 Technical assistance: Responsibilities of the Loan Administrator.**

The Loan Administrator will assure that competent management and technical assistance is available to the borrower consistent with the borrower's knowledge and experience and the nature and complexity of the economic enterprise being financed by the RLF. Consultants, RLF staff, and members of the loan review committee and Board may be used to assist borrowers. (section 803A(d)(1)(B))

**§ 1336.71 Administrative costs.**

Reasonable administrative costs of the RLF may be paid out of the loan fund. The grant award agreement between the Loan Administrator and ANA will set forth the allowable administrative costs of the loan fund during the five-year demonstration period. (sections 803A(a)(2) and 803A(d)(1)(A))

**§ 1336.72 Fiscal requirements.**

(a) Any portion of the revolving loan fund that is not required for expenditure must be invested in obligations of the United States or in obligations guaranteed or insured by the United States.

(b) Loans made under the RLF will be for a term that does not exceed five years.

(c) No loan may be made by the RLF after November 29, 1992, the close of the five-year period of the demonstration project. (section 803A(b)(6))

(d) All monies that are in the revolving loan fund on November 29, 1992 and that are not otherwise needed (as determined by the Commissioner) to carry out the provisions of this subpart must be deposited in the Treasury of the United States as miscellaneous receipts. The Commissioner will make this determination based on reports, audits and other appropriate documents as determined by the Commissioner. The Commissioner will take into consideration the costs necessary to collect loans outstanding beyond November 29, 1992, which costs may be paid from interest and loan charges collected by the Fund and in the Fund as of November 29, 1992. To use monies in the Fund for the costs of collection after November 29, 1992, the Commis-

sioner must give prior approval for such use.

(e) All monies deposited in the revolving loan fund after November 29, 1992 must be deposited in the Treasury of the United States as miscellaneous receipts.

(f) After November 29, 1992, the Loan Administrator will assume responsibility for the collection of all outstanding loans without additional financial assistance from ANA.

**§ 1336.73 Eligible borrowers.**

(a) Loans may be made to eligible applicants only if the Loan Administrator determines that the applicant is unable to obtain financing on reasonable terms and conditions from other sources such as banks, Small Business Administration, Production Credit Associations, Federal Land Banks; and

(b) Only if there is a reasonable prospect that the borrower will repay the loan. (section 803A(b)(1)(A) and (B))

(c) The Loan Administrator will determine an applicant's inability to obtain financing elsewhere on reasonable terms and conditions from documentation provided by the applicant.

(d) Those eligible to receive loans from the revolving loan fund are:

- (1) Native Hawaiian individuals.
- (2) Native Hawaiian non-profit organizations.
- (3) Native Hawaiian businesses.
- (4) Native Hawaiian cooperative associations.
- (5) Native Hawaiian partnerships.
- (6) Native Hawaiian associations.
- (7) Native Hawaiian corporations.

**§ 1336.74 Time limits and interest on loans.**

(a) Loans made under the RLF will be for a term that does not exceed 5 years.

(b) Loans will be made to approved borrowers at a rate of interest that is 2 percentage points below the average market yield on the most recent public offering of United States Treasury bills occurring before the date on which the loan is made. (section 803A(b)(2)(A) and (B))

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### § 1336.75 Allowable loan activities.

The following are among those activities for which a loan may be made from the RLF:

- (a) The establishment or expansion of businesses engaged in commercial, industrial or agricultural activities, such as farming, manufacturing, construction, sales, service;
- (b) The establishment or expansion of cooperatives engaged in the production and marketing of farm products, equipment, or supplies; the manufacture and sale of industrial, commercial or consumer products; or the provision of various commercial services;
- (c) Business or job retention;
- (d) Small business development;
- (e) Private sector job creation; and
- (f) Promotion of economic diversification, e.g. targeting firms in growth industries that have not previously been part of a community's economic base.

### § 1336.76 Unallowable loan activities.

The following activities are among those activities not eligible for support under the revolving loan fund:

- (a) Loans to the Loan Administrator or any representative or delegate of the Loan Administrator (section 803A(b)(5));
- (b) Loans which would create a potential conflict-of-interest for any officer or employee of the Loan Administrator; loan activities which directly benefit these individuals, or persons related to them by marriage, or law.
- (c) Eligible activities which are moved from the State of Hawaii;
- (d) Investing in high interest account, certificates of deposit or other investments;
- (e) Relending of the loan amount by the borrower;
- (f) The purchase of land or buildings;
- (g) The construction of buildings; and
- (h) Purchasing or financing equity in private businesses.

### § 1336.77 Recovery of funds.

- (a) Funds provided under this Subpart may be recovered by the Commissioner for both costs of administration of the Loan Fund and losses incurred by the Fund (hereafter jointly referred to as "costs") under the following circumstances:

(1) Whenever claimed costs are unallowable under the Native Americans Programs Act of 1974, as amended, or under 45 CFR part 75, subpart E, or both;

(2) For costs for loans made to ineligible persons or entities as defined in § 1336.73;

(3) For costs connected with the default of a borrower when the Loan Administrator has failed to perfect any security interest or when the Loan Administrator has failed to obtain collateral when provision of collateral is a condition of a loan.

(4) For costs connected with any default when the Loan Administrator has failed to perform a proper check of an applicant's credit;

(5) For costs whenever the Loan Administrator has failed to notify the Commission of loans at risk as required by § 1336.68 of these regulations, and as may be required by the procedures approved pursuant to that regulation;

(6) For costs whenever the Loan Administrator has failed to follow properly instructions provided to it by the Commissioner pursuant to § 1336.68(d) of these regulations;

(7) For costs which are incurred due to faulty record keeping, reporting, or both; or

(8) For costs which are in connection with any activity or action which violates any Federal or State law or regulation not specifically identified in these regulations.

(b) Whenever the Commissioner determines that funds have been improperly utilized or accounted for, he will issue a disallowance pursuant to the Act and to 45 CFR part 75 and will notify the Loan Administrator of its appeal rights, which appeal must be taken pursuant to 45 CFR part 16.

(c) If a disallowance is taken and not appealed, or if it is appealed and the disallowance is upheld by the Departmental Grant Appeals Board, the Loan Administrator must repay the disallowed amount to the Loan Fund within 30 days, such repayment to be made with non-Federal funds.

[53 FR 23969, June 24, 1988; 53 FR 28223, July 27, 1988; 54 FR 3452, Jan. 24, 1989, as amended at 81 FR 3022, Jan. 20, 2016]

## **SUBCHAPTER E [RESERVED]**

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

### PART 1351—RUNAWAY AND HOMELESS YOUTH PROGRAM

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AUTHORITY: 42 U.S.C. 5701.

SOURCE: 43 FR 55635, Nov. 28, 1978, unless otherwise noted.

#### Subpart A—Definition of Terms

##### § 1351.1 Significant Terms.

For the purposes of this part:

*Act* means the Runaway and Homeless Youth Act as amended, 42 U.S.C. 5701 *et seq.*

*Aftercare* means additional services provided beyond the period of residential stay that offer continuity and supportive follow-up to youth served by the program.

*Background check* means the review of an individual employee's or employment applicant's personal information, which shall include State or Tribal criminal history records (including fingerprint checks); Federal Bureau of Investigation criminal history records, including fingerprint checks, to the extent FSYB determines this to be practicable and specifies the requirement in a Funding Opportunity Announcement that is applicable to a grantee's award; a child abuse and neglect registry check, to the extent FSYB determines this to be practicable and specifies the requirement in a Funding Opportunity Announcement that is applicable to a grantee's award; and a sex

offender registry check for all employees, consultants, contractors, and volunteers who have regular, unsupervised contact with individual youth, and for all adult occupants of host homes. As appropriate to job functions, it shall also include verification of educational credentials and employment experience, and an examination of the individual's driving records (for those who will transport youth), and professional licensing records.

*Case management* means identifying and assessing the needs of the client, including consulting with the client, and, as appropriate, arranging, coordinating, monitoring, evaluating, and advocating for a package of services to meet the specific needs of the client.

*Client* means a runaway, homeless, or street youth, or a youth at risk of running away or becoming homeless, who is served by a program grantee.

*Congregate care* means a shelter type that combines living quarters and restroom facilities with centralized dining services, shared living spaces, and access to social and recreational activities, and which is not a family home.

*Contact* means the engagement between Street Outreach Program staff and youth who are at risk of homelessness or runaway status or homeless youth in need of services that could reasonably lead to shelter or significant harm reduction. Contact may occur on the streets, at a drop-in center, or at other locations known to be frequented by homeless, runaway, or street youth.

*Core competencies of youth worker* means the ability to demonstrate skills in six domain areas:

(1) Professionalism (including, but not limited to, consistent and reliable job performance, awareness and use of professional ethics to guide practice);

(2) Applied positive youth development approach (including, but not limited to, skills to develop a positive youth development plan and identifying the client's strengths in order to best apply a positive youth development framework);

(3) Cultural and human diversity (including, but not limited to, gaining knowledge and skills to meet the needs of clients of a different race, ethnicity, nationality, religion/spirituality, gen-

der identity/expression, sexual orientation);

(4) Applied human development (including, but not limited to, understanding the developmental needs of those at risk and with special needs);

(5) Relationship and communication (including, but not limited to, working with clients in a collaborative manner); and

(6) Developmental practice methods (including, but not limited to, utilizing methods focused on genuine relationships, health and safety, intervention planning).

*Counseling services* means the provision of guidance, support, referrals for services including, but not limited to, health services, and advice to runaway or otherwise homeless youth and their families, as well as to youth and families when a young person is at risk of running away, as appropriate. These services are provided in consultation with clients and are designed to alleviate the problems that have put the youth at risk of running away or contributed to his or her running away or being homeless. Any treatment or referral to treatment that aims to change someone's sexual orientation, gender identity or gender expression is prohibited.

*Drop-in center* means a place operated and staffed for runaway or homeless youth that clients can visit without an appointment to get advice or information, to receive services or service referrals, or to meet other runaway or homeless youth.

*Drug abuse education and prevention services* means services to prevent or reduce drug and/or alcohol abuse by runaway and homeless youth, and may include: (1) Individual, family, group, and peer counseling; (2) drop-in services; (3) assistance to runaway and homeless youth in rural areas (including the development of community support groups); (4) information and training relating to drug and/or alcohol abuse by runaway and homeless youth for individuals involved in providing services to such youth; and (5) activities to improve the availability of local drug and/or alcohol abuse prevention services to runaway and homeless youth.



*Education or employment* means performance in and completion of educational and training activities, especially for younger youth, and starting and maintaining adequate and stable employment, particularly for older youth.

*Health care services* means physical, mental, behavioral, and dental health services. It includes services provided to runaway and homeless youth and in the case of Maternity Group Homes also includes services provided to a pregnant youth and the child(ren) of the youth. Where applicable and allowable within a program, it includes information on appropriate health related services provided to family or household members of the youth. Any treatment or referral to treatment that aims to change someone's sexual orientation, gender identity or gender expression is prohibited.

*Home-based services* means services provided to youth and their families for the purpose of preventing such youth from running away or otherwise becoming separated from their families and assisting runaway youth to return to their families. It includes services that are provided in the residences of families (to the extent practicable), including intensive individual and family counseling and training relating to life skills and parenting.

*Homeless youth* means an individual who cannot live safely with a parent, legal guardian, or relative, and who has no other safe alternative living arrangement. For purposes of Basic Center Program eligibility, a homeless youth must be less than 18 years of age (or higher if allowed by a state or local law or regulation that applies to licensure requirements for child- or youth-serving facilities). For purposes of Transitional Living Program eligibility, a homeless youth cannot be less than 16 years of age and must be less than 22 years of age (unless the individual commenced his or her stay before age 22, and the maximum service period has not ended).

*Host family home* means a family or single adult home or domicile, other than that of a parent or permanent legal guardian, that provides shelter to homeless youth.

*Intake* means a process for gathering information to assess eligibility and the services required to meet the immediate needs of the client. The intake process may be operated independently but grantees should, at minimum, ensure they are working with their local Continuum of Care Program to ensure that referrals are coordinated and youth have access to all of the community's resources.

*Juvenile justice system* means agencies that include, but are not limited to, juvenile courts, correctional institutions, detention facilities, law enforcement, training schools, or agencies that use probation, parole, and/or court ordered confinement.

*Maternity group home* means a community-based, adult-supervised transitional living arrangement where client oversight is provided on site or on-call 24 hours a day and that provides pregnant or parenting youth and their children with a supportive environment in which to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence and ensure the well-being of their children.

*Outreach* means finding runaway, homeless, and street youth, or youth at risk of becoming runaway or homeless, who might not use services due to lack of awareness or active avoidance, providing information to them about services and benefits, and encouraging the use of appropriate services.

*Permanent connections* means ongoing attachments to families or adult role models, communities, schools, and other positive social networks which support young people's ability to access new ideas and opportunities that support thriving, and they provide a social safety net when young people are at-risk of re-entering homelessness.

*Risk and protective factors* mean those factors that are measurable characteristics of a youth that can occur at multiple levels, including biological, psychological, family, community, and cultural levels, that precede and are associated with an outcome. Risk factors are associated with higher likelihood of problematic outcomes, and protective factors are associated with higher likelihood of positive outcomes.

*Runaway youth* means an individual under 18 years of age who absents himself or herself from home or place of legal residence without the permission of a parent or legal guardian.

*Runaway and Homeless Youth project* means a community-based program outside the juvenile justice or child welfare systems that provides runaway prevention, outreach, shelter, or transition services to runaway, homeless, or street youth or youth at risk of running away or becoming homeless.

*Safe and appropriate exits* means settings that reflect achievement of the intended purposes of the Basic Center and Transitional Living Programs as outlined in section 382(a) of the Act. Examples of Safe and Appropriate Exits are exits:

(1) To the private residence of a parent, guardian, another adult relative, or another adult that has the youth's best interest in mind and can provide a stable arrangement;

(2) To another residential program if the youth's transition to the other residential program is consistent with the youth's needs; or

(3) To independent living if consistent with the youth's needs and abilities.

*Safe and appropriate exits* are not exits:

(1) To the street;

(2) To a locked correctional institute or detention center if the youth became involved in activities that lead to this exit after entering the program;

(3) To another residential program if the youth's transition to the other residential program is inconsistent with the youth's needs; or

(4) To an unknown or unspecified other living situation.

*Screening and assessment* means valid and reliable standardized instruments and practices used to identify each youth's individual strengths and needs across multiple aspects of health, wellbeing and behavior in order to inform appropriate service decisions and provide a baseline for monitoring outcomes over time. Screening involves abbreviated instruments, for example with trauma and health problems, which can indicate certain youth for more thorough diagnostic assessments and service needs. Assessment, which is

used here to mean assessment more broadly than for the purposes of diagnosis, involves evaluating multiple aspects of social, emotional, and behavioral competencies and functioning in order to inform service decisions and monitor outcomes.

*Service plan* or *treatment plan* means a written plan of action based on the assessment of client needs and strengths and engaging in joint problem solving with the client that identifies problems, sets goals, and describes a strategy for achieving those goals. To the extent possible, the plan should incorporate the use of trauma informed, evidence-based, or evidence-informed interventions. As appropriate, the service and treatment plans should address both physical and mental safety issues.

*Short-term training* means the provision of local, state, or regionally-based instruction to runaway or otherwise homeless youth service providers in skill areas that will directly strengthen service delivery.

*Social and emotional well-being* means the development of key competencies, attitudes, and behaviors that equip a young person experiencing homelessness to avoid unhealthy risks and to succeed across multiple domains of daily life, including school, work, relationships, and community.

*Stable housing* means a safe and reliable place to call home. Stable housing fulfills a critical and basic need for homeless youth. It is essential to enable functioning across a range of life activities.

*State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

*Street youth* means an individual who is a runaway youth or an indefinitely or intermittently homeless youth who spends a significant amount of time on the street or in other areas that increase the risk to such youth for sexual abuse, sexual exploitation, prostitution, or drug and/or alcohol abuse. For purposes of this definition, youth means an individual who is age 21 or less.

*Supervised apartments* mean a type of shelter setting using building(s) with

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separate residential units where client supervision is provided on site or on call 24 hours a day.

*Technical assistance* means the provision of expertise or support for the purpose of strengthening the capabilities of grantee organizations to deliver services.

*Temporary shelter* means all Basic Center Program shelter settings in which runaway and homeless youth are provided room and board, crisis intervention, and other services on a 24-hour basis for up to 21 days. The 21 day restriction is on the use of RHY funds through the Basic Center Program, not a restriction on the length of stay permitted by the facility.

[81 FR 93058, Dec. 20, 2016]

### **Subpart B—Runaway and Homeless Youth Program Grants**

#### **§ 1351.10 What is the purpose of Runaway and Homeless Youth Program grants?**

(a) The purpose of Runaway and Homeless Youth Program grants is to establish or strengthen community-based projects to provide runaway prevention, outreach, shelter, and transition services to runaway, homeless, or street youth or youth at risk of running away or becoming homeless.

(b) Youth who have become homeless or who leave and remain away from home without parental permission are disproportionately subject to serious health, behavioral, and emotional problems. They lack sufficient resources to obtain care and may live on the street for extended periods, unable to achieve stable, safe living arrangements that at times put them in danger. Many are urgently in need of shelter, which, depending on the type of Runaway and Homeless Youth project, can include host family homes, drop-in centers, congregate care, or supervised apartments, and services, including services that are linguistically appropriate, responsive to their complex social identities (*i.e.*, race, ethnicity, nationality, religion/spirituality, gender identity/expression, sexual orientation, socioeconomic status, physical ability, language, beliefs, values, behavior patterns, or customs), and acknowledge the environment they come from. Run-

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away and Homeless Youth grant services should have a positive youth development approach that ensures a young person has a sense of safety and structure; belonging and membership; self-worth and social contribution; independence and control over one's life; skills to develop plans for the future and set goals; and closeness in interpersonal relationships. To make a successful transition to adulthood, runaway youth, homeless youth, and street youth also need opportunities to complete high school or earn a general equivalency degree, learn job skills, and obtain employment. HHS operates three programs to carry out these purposes through direct local services: The Basic Center Program; the Transitional Living Program (including Maternity Group Homes); and the Street Outreach Program. HHS operates three additional activities to support achievement of these purposes: Research, evaluation, and service projects; a national communications system to assist runaway and homeless youth in communicating with service providers; and technical assistance and training.

[81 FR 93060, Dec. 20, 2016]

#### **§ 1351.11 Who is eligible to apply for a Runaway and Homeless Youth Program grant?**

Public (state and local) and private non-profit entities, and coordinated networks of such entities, are eligible to apply for a Runaway and Homeless Youth Program grant unless they are part of the juvenile justice system.

[81 FR 93060, Dec. 20, 2016]

#### **§ 1351.12 Who gets priority for the award of a Runaway and Homeless Youth Program grant?**

(a) In selecting applications for grants under the Basic Center Program the Secretary shall give priority to—

(1) Eligible applicants who have demonstrated experience in providing services to runaway and homeless youth; and

(2) Eligible applicants that request grants of less than \$200,000 or such figure as Congress may specify.

(b) In selecting applications for grants under the Transitional Living

Program, the Secretary shall give priority to entities that have experience in providing to homeless youth shelter (such as group homes, including maternity group homes, host family homes, and supervised apartments) and services (including information and counseling services in basic life skills which shall include money management, budgeting, consumer education, and use of credit, parenting skills (as appropriate), interpersonal skill building, educational advancement, job attainment skills, and mental and physical health care) to homeless youth.

(c) In selecting applicants to receive grants under the Street Outreach Program, the Secretary shall give priority to public and nonprofit private agencies that have experience in providing services to runaway and homeless, and street youth.

(d) In selecting grants for the national communication system to assist runaway and homeless youth in communicating with their families and with service providers, the Secretary shall give priority to grant applicants that have experience in providing electronic communications services to runaway and homeless youth, including telephone, Internet, mobile applications, and other technology-driven services.

(e) In selecting grants for research, evaluation, demonstration and service projects, the Secretary shall give priority to proposed projects outlined in section 343(b) and (c) of the Act.

(f) The Secretary shall integrate the performance standards outlined in §§1351.30, 1351.31, or 1351.32 into the grantmaking, monitoring, and evaluation processes of the Basic Center Program, Transitional Living Program, and Street Outreach Program. Specific details about how performance standards will be considered, along with examples of performance documentation, will be provided in the annual funding opportunity announcements.

[81 FR 93060, Dec. 20, 2016]

**§ 1351.13 What are the Federal and non-Federal match requirements under a Runaway and Homeless Youth Program grant?**

The federal share of the project represents 90 percent of the total project

cost supported by the federal government. The remaining 10 percent represents the required project match cost by the grantee. This may be a cash or in-kind contribution.

[81 FR 93060, Dec. 20, 2016]

**§ 1351.14 What is the period for which a grant will be awarded?**

(a) The initial notice of grant award specifies how long HHS intends to support the project without requiring the project to recompet for funds. This period, called the project period, will not exceed five years.

(b) Generally the grant will initially be for one year. A grantee must submit a separate application to have the support continued for each subsequent year. Continuation awards within the project period will be made provided the grantee has made satisfactory progress, funds are available, and HHS determines that continued funding is in the best interest of the Government.

[43 FR 55635, Nov. 28, 1978, as amended at 65 FR 50141, Aug. 17, 2000]

**§ 1351.15 What costs are supportable under a Runaway and Homeless Youth Program grant?**

(a) For all grant programs, costs that can be supported include, but are not limited to, staff training and core services such as outreach, intake, case management, data collection, temporary shelter, transitional living arrangements, referral services, counseling services, and aftercare services. Costs for acquisition and renovation of existing structures may not normally exceed 15 percent of the grant award. HHS may waive this limitation upon written request under special circumstances based on demonstrated need.

(b) For grants that support research, evaluation, and service projects; a national communications system to assist runaway and homeless youth in communicating with service providers; and for technical assistance and training grants; costs that can be supported include those enumerated above as well as services such as data collection and analysis, telecommunications services,

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and preparation and publication of materials in support of the purposes of such grants.

[81 FR 93060, Dec. 20, 2016]

### **§ 1351.16 What costs are not allowable under a Runaway and Homeless Youth Program grant?**

(a) A Runaway and Homeless Youth Program grant does not cover the capital costs of constructing new facilities, or operating costs of existing community centers or other facilities that are used partially or incidentally for services to runaway or homeless youth clients, except to the extent justified by application of cost allocation methods accepted by HHS as reasonable and appropriate.

(b) A Runaway and Homeless Youth Program grant does not cover any treatment or referral to treatment that aims to change someone's sexual orientation, gender identity or gender expression.

[81 FR 93061, Dec. 20, 2016]

### **§ 1351.17 How is application made for a Runaway and Homeless Youth Program grant?**

An applicant should follow instructions included in funding opportunity announcements, which describe procedures for receipt and review of applications.

[81 FR 93061, Dec. 20, 2016]

### **§ 1351.18 What criteria has HHS established for deciding which Runaway and Homeless Youth Program grant applications to fund?**

In reviewing applications for a Runaway and Homeless Youth Program grant, HHS takes into consideration a number of factors, including, but not limited to:

(a) Whether the grant application meets the particular priorities, requirements, standards, or evaluation criteria established in funding opportunity announcements;

(b) A need for Federal support based on the likely number of estimated runaway or otherwise homeless youth in the area in which the Runaway and Homeless Youth project is or will be located exceeding the availability of ex-

isting services for such youth in that area;

(c) For runaway and homeless youth centers, whether there is a minimum residential capacity of four (4) and a maximum residential capacity of twenty (20) youth in a single structure (except where the applicant assures that the state where the center or locally controlled facility is located has a state or local law or regulation that requires a higher maximum to comply with licensure requirements for child and youth serving facilities), or within a single floor of a structure in the case of apartment buildings, with a number of staff sufficient to assure adequate supervision and treatment for the number of clients to be served and the guidelines followed for determining the appropriate staff ratio;

(d) Plans for meeting the best interests of the youth involving, when reasonably possible, both the youth and the family. For Basic Center grantee applicants, the grantee shall develop adequate plans for contacting the parents or other relatives of the youth and ensuring the safe return of the youth according to the best interests of the youth, for contacting local government officials pursuant to informal arrangements established with such officials by the runaway and homeless youth center, and for providing for other appropriate alternative living arrangements;

(e) Plans for the delivery of aftercare or counseling services to runaway or otherwise homeless youth and their families;

(f) Whether the estimated cost to HHS for the Runaway and Homeless Youth project is reasonable considering the anticipated results;

(g) Whether the proposed personnel are well qualified and the applicant agency has adequate facilities and resources;

(h) Past performance on a RHY grant, including but not limited to program performance standards;

(i) Whether the proposed project design, if well executed, is capable of attaining program objectives;

(j) The consistency of the grant application with the provisions of the Act and these regulations; and

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(k) Other factors as outlined in funding opportunity announcements.

[81 FR 93061, Dec. 20, 2016]

### Subpart C—Additional Requirements

SOURCE: 81 FR 93061, Dec. 20, 2016, unless otherwise noted.

#### § 1351.20 What Government-wide and HHS-wide regulations apply to these programs?

A number of other rules and regulations apply or potentially apply to applicants and grantees. These include:

- (a) 2 CFR part 182—Government-wide Requirements for Drug Free Workplace;
- (b) 2 CFR part 376—Nonprocurement Debarment and Suspension
- (c) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board;
- (d) 45 CFR part 30—Claims Collection;
- (e) 45 CFR part 46—Protection of Human Subjects;
- (f) 45 CFR part 75—Uniform Administrative Requirements, Cost principles, and Audit Requirements for HHS Awards, including nondiscrimination requirements.
- (g) 45 CFR part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964;
- (h) 45 CFR part 81—Practice and Procedure for Hearings Under part 80;
- (i) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance;
- (j) 45 CFR part 86—Nondiscrimination on the Basis of Sex in Education Programs or Activities receiving Federal Financial Assistance;
- (k) 45 CFR part 87—Equal Treatment for Faith Based Organizations;
- (l) 45 CFR part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance;
- (m) 45 CFR part 92—Nondiscrimination in Health Programs and Activities; and
- (n) 45 CFR part 93—New Restrictions on Lobbying.

#### § 1351.21 What confidentiality requirements apply to these programs?

Several program policies regarding confidentiality of information, treatment, conflict of interest and state protection apply to recipients of Runaway and Homeless Youth Program grants. These include:

(a) Confidential information. Pursuant to the Act, no records containing the identity of individual youth, including but not limited to lists of names, addresses, photographs, or records of evaluation of individuals served by a Runaway and Homeless Youth project, may be disclosed or transferred to any individual or to any public or private agency except:

(1) For Basic Center Program grants, records maintained on individual runaway and homeless youth shall not be disclosed without the informed consent of the individual youth and parent or legal guardian to anyone other than another agency compiling statistical records or a government agency involved in the disposition of criminal charges against an individual runaway and homeless youth;

(2) For Transitional Living Programs, records maintained on individual homeless youth shall not be disclosed without the informed consent of the individual youth to anyone other than an agency compiling statistical records;

(3) Research, evaluation, and statistical reports funded by grants provided under section 343 of the Act are allowed to be based on individual data, but only if such data are de-identified in ways that preclude disclosing information on identifiable individuals; and

(4) Youth served by a Runaway and Homeless Youth project shall have the right to review their records; to correct a record or file a statement of disagreement; and to be apprised of the individuals who have reviewed their records.

(b) State law protection. HHS policies regarding confidential information and experimentation and treatment shall not apply if HHS finds that state law is more protective of the rights of runaway or otherwise homeless youth.

(c) Procedures shall be established for the training of project staff in the protection of these rights and for the secure storage of records.

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### § 1351.22 What additional requirements apply to these programs?

(a) *Non-discriminatory and culturally and linguistically sensitive services and training.* Service delivery and staff training must comprehensively address the individual strengths and needs of youth as well as be language appropriate, gender appropriate (interventions that are sensitive to the diverse experiences of male, female, and transgender youth and consistent with the gender identity of participating youth), and culturally sensitive and respectful of the complex social identities of youth (*i.e.*, race, ethnicity, nationality, age, religion/spirituality, gender identity/expression, sexual orientation, socioeconomic status, physical or cognitive ability, language, beliefs, values, behavior patterns, or customs). No runaway youth or homeless youth shall, on any of the foregoing bases, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part under the Runaway and Homeless Youth Act.

(1) The criteria that grantees adopt to determine eligibility for the program, or any activity or service, may include an assessment of the needs of each applicant, and the health and safety of other beneficiaries, among other factors.

(2) [Reserved]

(b) *Medical, psychiatric or psychological treatment.* No youth shall be subject to medical, psychiatric, or psychological treatment without the consent of the youth and, for youth under the age of emancipation in their state of residence, consent of a parent or guardian, if required by state law.

(c) *Conflict of interest.* Employees or individuals participating in a program or project under the Act shall not use their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

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### § 1351.23 What are the additional requirements that apply to the Basic Center, Transitional Living and Street Outreach Program grants?

To improve the administration of these Runaway and Homeless Youth Programs by increasing the capacity of Runaway and Homeless Youth projects to deliver services, by improving their performance in delivering services, and by providing for the evaluation of performance:

(a) Grantees shall participate in technical assistance, monitoring, and short-term training as a condition of funding, as determined necessary by HHS, in such areas as: Aftercare services and counseling; background checks; core competencies of youth workers; core support services; crisis intervention techniques; culturally and linguistically sensitive services; participation in or development of coordinated networks of private nonprofit agencies and/or public agencies to provide services; ethics and staff safety; fiscal management; low cost community alternatives for runaway or otherwise homeless youth; positive youth development; program management; risk and protective factors related to youth homelessness; screening and assessment practices; shelter facility staff development; special populations (tribal youth; lesbian, gay, bisexual, transgender, questioning (LGBTQ), and intersex youth; youth with disabilities; youth victims of trafficking, sexual exploitation or sexual abuse); trauma and the effects of trauma on youth; use of evidence-based and evidence-informed interventions; and youth and family counseling. It is not a requirement that every staff person receives training in every subject but all staff members who work directly with youth should receive training sufficient to meet the stated core-competencies of youth workers.

(b) Grantees shall coordinate their activities with the 24-hour National toll-free and Internet communication system, which links Runaway and Homeless Youth projects and other service providers with runaway or otherwise homeless youth, as appropriate to the specific activities provided by the grantee.

(c) Grantees shall submit statistical reports profiling the clients served and providing management and performance information in accordance with guidance provided by HHS.

(d) Grantees shall perform outreach to locate runaway and homeless youth and to coordinate activities with other organizations serving the same or similar client populations, such as child welfare agencies, juvenile justice systems, schools, and Continuums of Care, as defined by HUD.

(e) Grantees shall develop and implement a plan for addressing youth who have run away from foster care placement or correctional institutions, in accordance with federal, state, or local laws or regulations that apply to these situations. In accordance with section 312(b)(4) of the Act, Basic Center grantees must also develop a plan that ensures the return of runaway and homeless youth who have run away from the correctional institution back to the correctional institution.

(f) Grantees shall take steps to ensure that youth who are or should be under the legal jurisdiction of the juvenile justice or child welfare systems obtain and receive services from those systems until such time as they are released from the jurisdiction of those systems.

(g) Grantees shall develop and document plans that address steps to be taken in case of a local or national situation that poses risk to the health and safety of staff and youth. Emergency preparedness plans should, at a minimum, include routine preventative maintenance of facilities as well as preparedness, response, and recovery efforts. The plan should contain strategies for addressing evacuation, security, food, medical supplies, and notification of youths' families, as appropriate. In the event of an evacuation due to specific facility issues, such as a fire, loss of utilities, or mandatory evacuation by the local authorities, an alternative location needs to be designated and included in the plan. Grantees must immediately provide notification to their project officer and grants officer when evacuation plans are executed.

(h) Grantees shall ensure that all shelters that they operate are licensed

and determine that any shelters to which they regularly refer clients have evidence of current licensure, in states or localities with licensure requirements. Grantees shall promptly report to HHS instances in which shelters are cited for failure to meet licensure or related requirements, or lose licensure. For grantee-operated facilities, failure to meet any applicable state or local legal requirements as a condition of operation may be grounds for grant termination.

(i) Grantees shall utilize and integrate into the operation of their projects the principles of positive youth development, including healthy messages, safe and structured places, adult role models, skill development, and opportunities to serve others.

(j) No later than October 1, 2017, grantees shall have a plan, procedures, and standards for ensuring background checks on all employees, contractors, volunteers, and consultants who have regular and unsupervised private contact with youth served by the grantee, and on all adults who reside in or operate host homes. The plans, procedures, and standards must identify the background check findings that would disqualify an applicant from consideration for employment to provide services for which assistance is made available in accordance with this part.

(1) Required background checks include:

(i) State or tribal criminal history records, including fingerprint checks;

(ii) Federal Bureau of Investigation criminal history records, including fingerprint checks, to the extent FSYB determines this to be practicable and specifies the requirement in a Funding Opportunity Announcement that is applicable to a grantee's award;

(iii) Child abuse and neglect state registry check, to the extent FSYB determines this to be practicable and specifies the requirement in a Funding Opportunity Announcement that is applicable to a grantee's award;

(iv) Sex offender registry check; and,

(v) Any other checks required under state or tribal law.

(2) Programs must document the justification for any hire where an arrest, pending criminal charge or conviction, is present.



#### § 1351.24

(k) Grantees shall provide such other services and meet such additional requirements as HHS determines are necessary to carry out the purposes of the statute, as appropriate to the services and activities for which they are funded. These services and requirements are articulated in the funding opportunity announcements and other instructions issued by the Secretary or secretarial designees. This includes operational instructions and standards of execution determined by the Secretary or secretarial designees to be necessary to properly perform or document meeting the requirements applicable to particular programs or projects.

#### **§ 1351.24 What are the additional requirements that the Basic Center Program grantees must meet?**

(a) Grantees shall have an intake procedure that is available 24 hours a day and 7 days a week to all youth seeking services and temporary shelter that addresses and responds to immediate needs for crisis counseling, food, clothing, shelter, and health care services.

(b) Grantees shall provide, either directly or through arrangements, access to temporary shelter 24 hours a day and 7 days a week.

(c) Grantees shall provide trauma-informed case management, counseling and referral services that meet client needs and that encourage, when in the best interests of the youth particularly with regard to safety, the involvement of parents or legal guardians.

(d) Grantees shall provide additional core support services to clients both residentially and non-residentially as appropriate. The core services must include case planning, skill building, recreation and leisure activities.

(e) Grantees shall, as soon as feasible and no later than 72 hours of the youth entering the program, contact the parents, legal guardians or other relatives of each youth according to the best interests of the youth. If a grantee determines that it is not in the best interest of the client to contact the parents, legal guardian or other relatives of the client, or if the grantee is unable to locate, or the youth refuses to disclose the contact information of, the parent,

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legal guardian or other relative of the client, they must:

(1) Inform another adult identified by the child;

(2) Document why it is not in the client's best interest to contact the parent, legal guardian or other relative, or why they are not able to contact the parent, legal guardian or other relative; and

(3) Send a copy of the documentation to the regional program specialist for review.

(f) Additional requirements included in the funding opportunity announcement.

#### **§ 1351.25 What are the additional requirements that the Transitional Living Program and Maternity Group Home grantees must meet?**

(a) Grantees shall provide transitional living arrangements and additional core services including case planning/management, counseling, skill building, consumer education, referral to needed social and health care services, and education, recreation and leisure activities, aftercare and, as appropriate to grantees providing maternity-related services, parenting skills, child care, and child nutrition.

(b) Additional requirements included in the funding opportunity announcement.

#### **§ 1351.26 What are the additional requirements that both the Basic Center and Transitional Living Program grantees must meet?**

(a) Basic Center and Transitional Living grantees shall develop and implement an aftercare plan, covering at least 3 months, to stay in contact with youth who leave the program in order to ensure their ongoing safety and access to services. A youth's individual aftercare plan shall outline what services were and will be provided as well as the youth's housing status during and after the program. The plan shall be provided to the youth in exit counseling or before. Follow-up efforts shall be made for all youth. For those contacted after 3 months, the plan shall be updated to record the rate of participation and completion of the services in the plan at 3 months after exiting the program. In accordance with section 312(b)(5) of the Act, as possible, Basic

Center grantees shall also provide a plan for providing counseling and aftercare services to youth who are returned beyond the state in which the runaway and homeless youth service is located.

(b) Basic Center and Transitional Living grantees shall develop and implement a plan for health care services referrals for youth during the service and aftercare periods. Such referral plans shall include health care services and referrals and counseling on insurance coverage through family health insurance plans, or to agencies that assist in enrolling persons in Medicaid or in insurance plans offered under Affordable Care Act exchanges.

(c) Basic Center and Transitional Living grantees shall develop and implement a plan to assist youth to stay connected with their schools or to obtain appropriate educational services, training, or employment services. This includes coordination with McKinney-Vento school district liaisons, designated under the McKinney-Vento Homeless Assistance Act, to assure that runaway and homeless youth are provided information about the services available under that Act. This also includes coordination with local employment and employment training coordinating agencies or programs, coordination with local college placement services, and providing access to the Free Application for Federal Student Aid (FAFSA) application.

**§ 1351.27 What are the additional requirements that the Street Outreach Program grantees must meet?**

(a) Grantees shall provide services that are designed to assist clients in leaving the streets, making healthy choices, and building trusting relationships in areas where targeted youth congregate.

(b) Grantees shall directly or by referral provide treatment, counseling, prevention, and education services to clients as well as referral for emergency shelter.

(c) Additional requirements included in the funding opportunity announcement.

**Subpart D—What are the Runaway and Homeless Youth Program-Specific Performance Standards?**

SOURCE: 81 FR 93064, Dec. 20, 2016, unless otherwise noted.

**§ 1351.30 What performance standards must Basic Center Program grantees meet?**

(a)(1) Grantees shall consistently enhance outcomes for youth in the following four core areas:

- (i) Social and Emotional Well-being;
- (ii) Permanent Connections;
- (iii) Education or Employment; and
- (iv) Stable Housing.

(2) Each grantee shall report data related to these outcomes, using existing data collection processes found under PRA OMB Control Numbers 0970-0406 and 0970-0123, and their successors.

(b) Grantees shall ensure that youth receive counseling services that are trauma informed and match the individual needs of each client. Data shall be reported by each grantee on the type of counseling each youth received (individual, family and/or group counseling), the participation rate based on a youth's service plan or treatment plan, and the completion rate based on a youth's service plan or treatment plan, where applicable.

(c) Grantees that choose to provide street-based services, home-based services, drug and/or alcohol abuse education and prevention services, and/or testing for sexually transmitted diseases (at the request of the youth) shall ensure youth receive the appropriate services. Data shall be reported on the completion rate for each service provided based on the youth's service or treatment plan.

(d) Grantees shall ensure that youth have safe and appropriate exits when leaving the program. Each grantee shall report data on the type of exit experienced by each young person departing a Basic Center Program.

**§ 1351.31**

**§ 1351.31 What performance standards must Transitional Living Program grantees, including Maternity Group Homes, meet?**

(a)(1) Grantees shall consistently enhance outcomes for youth in the following four core areas:

- (i) Social and Emotional Well-being;
- (ii) Permanent Connections;
- (iii) Education or Employment; and
- (iv) Stable Housing.

(2) Each grantee shall report data related to these outcomes, using existing data collection and reporting processes, in accordance with the Paperwork Reduction Act and the Office of Management and Budget Control Numbers 0970-0406 and 0970-0123, and their successors.

(b) Grantees shall ensure youth are engaged in educational advancement, job attainment skills or work activities while in the program. Each grantee shall report data on the type of education or job-related activities that each youth is engaged in.

(c) Grantees shall ensure and report that youth receive health care referrals, including both services and insurance, as determined within their health care referral plan.

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(d) Maternity Group Home Grantees shall ensure and report that youth receive consistent pre-natal care, well-baby exams, and immunizations for the infant while in the program.

(e) Grantees shall ensure that youth have safe and appropriate exits when leaving the program. Each grantee shall report data on the type of exit experienced by each young person departing a Transitional Living Program.

**§ 1351.32 What performance standards must Street Outreach Program grantees meet?**

Grantees shall contact youth who are or who are at risk of homeless or runaway status on the streets in numbers that are reasonably attainable for the staff size of the project. Grantees with larger staff will be expected to contact larger numbers of youth in approximate proportion, as determined by HHS, to the larger number of staff available to provide this service. Each grantee shall report data related to this outcome, using existing data collection and reporting processes, in accordance with the Paperwork Reduction Act and the Office of Management and Budget Control Numbers 0970-0406 and 0970-0123, and their successors.

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

### PART 1355—GENERAL

Sec.

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- 1355.59 ≤[Reserved]

AUTHORITY: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1302.

#### § 1355.10 Scope.

Unless otherwise specified, part 1355 applies to States and Indian Tribes and contains general requirements for Federal financial participation under titles IV-B and IV-E of the Social Security Act.

[61 FR 58653, Nov. 18, 1996]

#### § 1355.20 Definitions.

(a) Unless otherwise specified, the following terms as they appear in 45 CFR parts 1355, 1356 and 1357 of this title are defined as follows—

*Act* means the Social Security Act, as amended.

*ACYF* means the Administration on Children, Youth and Families, Administration for Children and Families (ACF), U. S. Department of Health and Human Services.

*Adoption* means the method provided by State law, or for a Tribal title IV-E agency, Tribal law, which establishes the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed “adoption” after the legal process is complete.

*Child abuse and neglect* means the definition contained in 42 U.S.C. 5106(g)(2).

*Child care institution* means a private child care institution, or a public child care institution which accommodates no more than twenty-five children, and is licensed by the licensing authority responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. The licensing authority must be a State authority in the State in which the child care institution is located, a Tribal authority with respect to a child care institution on or near an Indian Reservation, or a Tribal authority of a Tribal title IV-E agency with respect to a child care institution in the Tribal title IV-E agency’s service area. This

definition must not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

*Commissioner* means the Commissioner on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services.

*Date a child is considered to have entered foster care* means the earlier of: The date of the first judicial finding that the child has been subjected to child abuse or neglect; or, the date that is 60 calendar days after the date on which the child is removed from the home pursuant to §1356.21(k). A title IV-E agency may use a date earlier than that required in this definition, such as the date the child is physically removed from the home. This definition determines the date used in calculating all time period requirements for the periodic reviews, permanency hearings, and termination of parental rights provision in section 475(5) of the Act and for providing time-limited reunification services described at section 431(a)(7) of the Act. The definition has no relationship to establishing initial title IV-E eligibility.

*Department* means the United States Department of Health and Human Services.

*Detention facility* in the context of the definition of child care institution in section 472(c)(2) of the Act means a physically restricting facility for the care of children who require secure custody pending court adjudication, court disposition, execution of a court order or after commitment.

*Entity*, as used in §1355.38, means any organization or agency (e.g., a private child placing agency) that is separate and independent of the title IV-E agency; performs title IV-E functions pursuant to a contract or subcontract with the title IV-E agency; and, receives title IV-E funds. A State or Tribal court is not an “entity” for the purposes of §1355.38 except if an administrative arm of the State or Tribal court carries out title IV-E administrative functions pursuant to a contract with the title IV-E agency.

*Foster care* means 24-hour substitute care for children placed away from

their parents or guardians and for whom the title IV-E agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

*Foster care maintenance payments* are payments made on behalf of a child eligible for title IV-E foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, and reasonable travel for a child’s visitation with family, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences. “Daily supervision” for which foster care maintenance payments may be made includes:

(1) *Foster family care*—licensed child care, when work responsibilities preclude foster parents from being at home when the child for whom they have care and responsibility in foster care is not in school, licensed child care when the foster parent is required to participate, without the child, in activities associated with parenting a child in foster care that are beyond the scope of ordinary parental duties, such as attendance at administrative or judicial reviews, case conferences, or foster parent training. Payments to cover these costs may be: included in the basic foster care maintenance payment; a separate payment to the foster parent, or a separate payment to the child care provider; and

(2) *Child care institutions*—routine day-to-day direction and arrangements to ensure the well-being and safety of the child.

*Foster family home* means, for the purpose of title IV-E eligibility, the home of an individual or family licensed or approved as meeting the standards established by the licensing or approval authority(ies), that provides 24-hour out-of-home care for children. The licensing or approval authority must be a state authority in the state in which the foster family home is located, a tribal authority with respect to a foster family home on or near an Indian Reservation, or a tribal authority of a tribal title IV-E agency with respect to a foster family home in the tribal title IV-E agency's service area. Agencies may establish one set of foster family home licensing or approval standards for all relative or kinship foster family homes that are different from the set of standards used to license or approve all non-relative foster family homes. Anything less than full licensure or approval is insufficient for meeting title IV-E eligibility requirements. Title IV-E agencies may, however, claim title IV-E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure or approval and the date the actual license is issued, not to exceed 60 days.

*Full review* means the joint Federal and title IV-E agency review of all federally-assisted child and family services programs, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining the title IV-E agency's substantial conformity with the plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part. A full review consists of two phases, the statewide assessment (or for a Tribal title IV-E agency, an assessment of the service area) and a subsequent on-site review, as described in §1355.33 of this part.

*Legal guardianship* means a judicially-created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights

with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term *legal guardian* means the caretaker in such a relationship.

*National Child Abuse and Neglect Data System (NCANDS)* means the voluntary national data collection and analysis system established by the Administration for Children and Families in response to a requirement in the Child Abuse Prevention and Treatment Act (Pub. L. 93-247), as amended.

*Partial review* means:

(1) For the purpose of the child and family services review, the joint Federal and State/Tribal review of one or more federally-assisted child and family services program(s), including family preservation and support services, child protective services, foster care, adoption, and independent living services. A partial review may consist of any of the components of the full review, as mutually agreed upon by the title IV-E agency and the Administration for Children and Families as being sufficient to determine substantial conformity of the reviewed components with the plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part;

(2) For the purpose of title IV-B and title IV-E State plan compliance issues that are outside the prescribed child and family services review format, e.g., compliance with AFCARS requirements, a review of State laws, policies, regulations, or other information appropriate to the nature of the concern, to determine State compliance; or

(3) For the purpose of title IV-E plan compliance issues for a Tribal title IV-E agency which are outside of the prescribed child and family services review format, a review of Tribal laws, policies, regulations, or other information appropriate to the nature of the concern, to determine plan compliance.

*Permanency hearing* means:

(1) The hearing required by section 475(5)(C) of the Act to determine the permanency plan for a child in foster care. Within this context, the court (including a Tribal court) or administrative body determines whether and, if applicable, when the child will be:

(i) Returned to the parent;

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(ii) Placed for adoption, with the title IV-E agency filing a petition for termination of parental rights;

(iii) Referred for legal guardianship;

(iv) Placed permanently with a fit and willing relative; or

(v) Placed in another planned permanent living arrangement, but only in cases where the title IV-E agency has documented to the State or Tribal court a compelling reason for determining that it would not be in the best interests of the child to follow one of the four specified options above.

(2) The permanency hearing must be held no later than 12 months after the date the child is considered to have entered foster care in accordance with the definition at §1355.20 of this part or within 30 days of a judicial determination that reasonable efforts to reunify the child and family are not required. After the initial permanency hearing, subsequent permanency hearings must be held not less frequently than every 12 months during the continuation of foster care. The permanency hearing must be conducted by a family or juvenile court or another court of competent jurisdiction or by an administrative body appointed or approved by the court which is not a part of or under the supervision or direction of the title IV-E agency. Paper reviews, *ex parte* hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and foster parents or preadoptive parents (if any) are not permanency hearings.

*State* means, for title IV-B, the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. For title IV-E the term “State” means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

*State agency* means the State agency administering or supervising the administration of the title IV-B and title IV-E State plans and the title XX social services block grant program. An exception to this requirement is permitted by section 103(d) of the Adop-

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tion Assistance and Child Welfare Act of 1980 (Pub. L. 96–272). Section 103(d) provides that, if on December 1, 1974, the title IV-B program (in a State or local agency) and the social services program under section 402(a)(3) of the Act (the predecessor program to title XX) were administered by separate agencies, that separate administration of the programs could continue at State option.

*Statewide assessment (or Tribal assessment)* means the initial phase of a full review of all federally-assisted child and family services programs in the States (or for a Tribal title IV-E agency, in the service area), including family preservation and support services, child protective services, foster care, adoption, and independent living services as described in §1355.33(b) of this part, for the purpose of determining substantial conformity with the plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part.

*Title IV-E agency* means the State or Tribal agency administering or supervising the administration of the title IV-B and title IV-E plans.

*Tribal agency* means, for the purpose of title IV-E, the agency of the Indian Tribe, Indian Tribal organization (as those terms are defined in section 479B(a) of the Act) or consortium of Indian Tribes that is administering or supervising the administration of the title IV-E and title IV-B, subpart 1 plan.

(b) Unless otherwise specified, the definitions contained in section 475 of the Act apply to all programs under titles IV-E and IV-B of the Act.

[48 FR 23114, May 23, 1983, as amended at 57 FR 30429, July 9, 1992; 58 FR 67924, Dec. 22, 1993; 61 FR 58653, Nov. 18, 1996; 65 FR 4076, Jan. 25, 2000; 66 FR 58675, Nov. 23, 2001; 77 FR 925, Jan. 6, 2012; 88 FR 66708, Sept. 28, 2023]

## § 1355.21 Plan requirements for titles IV-E and IV-B.

(a) The plans for titles IV-E and IV-B must provide for safeguards on the use and disclosure of information which meet the requirements contained in section 471(a)(8) of the Act.

(b) The plans for titles IV-E and IV-B must provide for compliance with the Department’s regulations applicable to

the State and/or Tribe as listed in 45 CFR 1355.30.

(c) The State agency and the Indian Tribe must make available for public review and inspection the Child and Family Services Plan (CFSP) and the Annual Progress and Services Reports. (See 45 CFR 1357.15 and 1357.16.) The title IV-E agency also must make available for public review and inspection the title IV-E Plan.

[48 FR 23114, May 23, 1983, as amended at 61 FR 58654, Nov. 18, 1996; 77 FR 926, Jan. 6, 2012]

**§ 1355.22 Designated Placement requirements under titles IV-E and IV-B for LGBTQI+ children.**

LGBTQI+ children (including children with lesbian, gay, bisexual, transgender, queer, or questioning, and intersex status or identity) shall be placed and receive services in accordance with the following requirements:

(a) *Protections generally applicable.* As part of meeting the requirement to provide a safe and appropriate placement for all children in foster care, the title IV-E/IV-B agency must ensure that all placements, including those for LGBTQI+ children, are free from harassment, mistreatment, or abuse.

(b) *Designated Placements and services for LGBTQI+ children.* The title IV-E/IV-B agency must meet the following requirements for each LGBTQI+ child in foster care:

(1) *Designated Placements.* The title IV-E/IV-B agency must ensure there is a Designated Placement available for all LGBTQI+ children in foster care who request or would benefit from such a placement. Nothing in this section requires any provider to become or serve as a Designated Placement. As used in this section, for a placement to be specifically designated for an LGBTQI+ child, the provider must meet the protections generally applicable as defined at paragraph (a) of this section and:

(i) Commit to establish an environment that supports the child's LGBTQI+ status or identity;

(ii) Be trained with the appropriate knowledge and skills to provide for the needs of the child related to the child's self-identified sexual orientation, gender identity, and gender expression. The training must reflect evidence,

and research about the impacts of rejection, discrimination, and stigma on the safety and wellbeing of LGBTQI+ children, and provide information for providers about professional standards and recommended practices that promote the safety and wellbeing of LGBTQI+ children; and

(iii) Facilitate the child's access to age- or developmentally appropriate resources, services, and activities that support their health and well-being as described in paragraph (e) of this section.

(2) *Process for notification of and request for Designated Placements.* The IV-E/IV-B agency must implement a process by which an LGBTQI+ child may request a Designated Placement as described in paragraph (b)(1) of this section or request that their current placement be offered services to become a Designated Placement. The title IV-E/IV-B agency's process for considering such a request must provide the child with an opportunity to express their needs and concerns. The process must safeguard the privacy and confidentiality of the child, consistent with section 471(a)(8) of the Act and 45 CFR 205.50, and must include the following components:

(i) Notice of the availability of Designated Placements and the ability to request that services be offered to their current placement must be provided to, at minimum:

- (A) All children age 14 and over; and
- (B) Children under age 14 who:

(1) Have been removed from their home due, in whole or part, to familial conflict about their sexual orientation, gender identity, gender expression or sex characteristics; or

(2) Have disclosed their LGBTQI+ status or identity or whose LGBTQI+ status or identity is otherwise known to the agency;

(ii) The notice must be provided in an age- or developmentally appropriate manner, both verbally and in writing, and must inform the child of how they may request a Designated Placement or services for their current placement and the process the title IV-E/IV-B agency will use in responding to their request; and



(iii) The notice must inform the child of the nonretaliation protections described at paragraph (d) of this section and describe the process by which a child may report a concern about retaliation.

(3) *Placement and services decisions and changes.* When making placement and service decisions related to an LGBTQI+ child, the title IV–E/IV–B agency shall give substantial weight to the child’s expressed concerns or requests when determining the child’s best interests. To promote placement stability, when an LGBTQI+ child requests a Designated Placement and before initiating any placement changes, the title IV–E/IV–B agency must consider whether additional services and training would allow the current provider to meet the conditions for a Designated Placement. If so, and if the current provider is willing to meet the conditions for a Designated Placement, the IV–E/IV–B agency must use the case review system to regularly review the provider’s progress towards meeting the conditions of such a designation.

(c) *Process for reporting concerns about placements and concerns about retaliation.* The title IV–E/IV–B agency must implement a process for LGBTQI+ children to report concerns about a placement that fails to meet the applicable requirements of this section, and to report concerns about retaliation as described in paragraph (d) of this section. The process must safeguard the privacy and confidentiality of the child, consistent with section 471(a)(8) of the Act and 45 CFR 205.50. The title IV–E/IV–B agency must respond promptly to an LGBTQI+ child’s reported concern, consistent with the agency’s timeframes for investigating child abuse and neglect reports depending on the nature of the child’s report.

(d) *Retaliation prohibited.* (1) The title IV–E/IV–B agency must have a procedure to ensure that neither the title IV–E/IV–B agency, nor any provider, nor any entity or person acting on behalf of the agency or a provider retaliates against an LGBTQI+ child in foster care based on the child’s actual or perceived LGBTQI+ status or identity, any disclosure of that status or identity by the child or a third party, or

the child’s request or report related to the requirements for placements or services under this part.

(2) Conduct by the title IV–E/IV–B agency, provider, or any entity or person acting on behalf of the agency or a provider that will be considered retaliation includes, but is not limited to:

(i) Harassment, mistreatment, or abuse as described in paragraph (a) of this section.

(ii) Attempts to undermine, suppress, change, or stigmatize a child’s sexual orientation or gender identity or expression through “conversion therapy.”

(iii) Unwarranted placement changes, including unwarranted placements in congregate care facilities, or restricting an LGBTQI+ child’s access to LGBTQI+ peers, siblings, family members, or age- or developmentally appropriate materials and community resources.

(iv) Disclosing the child’s LGBTQI+ status or identity in ways that cause harm or risk the privacy of the child or that infringe on any privacy rights of the child.

(v) Using information about the child’s LGBTQI+ status or identity to initiate or sustain a child protection investigation or disclosing information about the child’s LGBTQI+ status or identity to law enforcement in any manner not permitted by law.

(vi) Taking action against current or potential caregivers (including foster parents, pre-adoptive parents, adoptive parents, kin caregivers and birth families) because they support or have supported a child’s LGBTQI+ status or identity.

(e) *Access to supportive and age- or developmentally appropriate services.* The title IV–E/IV–B agency must ensure that LGBTQI+ children have access to age- or developmentally appropriate services that are supportive of their sexual orientation and gender identity or expression, including clinically appropriate mental and behavioral health supports.

(f) *Placement of transgender and gender non-conforming children in foster care.* When considering placing a child, the title IV–E/IV–B agency must offer the child a placement consistent with their gender identity. The title IV–E/IV–B

agency must also consult with the child to provide an opportunity to voice any concerns related to placement.

(g) *Compliance with privacy laws.* The title IV-E/IV-B agency must comply with all applicable privacy laws, including section 471(a)(8) of the Act and 45 CFR 205.50, in all aspects of its implementation of this section. Information that reveals a child's LGBTQI+ status or identity may only be disclosed in accordance with law and any such disclosure must be the minimum necessary to accomplish the legally-permitted purposes.

(h) *Training and notification requirements.* In addition to meeting the requirements of paragraph (b)(1)(ii) of this section, the title IV-E/IV-B agency must:

(1) Ensure that its employees who have responsibility for placing children in foster care, making placement decisions, or providing services:

(i) Are trained to implement the procedural requirements of this section; and

(ii) Are adequately prepared with the appropriate knowledge and skills to serve an LGBTQI+ child related to their sexual orientation, gender identity, and gender expression.

(2) Ensure that all its contractors and subrecipients who have responsibility for placing children in foster care, making placement decisions, or providing services are informed of the procedural requirements to comply with this section, including the required non-retaliation provisions outlined in paragraph (d) of this section.

(3) Ensure that all placement providers are informed of the procedural requirements to comply with this section, including the required non-retaliation provision outlined in paragraph (d) of this section.

(i) *Protections for religious freedom, conscience, and free speech.* Insofar as the application of any requirement under this section would violate applicable Federal protections for religious freedom, conscience, and free speech, such application shall not be required.

(j) *No penalties for providers that do not seek to qualify as Designated Placements.* Nothing in this section shall be construed to require or authorize a

State or Tribe to penalize a provider in the titles IV-E or IV-B programs because the provider does not seek or is determined not to qualify as a Designated Placement under this section.

(k) *Severability.* Any provision of this section held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this section is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this section and shall not affect the remainder thereof.

(l) *Implementation.* Title IV-E/IV-B agencies must follow the requirements of this section beginning on October 1, 2026.

(m) *No effect on more protective laws or policies.* Nothing in this section shall limit any State, Tribe, or local government from imposing or enforcing, as a matter of law or policy, requirements that provide greater protection to LGBTQI+ children than this section provides.

[89 FR 34859, Apr. 30, 2024]

#### **§ 1355.25 Principles of child and family services.**

The following principles, most often identified by practitioners and others as helping to assure effective services for children, youth, and families, should guide the States and Indian Tribes in developing, operating, and improving the continuum of child and family services.

(a) The safety and well-being of children and of all family members is paramount. When safety can be assured, strengthening and preserving families is seen as the best way to promote the healthy development of children. One important way to keep children safe is to stop violence in the family including violence against their mothers.

(b) Services are focused on the family as a whole; service providers work with families as partners in identifying and meeting individual and family needs; family strengths are identified, enhanced, respected, and mobilized to

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help families solve the problems which compromise their functioning and well-being.

(c) Services promote the healthy development of children and youth, promote permanency for all children and help prepare youth emancipating from the foster care system for self-sufficiency and independent living.

(d) Services may focus on prevention, protection, or other short or long-term interventions to meet the needs of the family and the best interests and need of the individual(s) who may be placed in out-of-home care.

(e) Services are timely, flexible, coordinated, and accessible to families and individuals, principally delivered in the home or the community, and are delivered in a manner that is respectful of and builds on the strengths of the community and cultural groups.

(f) Services are organized as a continuum, designed to achieve measurable outcomes, and are linked to a wide variety of supports and services which can be crucial to meeting families' and children's needs, for example, housing, substance abuse treatment, mental health, health, education, job training, child care, and informal support networks.

(g) Most child and family services are community-based, involve community organizations, parents and residents in their design and delivery, and are accountable to the community and the client's needs.

(h) Services are intensive enough and of sufficient duration to keep children safe and meet family needs. The actual level of intensity and length of time needed to ensure safety and assist the family may vary greatly between preventive (family support) and crisis intervention services (family preservation), based on the changing needs of children and families at various times in their lives. A family or an individual does not need to be in crisis in order to receive services.

[61 FR 58654, Nov. 18, 1996]

### § 1355.30 Other applicable regulations.

Except as specified, the following regulations are applicable to State and Tribal programs funded under titles IV-B and IV-E of the Act.

## 45 CFR Ch. XIII (10–1–24 Edition)

(a) 45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.

(b) 45 CFR Part 30—Claims Collection.

(c) 2 CFR part 376—Nonprocurement Debarment and Suspension.

(d) 2 CFR part 382—Requirements for Drug-Free Workplace (Financial Assistance).

(e) 45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964.

(f) 45 CFR Part 81—Practice and Procedure for Hearings Under Part 80 of This Title.

(g) 45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance.

(h) 45 CFR Part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance.

(i) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards. Part 75 of this title is applicable to title IV-B programs and the John H. Chafee Foster Care Independence Program under Section 477 of the Act that are operated by States and/or Tribes. Part 75 of this title is applicable to title IV-E foster care and adoption assistance programs operated by a State title IV-E agency, except that section 75.306 Cost sharing or matching and section 75.341 Financial reporting do not apply. Part 75 of this title is applicable to title IV-E foster care and adoption assistance programs operated by a Tribal title IV-E agency pursuant to section 479B, except that section 75.341 and the sections specified in §1356.68 do not apply to a Tribal title IV-E agency.

(j) 45 CFR Part 93—New Restrictions on Lobbying.

(k) 45 CFR part 95—General Administration—Grant Programs (Public Assistance and Medical Assistance). Part 95 of this title is applicable to State and Indian Tribe operated title IV-B and title IV-E programs, except:

(1) Notwithstanding 45 CFR 95.1(a), subpart A, Time Limits for States to File Claims, does not apply to State

and Indian Tribe-operated title IV-B (subparts 1 and 2) program and the John H. Chafee Foster Care Independence Program; and

(2) 45 CFR part 95 Subpart E, Cost Allocation Plans, is not applicable to Indian Tribe-operated title IV-E foster care and adoption assistance pursuant to section 479B of the Act (ACYF-CB-PI-10-13).

(1) 45 CFR Part 97—Consolidation of Grants to the Insular Areas. (Applicable only to the title IV-B programs).

(m) 45 CFR part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities. Only one section is applicable: 45 CFR 100.12, How may a State simplify, consolidate, or substitute federally required State plans? This section is applicable to a State title IV-E agency only.

(n) 45 CFR part 201—Grants to States for Public Assistance Programs. Only the following sections are applicable:

(1) § 201.5—Grants. Applicable to title IV-E foster care and adoption assistance only.

(2) § 201.6—Withholding of payment; reduction of Federal financial participation in the costs of social services and training. Applicable only to an unapprovable change in an approved plan, or the failure of the agency to change its approved plan to conform to a new Federal requirement for approval of plans.

(3) § 201.15—Deferral of claims for Federal financial participation. Applicable only to title IV-E foster care and adoption assistance.

(4) § 201.66—Repayment of Federal funds by installments. Applicable only to title IV-E foster care and adoption assistance.

(o) 45 CFR 204.1—Submittal of State Plans for Governor's Review. Applicable to State title IV-E agencies only.

(p) 45 CFR Part 205—General Administration—Public Assistance Programs. Only the following sections are applicable:

(1) § 205.5—Plan amendments.

(2) § 205.10—Hearings.

(3) § 205.50—Safeguarding information for the financial assistance programs.

(4) § 205.100—Single State agency.

[61 FR 58654, Nov. 18, 1996, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 926, Jan. 6, 2012; 81 FR 3022, Jan. 20, 2016]

#### § 1355.31 Elements of the child and family services review system.

*Scope.* Sections 1355.32 through 1355.37 of this part apply to reviews of child and family services programs under subparts 1 and 2 of title IV-B of the Act, and reviews of foster care and adoption assistance programs under title IV-E of the Act.

[77 FR 926, Jan. 6, 2012]

#### § 1355.32 Timetable for the reviews.

(a) *Initial reviews.* Each State must complete an initial full review as described in § 1355.33 of this part during the four-year period after the final rule becomes effective. Each Tribal title IV-E agency must complete an initial full review as described in § 1355.33 of this part, during the four-year period after the ACF determines that the Tribe has approved title IV-B, subpart 1 and 2 and title IV-E plans and has sufficient cases for ACF to apply the procedures in § 1355.33(c).

(b) *Reviews following the initial review.* (1) A title IV-E agency found to be operating in substantial conformity during an initial or subsequent review, as defined in § 1355.34 of this part, must:

(i) Complete a full review every five years; and

(ii) Submit a completed statewide assessment, or in the case of a Tribal title IV-E agency, a completed Tribal assessment of the service area, to ACF three years after the on-site review. The assessment will be reviewed jointly by the title IV-E agency and ACF to determine the State's or Indian Tribe's continuing substantial conformity with the plan requirements subject to review. No formal approval of this interim assessment by ACF is required.

(2) A program found not to be operating in substantial conformity during an initial or subsequent review will:

(i) Be required to develop and implement a program improvement plan, as defined in § 1355.35 of this part; and

(ii) Begin a full review two years after approval of the program improvement plan.

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(c) *Reinstatement of reviews based on information that a title IV-E agency is not in substantial conformity.* (1) ACF may require a full or a partial review at any time, based on any information, regardless of the source, that indicates the title IV-E agency may no longer be operating in substantial conformity.

(2) Prior to reinstating a full or partial review, ACF will conduct an inquiry and require the title IV-E agency to submit additional data whenever ACF receives information that the title IV-E agency may not be in substantial conformity.

(3) If the additional information and inquiry indicates to ACF's satisfaction that the title IV-E agency is operating in substantial conformity, ACF will not proceed with any further review of the issue addressed by the inquiry. This inquiry will not substitute for the full reviews conducted by ACF under § 1355.32(b).

(4) ACF may proceed with a full or partial review if the title IV-E agency does not provide the additional information as requested, or the additional information confirms that the title IV-E agency may not be operating in substantial conformity.

(d) *Partial reviews based on noncompliance with plan requirements that are outside the scope of a child and family services review.* When ACF becomes aware of a title IV-B or title IV-E compliance issue that is outside the scope of the child and family services review process, we will:

(1) Conduct an inquiry and require the title IV-E agency to submit additional data.

(2) If the additional information and inquiry indicates to ACF's satisfaction that the title IV-E agency is in compliance, we will not proceed with any further review of the issue addressed by the inquiry.

(3) ACF will institute a partial review, appropriate to the nature of the concern, if the title IV-E agency does not provide the additional information as requested, or the additional information confirms that the title IV-E agency may not be in compliance.

(4) If the partial review determines that the title IV-E agency is not in compliance with the applicable plan requirement, the title IV-E agency must

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enter into a program improvement plan designed to bring the title IV-E agency into compliance, if the provisions for such a plan are applicable. The terms, action steps and timeframes of the program improvement plan will be developed on a case-by-case basis by ACF and the title IV-E agency. The program improvement plan must take into consideration the extent of noncompliance and the impact of the noncompliance on the safety, permanency or well-being of children and families served through the title IV-E agency's title IV-B or IV-E allocation. If the title IV-E agency remains out of compliance, the title IV-E agency will be subject to a penalty related to the extent of the noncompliance.

[65 FR 4076, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 926, Jan. 6, 2012]

### § 1355.33 Procedures for the review.

(a) The full child and family services reviews will:

(1) Consist of a two-phase process that includes a statewide assessment and an on-site review; and

(2) Be conducted by a team of Federal, and State or Tribal reviewers that includes:

(i) Staff of the child and family services agency, including the offices that represent the service areas that are the focus of any particular review;

(ii) Representatives selected by the title IV-E agency, in collaboration with the ACF Regional Office, from those with whom the title IV-E agency was required to consult in developing its CFSP, as described and required in 45 CFR 1357.15(1);

(iii) Federal staff of HHS; and

(iv) Other individuals, as deemed appropriate and agreed upon by the title IV-E agency and ACF.

(b) *Statewide or Tribal Assessment.* The first phase of the full review will be a statewide assessment, or for a Tribal title IV-E agency a service area assessment, conducted by the title IV-E agency's internal and external members of the review team. The assessment must:

(1) Address each systemic factor under review including the statewide/Tribal information system; case review system; quality assurance system; staff

training; service array; agency responsiveness to the community; and foster and adoptive parent licensing, recruitment and retention;

(2) Assess the outcome areas of safety, permanence, and well-being of children and families served by the title IV-E agency using data from AFCARS and NCANDS. For the initial review, ACF may approve another data source to substitute for AFCARS, and in all reviews, ACF may approve another data source to substitute for NCANDS. The title IV-E agency must also analyze and explain its performance in meeting the national standards for the statewide/Tribal service area data indicators;

(3) Assess the characteristics of the title IV-E agency that have the most significant impact on the agency's capacity to deliver services to children and families that will lead to improved outcomes;

(4) Assess the strengths and areas of the title IV-E agency's child and family services programs that require further examination through an on-site review;

(5) Include a listing of all the persons external to the title IV-E agency who participated in the preparation of the assessment pursuant to § 1355.33(a)(2)(ii) and (iv); and

(6) Be completed and submitted to ACF within 4 months of the date that ACF transmits the information for the assessment to the title IV-E agency.

(c) *On-site review.* The second phase of the full review will be an on-site review.

(1) The on-site review will cover the title IV-E agency's programs under titles IV-B and IV-E of the Act, including in-home services and foster care. It will be jointly planned by the title IV-E agency and ACF, and guided by information in the completed assessment that identifies areas in need of improvement or further review.

(2) The on-site review may be concentrated in several specific political subdivisions or jurisdictions of the title IV-E agency, as agreed upon by the ACF and the title IV-E agency; however, for a State title IV-E agency, a State's largest metropolitan subdivision must be one of the locations selected.

(3) ACF has final approval of the selection of specific areas of the title IV-E agency's child and family services continuum described in paragraph (c)(1) of this section and selection of the political subdivisions or jurisdiction referenced in paragraph (c)(2) of this section.

(4) Sources of information collected during the on-site review to determine substantial conformity must include, but are not limited to:

(i) Case records on children and families served by the agency;

(ii) Interviews with children and families whose case records have been reviewed and who are, or have been, recipients of services of the agency;

(iii) Interviews with caseworkers, foster parents, and service providers for the cases selected for the on-site review; and

(iv) Interviews with key stakeholders, both internal and external to the agency, which, at a minimum, must include those individuals who participated in the development of the State's or Tribal title IV-E agency's CFSP required at 45 CFR 1357.15(1), courts, administrative review bodies, children's guardians ad litem and other individuals or bodies assigned responsibility for representing the best interests of the child.

(5) The sample will range from 30-50 cases. Foster care cases must be drawn randomly from AFCARS, or, for the initial review, from another source approved by ACF and include children who entered foster care during the year under review. In-home cases must be drawn randomly from NCANDS or from another source approved by ACF. To ensure that all program areas are adequately represented, the sample size may be increased.

(6) The sample of 30-50 cases reviewed on-site will be selected from a randomly drawn oversample of no more than 150 foster care and 150 in-home services cases. The oversample must be statistically significant at a 90 percent compliance rate (95 percent in subsequent reviews), with a tolerable sampling error of 5 percent and a confidence coefficient of 95 percent. The additional cases in the oversample not selected for the on-site review will

form the sample of cases to be reviewed, if needed, in order to resolve discrepancies between the statewide/Tribal assessment and the on-site review in accordance with paragraph (d)(2) of this section.

(d) *Resolution of discrepancies between the assessment and the findings of the on-site portion of the review.* Discrepancies between the statewide or Tribal assessment and the findings of the on-site portion of the review will be resolved by either of the following means, at the title IV–E agency’s option:

(1) The submission of additional information by the title IV–E agency; or

(2) ACF and the title IV–E agency will review additional cases using only those indicators in which the discrepancy occurred. ACF and the title IV–E agency will determine jointly the number of additional cases to be reviewed, not to exceed 150 foster care cases or 150 in-home services cases to be selected as specified in paragraph (c)(6) of this section.

(e) *Partial review.* A partial child and family services review, when required, will be planned and conducted jointly by ACF and the title IV–E agency based on the nature of the concern. A partial review does not substitute for the full reviews as required under § 1355.32(b).

(f) *Notification.* Within 30 calendar days following either a partial child and family services review, full child and family services review, or the resolution of a discrepancy between the assessment and the findings of the on-site portion of the review, ACF will notify the title IV–E agency in writing of whether the title IV–E agency is, or is not, operating in substantial conformity.

[65 FR 4077, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 927, Jan. 6, 2012]

**§ 1355.34 Criteria for determining substantial conformity.**

(a) *Criteria to be satisfied.* ACF will determine a title IV–E agency’s substantial conformity with title IV–B and title IV–E plan requirements based on the following:

(1) Its ability to meet national standards, set by the Secretary, for the statewide/Tribal service area data indi-

cators associated with specific outcomes for children and families;

(2) Its ability to meet criteria related to outcomes for children and families; and

(3) Its ability to meet criteria related to the title IV–E agency’s capacity to deliver services leading to improved outcomes.

(b) *Criteria related to outcomes.* (1) A title IV–E agency’s substantial conformity will be determined by its ability to substantially achieve the following child and family service outcomes:

(i) *In the area of child safety:*

(A) Children are, first and foremost, protected from abuse and neglect; and,

(B) Children are safely maintained in their own homes whenever possible and appropriate;

(ii) *In the area of permanency for children:*

(A) Children have permanency and stability in their living situations; and

(B) The continuity of family relationships and connections is preserved for children; and

(iii) *In the area of child and family well-being:*

(A) Families have enhanced capacity to provide for their children’s needs;

(B) Children receive appropriate services to meet their educational needs; and

(C) Children receive adequate services to meet their physical and mental health needs.

(2) A title IV–E agency’s level of achievement with regard to each outcome reflects the extent to which a title IV–E agency has:

(i) Met the national standard(s) for the statewide/Tribal service area data indicator(s) associated with that outcome, if applicable; and,

(ii) Implemented the following CFSP requirements or assurances:

(A) The requirements in 45 CFR 1357.15(p) regarding services designed to assure the safety and protection of children and the preservation and support of families;

(B) The requirements in 45 CFR 1357.15(q) regarding the permanency provisions for children and families in sections 422 and 471 of the Act;

(C) The requirements in section 422(b)(7) of the Act regarding recruitment of potential foster and adoptive families;

(D) The assurances as required by section 422(b)(8)(B) of the Act regarding policies and procedures for abandoned children;

(E) The requirements in section 422(b)(9) of the Act regarding the State's compliance with the Indian Child Welfare Act;

(F) The requirements in section 422(b)(10) of the Act regarding a title IV-E agency's plan for effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements; and,

(G) The requirements in section 471(a)(15) of the Act regarding reasonable efforts to prevent removals of children from their homes, to make it possible for children in foster care to safely return to their homes, or, when the child is not able to return home, to place the child in accordance with the permanency plan and complete the steps necessary to finalize the permanent placement.

(3) A title IV-E agency will be determined to be in substantial conformity if its performance on:

(i) Each statewide/Tribal service area data indicator developed pursuant to paragraph (b)(4) of this section meets the national standard described in paragraph (b)(5) of this section; and,

(ii) Each outcome listed in paragraph (b)(1) of this section is rated as "substantially achieved" in 95 percent of the cases examined during the on-site review (90 percent of the cases for an initial review). Information from various sources (case records, interviews) will be examined for each outcome and a determination made as to the degree to which each outcome has been achieved for each case reviewed.

(4) The Secretary may, using AFCARS and NCANDS, develop statewide/Tribal service area data indicators for each of the specific outcomes described in paragraph (b)(1) of this section for use in determining substantial conformity. The Secretary may add, amend, or suspend any such statewide/Tribal service area data indicator(s) when appropriate. To the extent practical and feasible, the state-

wide/Tribal service area data indicators will be consistent with those developed in accordance with section 203 of the Adoption and Safe Families Act of 1997 (Pub. L. 105-89).

(5) The initial national standards for the statewide data indicators described in paragraph (b)(4) of this section will be based on the 75th percentile of all State performance for that indicator, as reported in AFCARS or NCANDS. The Secretary may adjust these national standards if appropriate. The initial national standard will be set using the following data sources:

(i) The 1997 and 1998 submissions to NCANDS (or the most recent and complete 2 years available), for those statewide data indicators associated with the safety outcomes; and,

(ii) The 1998b, 1999c, and 2000a submissions to AFCARS (or the most recent and complete report periods available), for those statewide data indicators associated with the permanency outcomes.

(c) *Criteria related to title IV-E agency capacity to deliver services leading to improved outcomes for children and families.* In addition to the criteria related to outcomes contained in paragraph (b) of this section, the title IV-E agency also must satisfy criteria related to the delivery of services. Based on information from the assessment and onsite review, the title IV-E agency must meet the following criteria for each systemic factor in paragraphs (c)(2) through (c)(7) of this section to be considered in substantial conformity: All of the plan requirements associated with the systemic factor must be in place, and no more than one of the plan requirements fails to function as described in paragraphs (c)(2) through (c)(7) of this section. The systemic factor in paragraph (c)(1) of this section is rated on the basis of only one plan requirement. To be considered in substantial conformity, the plan requirement associated with statewide/Tribal information system capacity must be both in place and functioning as described in the requirement. ACF will use a rating scale to make the determinations of substantial conformity. The systemic factors under review are:

(1) *Statewide/Tribal information system:* The State/Tribal title IV-E agency is



operating a statewide/Tribal information system that, at a minimum, can readily identify the status, demographic characteristics, location, and goals for the placement of every child who is (or within the immediately preceding 12 months, has been) in foster care (section 422(b)(8)(A)(i) of the Act);

(2) *Case review system:* The title IV–E agency has procedures in place that:

(i) Provide, for each child, a written case plan to be developed jointly with the child’s parent(s) that includes provisions: for placing the child in the least restrictive, most family-like placement appropriate to the child’s needs, and in close proximity to the parents’ home where such placement is in the child’s best interests; for visits with a child placed out of State/Tribal service area at least every 12 months by a caseworker of the agency or of the agency in the State/Tribal service area where the child is placed; for documentation of the steps taken to make and finalize an adoptive or other permanent placement when the child cannot return home; and for implementation of the requirements of § 1355.22(b) and (d) as applicable (sections 422(b)(8)(A)(ii), 471(a)(16), and 475(5)(A) of the Act and § 1355.22(b) and (d));

(ii) Provide for periodic review of the status of each child no less frequently than once every six months by either a court or by administrative review (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(B) of the Act);

(iii) Assure that each child in foster care under the supervision of the title IV–E agency has a permanency hearing in a family or juvenile court or another court of competent jurisdiction (including a Tribal court), or by an administrative body appointed or approved by the court, which is not a part of or under the supervision or direction of the title IV–E agency, no later than 12 months from the date the child entered foster care (and not less frequently than every 12 months thereafter during the continuation of foster care) (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(C) of the Act);

(iv) Provide a process for termination of parental rights proceedings in accordance with sections 422(b)(8)(A)(ii), 475(5)(E) and (F) of the Act; and,

(v) Provide foster parents, preadoptive parents, and relative caregivers of children in foster care with notice of and a right to be heard in permanency hearings and six-month periodic reviews held with respect to the child (sections 422(b)(8)(A)(ii), 475(5)(G) of the Act, and 45 CFR 1356.21(o)).

(3) *Quality assurance system:* The title IV–E agency has developed and implemented standards to ensure that children in foster care placements are provided quality services that protect the safety and health of the children (section 471(a)(22)) and is operating an identifiable quality assurance system (45 CFR 1357.15(u)) as described in the CFSP that:

(i) Is in place in the jurisdictions within the State/Tribal service area where services included in the CFSP are provided;

(ii) Is able to evaluate the adequacy and quality of services provided under the CFSP;

(iii) Is able to identify the strengths and needs of the service delivery system it evaluates;

(iv) Provides reports to agency administrators on the quality of services evaluated and needs for improvement; and

(v) Evaluates measures implemented to address identified problems.

(4) *Staff training:* The title IV–E agency is operating a staff development and training program (45 CFR 1357.15(t)) that:

(i) Supports the goals and objectives in the title IV–E agency’s CFSP;

(ii) Addresses services provided under both subparts of title IV–B and the training plan under title IV–E of the Act;

(iii) Provides training for all staff who provide family preservation and support services, child protective services, foster care services, adoption services and independent living services soon after they are employed and that includes the basic skills and knowledge required for their positions;

(iv) Provides ongoing training for staff that addresses the skills and knowledge base needed to carry out their duties with regard to the services included in the CFSP; and,

(v) Provides training for current or prospective foster parents, adoptive

parents, and the staff of State/Tribal-licensed or State/Tribal-approved child care institutions providing care to foster and adopted children receiving assistance under title IV-E that addresses the skills and knowledge base needed to carry out their duties with regard to caring for foster and adopted children.

(5) *Service array:* Information from the assessment and on-site review determines that the title IV-E agency has in place an array of services (45 CFR 1357.15(n) and section 422(b)(8)(A)(iii) and (iv) of the Act) that includes, at a minimum:

(i) Services that assess the strengths and needs of children and families assisted by the agency and are used to determine other service needs;

(ii) Services that address the needs of the family, as well as the individual child, in order to create a safe home environment;

(iii) Services designed to enable children at risk of foster care placement to remain with their families when their safety and well-being can be reasonably assured;

(iv) Services designed to help children achieve permanency by returning to families from which they have been removed, where appropriate, be placed for adoption or with a legal guardian or in some other planned, permanent living arrangement, and through post-legal adoption services;

(v) Services that are accessible to families and children in all political subdivisions and/or the entire service area covered in the CFSP; and,

(vi) Services that can be individualized to meet the unique needs of children and families served by the agency.

(6) *Agency responsiveness to the community:*

(i) The title IV-E agency, in implementing the provisions of the CFSP, engages in ongoing consultation with a broad array of individuals and organizations representing the State/Tribal and county/local agencies responsible for implementing the CFSP and other major stakeholders in the services delivery system including, at a minimum, Tribal representatives, consumers, service providers, foster care providers, the juvenile court, and other

public and private child and family serving agencies (45 CFR 1357.15(1)(3));

(ii) The agency develops, in consultation with these or similar representatives, annual reports of progress and services delivered pursuant to the CFSP (45 CFR 1357.16(a));

(iii) There is evidence that the agency's goals and objectives included in the CFSP reflect consideration of the major concerns of stakeholders consulted in developing the plan and on an ongoing basis (45 CFR 1357.15(m)); and

(iv) There is evidence that the services under the plan are coordinated with services or benefits under other Federal or federally-assisted programs serving the same populations to achieve the goals and objectives in the plan (45 CFR 1357.15(m)).

(7) *Foster and adoptive parent licensing, recruitment and retention:*

(i) The State or Tribe has established and maintains standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes (section 471(a)(10) of the Act);

(ii) The standards so established are applied by the State or Tribe to every licensed or approved foster family home or child care institution receiving funds under title IV-E or IV-B of the Act (section 471(a)(10) of the Act);

(iii) The title IV-E agency complies with the safety requirements for foster care and adoptive placements in accordance with sections 471(a)(16), 471(a)(20) and 475(1) of the Act and 45 CFR 1356.30;

(iv) The title IV-E agency has in place an identifiable process for assuring the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State or Tribe for whom foster and adoptive homes are needed (section 422(b)(7) of the Act); and,

(v) The title IV-E agency has developed and implemented plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children (section 422(b)(10) of the Act).

(d) *Availability of review instruments.* ACF will make available to the title

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IV–E agencies copies of the review instruments, which will contain the specific standards to be used to determine substantial conformity, on an ongoing basis, whenever significant revisions to the instruments are made.

[65 FR 4078, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 928, Jan. 6, 2012; 89 FR 34861, Apr. 30, 2024]

### § 1355.35 Program improvement plans.

(a) *Mandatory program improvement plan.* (1) Title IV–E agencies found not to be operating in substantial conformity shall develop a program improvement plan. The program improvement plan must:

(i) Be developed jointly by title IV–E agency and Federal staff in consultation with the review team;

(ii) Identify the areas in which the title IV–E agency's program is not in substantial conformity;

(iii) Set forth the goals, the action steps required to correct each identified weakness or deficiency, and dates by which each action step is to be completed in order to improve the specific areas;

(iv) Set forth the amount of progress the statewide/Tribal data will make toward meeting the national standards;

(v) Establish benchmarks that will be used to measure the title IV–E agency's progress in implementing the program improvement plan and describe the methods that will be used to evaluate progress;

(vi) Identify how the action steps in the plan build on and make progress over prior program improvement plans;

(vii) Identify the technical assistance needs and sources of technical assistance, both Federal and non-Federal, which will be used to make the necessary improvements identified in the program improvement plan.

(2) In the event that ACF and the title IV–E agency cannot reach consensus regarding the content of a program improvement plan or the degree of program or data improvement to be achieved, ACF retains the final authority to assign the contents of the plan and/or the degree of improvement required for successful completion of the plan. Under such circumstances, ACF will render a written rationale for as-

signing such content or degree of improvement.

(b) *Voluntary program improvement plan.* Title IV–E agencies found to be operating in substantial conformity may voluntarily develop and implement a program improvement plan in collaboration with the ACF Regional Office, under the following circumstances:

(1) The title IV–E agency and Regional Office agree that there are areas of the title IV–E agency's child and family services programs in need of improvement which can be addressed through the development and implementation of a voluntary program improvement plan;

(2) ACF approval of the voluntary program improvement plan will not be required; and

(3) No penalty will be assessed for the title IV–E agency's failure to achieve the goals described in the voluntary program improvement plan.

(c) *Approval of program improvement plans.* (1) A title IV–E agency determined not to be in substantial conformity must submit a program improvement plan to ACF for approval within 90 calendar days from the date the title IV–E agency receives the written notification from ACF that it is not operating in substantial conformity.

(2) Any program improvement plan will be approved by ACF if it meets the provisions of paragraph (a) of this section.

(3) If the program improvement plan does not meet the provisions of paragraph (a) of this section, the title IV–E agency will have 30 calendar days from the date it receives notice from ACF that the plan has not been approved to revise and resubmit the plan for approval.

(4) If the title IV–E agency does not submit a revised program improvement plan according to the provisions of paragraph (c)(3) of this section or if the plan does not meet the provisions of paragraph (a) of this section, withholding of funds pursuant to the provisions of § 1355.36 of this part will begin.

(d) *Duration of program improvement plans.* (1) ACF retains the authority to establish time frames for the program improvement plan consistent with the

seriousness and complexity of the remedies required for any areas determined not in substantial conformity, not to exceed two years.

(2) Particularly egregious areas of nonconformity impacting child safety must receive priority in both the content and time frames of the program improvement plans and must be addressed in less than two years.

(3) The Secretary may approve extensions of deadlines in a program improvement plan not to exceed one year. The circumstances under which requests for extensions will be approved are expected to be rare. The title IV-E agency must provide compelling documentation of the need for such an extension. Requests for extensions must be received by ACF at least 60 days prior to the affected completion date.

(4) Title IV-E agencies must provide quarterly status reports (unless ACF and the title IV-E agency agree to less frequent reports) to ACF. Such reports must inform ACF of progress in implementing the measures of the plan.

(e) *Evaluating program improvement plans.* Program improvement plans will be evaluated jointly by the title IV-E agency and ACF, in collaboration with other members of the review team, as described in the title IV-E agency's program improvement plan and in accordance with the following criteria:

(1) The methods and information used to measure progress must be sufficient to determine when and whether the title IV-E agency is operating in substantial conformity or has reached the negotiated standard with respect to statewide/Tribal service area data indicators that failed to meet the national standard for that indicator;

(2) The frequency of evaluating progress will be determined jointly by the title IV-E agency and Federal team members, but no less than annually. Evaluation of progress will be performed in conjunction with the annual updates of the title IV-E agency's CFSP, as described in paragraph (f) of this section;

(3) Action steps may be jointly determined by the title IV-E agency and ACF to be achieved prior to projected completion dates, and will not require any further evaluation at a later date; and

(4) The title IV-E agency and ACF may jointly renegotiate the terms and conditions of the program improvement plan as needed, provided that:

(i) The renegotiated plan is designed to correct the areas of the title IV-E agency's program determined not to be in substantial conformity and/or achieve a standard for the statewide/Tribal service area data indicators that is acceptable to ACF;

(ii) The amount of time needed to implement the provisions of the plan does not extend beyond three years from the date the original program improvement plan was approved;

(iii) The terms of the renegotiated plan are approved by ACF; and

(iv) The Secretary approves any extensions beyond the two-year limit.

(f) *Integration of program improvement plans with CFSP planning.* The elements of the program improvement plan must be incorporated into the goals and objectives of the title IV-E agency's CFSP. Progress in implementing the program improvement plan must be included in the annual reviews and progress reports related to the CFSP required in 45 CFR 1357.16.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0970-0214. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[65 FR 4080, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 929, Jan. 6, 2012]

**§ 1355.36 Withholding Federal funds due to failure to achieve substantial conformity or failure to successfully complete a program improvement plan.**

(a) *For the purposes of this section:*

(1) The term "title IV-B funds" refers to the title IV-E agency's combined allocation of title IV-B subpart 1 and subpart 2 funds; and

(2) The term "title IV-E funds" refers to the title IV-E agency's reimbursement for administrative costs for the foster care program under title IV-E.

(b) *Determination of the amount of Federal funds to be withheld.* ACF will determine the amount of title IV-B and

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IV–E funds to be withheld due to a finding that the title IV–E agency is not operating in substantial conformity, as follows:

(1) A title IV–E agency will have the opportunity to develop and complete a program improvement plan prior to any withholding of funds.

(2) Title IV–B and IV–E funds will not be withheld from a title IV–E agency if the determination of nonconformity was caused by the title IV–E agency's correct use of formal written statements of Federal law or policy provided the title IV–E agency by DHHS.

(3) A portion of the title IV–E agency's title IV–B and IV–E funds will be withheld by ACF for the year under review and for each succeeding year until the title IV–E agency either successfully completes a program improvement plan or is found to be operating in substantial conformity.

(4) The amount of title IV–B and title IV–E funds subject to withholding due to a determination that a title IV–E agency is not operating in substantial conformity is based on a pool of funds defined as follows:

(i) The title IV–E agency's allotment of title IV–B funds for each of the years to which the withholding applies; and

(ii) An amount equivalent to 10 percent of the title IV–E agency's Federal claims for title IV–E foster care administrative costs for each of the years to which withholding applies;

(5) The amount of funds to be withheld from the pool in paragraph (b)(4) of this section will be computed as follows:

(i) Except as provided for in paragraphs (b)(7) and (b)(8) of this section, an amount equivalent to one percent of the funds described in paragraph (b)(4) of this section for each of the years to which withholding applies will be withheld for each of the seven outcomes listed in §1355.34(b)(1) of this part that is determined not to be in substantial conformity; and

(ii) Except as provided for in paragraphs (b)(7) and (b)(8) of this section, an amount equivalent to one percent of the funds described in paragraph (b)(4) of this section for each of the years to which withholding applies will be withheld for each of the seven systemic factors listed in §1355.34(c) of this part

that is determined not to be in substantial conformity.

(6) Except as provided for in paragraphs (b)(7), (b)(8), and (e)(4) of this section, in the event the title IV–E agency is determined to be in nonconformity on each of the seven outcomes and each of the seven systemic factors subject to review, the maximum amount of title IV–B and title IV–E funds to be withheld due to the title IV–E agency's failure to comply is 14 percent per year of the funds described in paragraph (b)(4) of this section for each year.

(7) Title IV–E agencies determined not to be in substantial conformity that fail to correct the areas of nonconformity through the successful completion of a program improvement plan, and are determined to be in nonconformity on the second full review following the first full review in which a determination of nonconformity was made will be subject to increased withholding as follows:

(i) The amount of funds described in paragraph (b)(5) of this section will increase to two percent for each of the seven outcomes and each of the seven systemic factors that continues in nonconformity since the immediately preceding child and family services review;

(ii) The increased withholding of funds for areas of continuous nonconformity is subject to the provisions of paragraphs (c), (d), and (e) of this section;

(iii) The maximum amount of title IV–B and title IV–E funds to be withheld due to the title IV–E agency's failure to comply on the second full review following the first full review in which the determination of nonconformity was made is 28 percent of the funds described in paragraph (b)(4) of this section for each year to which the withholding of funds applies.

(8) Title IV–E agencies determined not to be in substantial conformity that fail to correct the areas of nonconformity through the successful completion of a program improvement plan, and are determined to be in nonconformity on the third and any subsequent full reviews following the first full review in which a determination of

nonconformity was made will be subject to increased withholding as follows:

(i) The amount of funds described in paragraph (b)(5) of this section will increase to three percent for each of the seven outcomes and each of the seven systemic factors that continues in nonconformity since the immediately preceding child and family services review;

(ii) The increased withholding of funds for areas of continuous nonconformity is subject to the provisions of paragraphs (c), (d), and (e) of this section;

(iii) The maximum amount of title IV-B and title IV-E funds to be withheld due to the title IV-E agency's failure to comply on the third and any subsequent full reviews following the first full review in which the determination of nonconformity was made is 42 percent of the funds described in paragraph (b)(4) of this section for each year to which the withholding of funds applies.

(c) *Suspension of withholding.* (1) For title IV-E agencies determined not to be operating in substantial conformity, ACF will suspend the withholding of the title IV-E agencies' title IV-B and title IV-E funds during the time that a program improvement plan is in effect, provided that:

(i) The program improvement plan conforms to the provisions of §1355.35 of this part; and

(ii) The title IV-E agency is actively implementing the provisions of the program improvement plan.

(2) Suspension of the withholding of funds is limited to three years following each review, or the amount of time approved for implementation of the program improvement plan, whichever is less.

(d) *Terminating the withholding of funds.* For title IV-E agencies determined not to be in substantial conformity, ACF will terminate the withholding of the title IV-E agency's title IV-B and title IV-E funds related to the nonconformity upon determination by the title IV-E agency and ACF that the title IV-E agency has achieved substantial conformity or has successfully completed a program improvement plan. ACF will rescind the withholding

of the portion of title IV-B and title IV-E funds related to specific goals or action steps as of the date at the end of the quarter in which they were determined to have been achieved.

(e) *Withholding of funds.* (1) Title IV-E agencies determined not to be in substantial conformity that fail to successfully complete a program improvement plan will be notified by ACF of this final determination of nonconformity in writing within 10 business days after the relevant completion date specified in the plan, and advised of the amount of title IV-B and title IV-E funds which are to be withheld.

(2) Title IV-B and title IV-E funds will be withheld based on the following:

(i) If the title IV-E agency fails to submit status reports in accordance with §1355.35(d)(4), or if such reports indicate that the title IV-E agency is not making satisfactory progress toward achieving goals or actions steps, funds will be withheld at that time for a period beginning October 1 of the fiscal year for which the determination of nonconformity was made and ending on the specified completion date for the affected goal or action step.

(ii) Funds related to goals and action steps that have not been achieved by the specified completion date will be withheld at that time for a period beginning October 1 of the fiscal year for which the determination of nonconformity was made and ending on the completion date of the affected goal or action step; and

(iii) The withholding of funds commensurate with the level of nonconformity at the end of the program improvement plan will begin at the latest completion date specified in the program improvement plan and will continue until a subsequent full review determines the title IV-E agency to be in substantial conformity or the title IV-E agency successfully completes a program improvement plan developed as a result of that subsequent full review.

(3) When the date the title IV-E agency is determined to be in substantial conformity or to have successfully completed a program improvement plan falls within a specific quarter, the amount of funds to be withheld will be computed to the end of that quarter.

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(4) A title IV-E agency that refuses to participate in the development or implementation of a program improvement plan, as required by ACF, will be subject to the maximum increased withholding of 42 percent of its title IV-B and title IV-E funds, as described in paragraph (b)(8) of this section, for each year or portion thereof to which the withholding of funds applies.

(5) The title IV-E agency will be liable for interest on the amount of funds withheld by the Department, in accordance with the provisions of 45 CFR 30.18.

[65 FR 4081, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 930, Jan. 6, 2012]

## § 1355.37 Opportunity for public inspection of review reports and materials.

The title IV-E agency must make available for public review and inspection all statewide or Tribal assessments (§1355.33(b)), report of findings (§1355.33(e)), and program improvement plans (§1355.35(a)) developed as a result of a full or partial child and family services review.

[77 FR 931, Jan. 6, 2012]

## § 1355.38 Enforcement of section 471(a)(18) of the Act regarding the removal of barriers to interethnic adoption.

(a) *Determination that a violation has occurred in the absence of a court finding.*

(1) If ACF becomes aware of a possible section 471(a)(18) violation, whether in the course of a child and family services review, the filing of a complaint, or through some other mechanism, it will refer such a case to the Department's Office for Civil Rights (OCR) for investigation.

(2) Based on the findings of the OCR investigation, ACF will determine if a violation of section 471(a)(18) has occurred. A section 471(a)(18) violation occurs if a title IV-E agency or an entity in the State/Tribe:

(i) Has denied to any person the opportunity to become an adoptive or foster parent on the basis of the race, color, or national origin of the person, or of the child, involved;

(ii) Has delayed or denied the placement of a child for adoption or into foster care on the basis of the race, color,

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or national origin of the adoptive or foster parent, or the child involved; or.

(iii) With respect to a title IV-E agency, maintains any statute, regulation, policy, procedure, or practice that on its face, is a violation as defined in paragraphs (a)(2)(i) and (2)(ii) of this section.

(3) ACF will provide the title IV-E agency or entity with written notification of its determination.

(4) If there has been no violation, there will be no further action. If ACF determines that there has been a violation of section 471(a)(18), it will take enforcement action as described in this section.

(5) Compliance with the Indian Child Welfare Act of 1978 (Pub. L. 95-608) does not constitute a violation of section 471(a)(18).

(b) *Corrective action and penalties for violations with respect to a person or based on a court finding.* (1) A title IV-E agency or entity found to be in violation of section 471(a)(18) of the Act with respect to a person, as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, will be penalized in accordance with paragraph (g)(2) of this section. A title IV-E agency or entity determined to be in violation of section 471(a)(18) of the Act as a result of a court finding will be penalized in accordance with paragraph (g)(4) of this section. The title IV-E agency may develop, obtain approval of, and implement a plan of corrective action any time after it receives written notification from ACF that it is in violation of section 471(a)(18) of the Act.

(2) Corrective action plans are subject to ACF approval.

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the title IV-E agency must revise and resubmit the plan for approval until it has an approved plan.

(4) A title IV-E agency or entity found to be in violation of section 471(a)(18) of the Act by a court must notify ACF within 30 days from the date of entry of the final judgment once all appeals have been exhausted, declined, or the appeal period has expired.

(c) *Corrective action for violations resulting from a title IV-E agency's statute,*

*regulation, policy, procedure, or practice.*

(1) A title IV-E agency found to have committed a violation of the type described in paragraph (a)(2)(iii) of this section must develop and submit a corrective action plan within 30 days of receiving written notification from ACF that it is in violation of section 471(a)(18). Once the plan is approved the title IV-E agency will have to complete the corrective action and come into compliance. If the title IV-E agency fails to complete the corrective action plan within six months and come into compliance, a penalty will be imposed in accordance with paragraph (g)(3) of this section.

(2) Corrective action plans are subject to ACF approval.

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the title IV-E agency must revise and resubmit the plan within 30 days from the date it receives a written notice from ACF that the plan has not been approved. If the title IV-E agency does not submit a revised corrective action plan according to the provisions of paragraph (d) of this section, withholding of funds pursuant to the provisions of paragraph (g) of this section will apply.

(d) *Contents of a corrective action plan.* A corrective action plan must:

(1) Identify the issues to be addressed;

(2) Set forth the steps for taking corrective action;

(3) Identify any technical assistance needs and Federal and non-Federal sources of technical assistance which will be used to complete the action steps; and,

(4) Specify the completion date. This date will be no later than 6 months from the date ACF approves the corrective action plan.

(e) *Evaluation of corrective action plan.* ACF will evaluate corrective action plans and notify the title IV-E agency (in writing) of its success or failure to complete the plan within 30 calendar days. If the title IV-E agency has failed to complete the corrective action plan, ACF will calculate the amount of reduction in the title IV-E agency's title IV-E payment and include this information in the written notification of failure to complete the plan.

(f) *Funds to be withheld.* The term "title IV-E funds" refers to the amount of Federal funds advanced or paid to the title IV-E agency for allowable costs incurred by a title IV-E agency for: foster care maintenance payments, adoption assistance payments, administrative costs, and training costs under title IV-E and includes the title IV-E agency's allotment for the Chafee Foster Care Independence Program under section 477 of the Act.

(g) *Reduction of title IV-E funds.* (1) Title IV-E funds shall be reduced in specified amounts in accordance with paragraph (h) of this section under the following circumstances:

(i) A determination that a title IV-E agency or entity is in violation of section 471(a)(18) of the Act with respect to a person as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, or:

(ii) After a title IV-E agency's failure to implement and complete a corrective action plan and come into compliance as described in paragraph (c) of this section.

(2) Once ACF notifies a title IV-E agency (in writing) that it has committed a section 471(a)(18) violation with respect to a person, the title IV-E agency's title IV-E funds will be reduced for the fiscal quarter in which the title IV-E agency received written notification and for each succeeding quarter within that fiscal year or until the title IV-E agency completes a corrective action plan and comes into compliance, whichever is earlier. Once ACF notifies an entity (in writing) that it has committed a section 471(a)(18) violation with respect to a person, the entity must remit to the Secretary all title IV-E funds paid to it by the title IV-E agency during the quarter in which the entity is notified of the violation.

(3) For title IV-E agencies that fail to complete a corrective action plan within 6 months, title IV-E funds will be reduced by ACF for the fiscal quarter in which the title IV-E agency received notification of its violation. The reduction will continue for each succeeding quarter within that fiscal year or until the title IV-E agency completes the corrective action plan and comes into compliance, whichever is earlier.



(4) If, as a result of a court finding, a title IV–E agency or entity is determined to be in violation of section 471(a)(18) of the Act, ACF will assess a penalty without further investigation. Once the title IV–E agency is notified (in writing) of the violation, its title IV–E funds will be reduced for the fiscal quarter in which the court finding was made and for each succeeding quarter within that fiscal year or until the title IV–E agency completes a corrective action plan and comes into compliance, whichever is sooner. Once an entity is notified (in writing) of the violation, the entity must remit to the Secretary all title IV–E funds paid to it by the title IV–E agency during the quarter in which the court finding was made.

(5) The maximum number of quarters that a title IV–E agency will have its title IV–E funds reduced due to a finding of a title IV–E agency’s failure to conform to section 471(a)(18) of the Act is limited to the number of quarters within the fiscal year in which a determination of nonconformity was made. However, an uncorrected violation may result in a subsequent review, another finding, and additional penalties.

(6) No penalty will be imposed for a court finding of a violation of section 471(a)(18) until the judgement is final and all appeals have been exhausted, declined, or the appeal period has expired.

(h) *Determination of the amount of reduction of Federal funds.* ACF will determine the reduction in title IV–E funds due to a section 471(a)(18) violation in accordance with section 474(d)(1) and (2) of the Act.

(1) Title IV–E agencies that violate section 471(a)(18) with respect to a person or fail to implement or complete a corrective action plan as described in paragraph (c) of this section will be subject to a penalty. The penalty structure will follow section 474(d)(1) of the Act. Penalties will be levied for the quarter of the fiscal year in which the title IV–E agency is notified of its section 471(a)(18) violation, and for each succeeding quarter within that fiscal year until the title IV–E agency comes into compliance with section 471(a)(18). The reduction in title IV–E funds will be computed as follows:

(i) 2 percent of the title IV–E agency’s title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the first finding of noncompliance in that fiscal year;

(ii) 3 percent of the title IV–E agency’s title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the second finding of noncompliance in that fiscal year;

(iii) 5 percent of the title IV–E agency’s title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the third or subsequent finding of noncompliance in that fiscal year.

(2) Any entity (other than the title IV–E agency) which violates section 471(a)(18) of the Act during a fiscal quarter must remit to the Secretary all title IV–E funds paid to it by the title IV–E agency in accordance with the procedures in paragraphs (g)(2) or (g)(4) of this section.

(3) No fiscal year payment to a title IV–E agency will be reduced by more than 5 percent of its title IV–E funds, as defined in paragraph (f) of this section, where the title IV–E agency has been determined to be out of compliance with section 471(a)(18) of the Act.

(4) The title IV–E agency or an entity, as applicable, will be liable for interest on the amount of funds reduced by the Department, in accordance with the provisions of 45 CFR 30.18.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0970–0214. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[65 FR 4082, Jan. 25, 2000, as amended at 66 FR 58676, Nov. 23, 2001; 77 FR 931, Jan. 6, 2012]

**§ 1355.39 Administrative and judicial review.**

A title IV–E agency determined not to be in substantial conformity with titles IV–B and IV–E plan requirements, or a title IV–E agency or an entity in violation of section 471(a)(18) of the Act:

(a) May appeal, pursuant to 45 CFR part 16, the final determination and

any subsequent withholding of, or reduction in, funds to the HHS Departmental Appeals Board within 60 days after receipt of a notice of nonconformity described in §1355.36(e)(1) of this part, or receipt of a notice of non-compliance by ACF as described in §1355.38(a)(3) of this part; and

(b) Will have the opportunity to obtain judicial review of an adverse decision of the Departmental Appeals Board within 60 days after the title IV-E agency or entity receives notice of the decision by the Board. Appeals of adverse Department Appeals Board decisions must be made to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(c) The procedure described in paragraphs (a) and (b) of this section will not apply to a finding that a title IV-E agency or an entity has been determined to be in violation of section 471(a)(18) which is based on a judicial decision.

[65 FR 4083, Jan. 25, 2000, as amended at 77 FR 932, Jan. 6, 2012]

#### § 1355.40 [Reserved]

#### § 1355.41 Scope of the Adoption and Foster Care Analysis and Reporting System.

(a) This section applies to state and tribal title IV-E agencies unless indicated for state title IV-E agencies only.

(b) An agency described in paragraph (a) of this section must report information on the characteristics and experiences of a child in the reporting populations described in §1355.42. The title IV-E agency must submit the information collected to ACF on a semi-annual basis in an out-of-home care data file and adoption assistance data file as required in §1355.43, pertaining to information described in §§1355.44 and 1355.45 and in a format according to ACF's specifications.

[81 FR 90569, Dec. 14, 2016, as amended at 85 FR 28424, May 12, 2020]

#### § 1355.42 Reporting populations.

(a) *Out-of-home care reporting population.* (1) A title IV-E agency must re-

port a child of any age who is in out-of-home care for more than 24 hours. The out-of-home care reporting population includes a child in the following situations:

(i) A child in foster care as defined in §1355.20.

(ii) A child on whose behalf title IV-E foster care maintenance payments are made and who is under the placement and care responsibility of another public agency or an Indian tribe, tribal organization or consortium with which the title IV-E agency has an agreement pursuant to section 472(a)(2)(B)(ii) of the Act.

(iii) A child who runs away or whose whereabouts are unknown at the time the child is placed under the placement and care responsibility of the title IV-E agency.

(2) Once a child enters the out-of-home care reporting population, the child remains in the out-of-home care reporting population through the end of the report period in which the title IV-E agency's placement and care responsibility ends, or a child's title IV-E foster care maintenance payment pursuant to a title IV-E agreement per section 472(a)(2) of the Act ends, regardless of any subsequent living arrangement.

(b) *Adoption and guardianship assistance reporting population.* (1) The title IV-E agency must include in the adoption and guardianship assistance reporting population any child who is:

(i) In a finalized adoption under a title IV-E adoption assistance agreement pursuant to section 473(a) of the Act with the reporting title IV-E agency that is or was in effect at some point during the current report period; or

(ii) In a legal guardianship under a title IV-E guardianship assistance agreement pursuant to section 473(d) of the Act with the reporting title IV-E agency that is or was in effect at some point during the current report period.

(2) A child remains in the adoption or guardianship assistance reporting population through the end of the report period in which the title IV-E agreement ends or is terminated.

[81 FR 90569, Dec. 14, 2016]

## § 1355.43

### § 1355.43 Data reporting requirements.

(a) *Report periods and deadlines.* There are two six-month report periods based on the Federal fiscal year: October 1 to March 31 and April 1 to September 30. The title IV-E agency must submit the out-of-home care and adoption assistance data files to ACF within 45 days of the end of the report period (*i.e.*, by May 15 and November 14). If the reporting deadline falls on a weekend, the title IV-E agency has through the end of the following Monday to submit the data file.

(b) *Out-of-home care data file.* A title IV-E agency must report the information required in §1355.44 pertaining to each child in the out-of-home care reporting population, in accordance with the following:

(1) The title IV-E agency must report the most recent information for the applicable data elements in §1355.44(a) and (b).

(2) Except as provided in paragraph (b)(3) of this section, the title IV-E agency must report the most recent information and all historical information for the applicable data elements described in §1355.44(c) through (h).

(3) For a child who had an out-of-home care episode(s) as defined in §1355.42(a) prior to October 1, 2022, the title IV-E agency must report only the information for the data described in §1355.44(d)(1) and (g)(1) and (3) for the out-of-home care episode(s) that occurred prior to October 1, 2022.

(c) *Adoption and guardianship assistance data file.* A title IV-E agency must report the most recent information for the applicable data elements in §1355.45 that pertains to each child in the adoption and guardianship assistance reporting population on the last day of the report period.

(d) *Missing information.* If the title IV-E agency fails to collect the information for a data element, the title IV-E agency must report the element as blank or otherwise missing. The title IV-E agency is not permitted to default or map missing information that was not collected to a valid response option.

(e) *Electronic submission.* The title IV-E agency must submit the required data files electronically and in a format according to ACF's specifications.

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(f) *Record retention.* The title IV-E agency must retain all records necessary to comply with the data requirements in §§1355.41 through 1355.45. The title IV-E agency's retention of such records is not limited to the requirements of 45 CFR 92.42(b) and (c).

[81 FR 90569, Dec. 14, 2016, as amended at 85 FR 28424, May 12, 2020]

### § 1355.44 Out-of-home care data file elements.

(a) *General information*—(1) *Title IV-E agency.* Indicate the title IV-E agency responsible for submitting the Adoption and Foster Care Analysis and Reporting System (AFCARS) data in a format according to ACF's specifications.

(2) *Report date.* The report date corresponds with the end of the report period. Indicate the last month and the year of the report period.

(3) *Local agency.* Indicate the local county, jurisdiction, or equivalent unit that has primary responsibility for the child in a format according to ACF's specifications.

(4) *Child record number.* Indicate the child's record number. This is an encrypted, unique person identification number that is the same for the child, no matter where the child lives while in the placement and care responsibility of the title IV-E agency in out-of-home care and across all report periods and episodes. The title IV-E agency must apply and retain the same encryption routine or method for the person identification number across all report periods. The record number must be encrypted in accordance with ACF standards.

(b) *Child information*—(1) *Child's date of birth.* Indicate the month, day and year of the child's birth. If the actual date of birth is unknown because the child has been abandoned, provide an estimated date of birth. "Abandoned" means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven."

(2) *Child's sex.* Indicate whether the child is "male" or "female."

(3) *Reason to know a child is an "Indian Child"* as defined in the Indian Child Welfare Act (ICWA). For state

title IV-E agencies only: Indicate whether the state title IV-E agency made inquiries whether the child is an Indian child as defined in ICWA. Indicate “yes” or “no.”

(4) *Child’s tribal membership.* For state title IV-E agencies only:

(i) Indicate whether the child is a member of or eligible for membership in a federally recognized Indian tribe. Indicate “yes,” “no,” or “unknown”.

(ii) If the state title IV-E agency indicated “yes” in paragraph (b)(4)(i) of this section, indicate all federally recognized Indian tribe(s) that may potentially be the Indian child’s tribe(s). The title IV-E agency must submit the information in a format according to ACF’s specifications.

(5) *Application of ICWA.* For state title IV-E agencies only:

(i) Indicate whether ICWA applies for the child. Indicate “yes,” “no,” or “unknown”.

(ii) If the state title IV-E agency indicated “yes” in paragraph (b)(5)(i) of this section, indicate the date that the state title IV-E agency was notified by the Indian tribe or state or tribal court that ICWA applies.

(6) *Notification.* For state title IV-E agencies only: If the state title IV-E agency indicated “yes” to paragraph (b)(5)(i) of this section, the state title IV-E agency must indicate whether the Indian child’s tribe(s) was sent legal notice in accordance with 25 U.S.C. 1912(a). Indicate “yes” or “no.”

(7) *Child’s race.* In general, a child’s race is determined by the child, the child’s parent(s) or legal guardian(s). Indicate whether each race category listed in paragraphs (b)(7)(i) through (viii) of this section applies with a “yes” or “no.”

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian child has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American child has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A white child has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown.* The child or parent or legal guardian does not know, or is unable to communicate the race, or at least one race of the child. This category does not apply when the child has been abandoned or the parents failed to return and the identity of the child, parent(s), or legal guardian(s) is known.

(vii) *Race—abandoned.* The child’s race is unknown because the child has been abandoned. “Abandoned” means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.”

(viii) *Race—declined.* The child or parent(s) or legal guardian(s) has declined to identify a race.

(8) *Child’s Hispanic or Latino ethnicity.* In general, a child’s ethnicity is determined by the child or the child’s parent(s) or legal guardian(s). A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a “yes” or “no.” If the child or the child’s parent(s) or legal guardian(s) does not know or is unable to communicate whether the child is of Hispanic or Latino ethnicity, indicate “unknown.” If the child is abandoned indicate “abandoned.” Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.” If the child or the child’s parent(s) or legal guardian(s) refuses to identify the child’s ethnicity, indicate “declined.”

(9) *Health assessment.* Indicate whether the child had a health assessment during the current out-of-home care episode. This assessment could include an initial health screening or any follow-up health screening pursuant to section 422(b)(15)(A) of the Act. Indicate “yes” or “no.”

(10) *Health, behavioral or mental health conditions.* Indicate whether the child was diagnosed by a qualified professional, as defined by the state or tribe, as having a health, behavioral or mental health condition, prior to or during the child’s current out-of-home care episode as of the last day of the report period. Indicate “child has a diagnosed condition” if a qualified professional has made such a diagnosis and for each paragraph (b)(10)(i) through (xi) of this section, indicate “existing condition,” “previous condition” or “does not apply,” as applicable. “Previous condition” means a previous diagnoses that no longer exists as a current condition. Indicate “no exam or assessment conducted” if a qualified professional has not conducted a medical exam or assessment of the child and leave paragraphs (b)(10)(i) through (xi) of this section blank. Indicate “exam or assessment conducted and none of the conditions apply” if a qualified professional has conducted a medical exam or assessment and has concluded that the child does not have one of the conditions listed and leave paragraphs (b)(10)(i) through (xi) of this section blank. Indicate “exam or assessment conducted but results not received” if a qualified professional has conducted a medical exam or assessment but the title IV–E agency has not yet received the results of such an exam or assessment and leave paragraphs (b)(10)(i) through (xi) of this section blank.

(i) *Intellectual disability.* The child has, or had previously, significantly sub-average general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect the child’s socialization and learning.

(ii) *Autism spectrum disorder.* The child has, or had previously, a neurodevelopment disorder, characterized by social impairments, communication difficulties, and restricted, re-

petitive, and stereotyped patterns of behavior. This includes the range of disorders from autistic disorder, sometimes called autism or classical autism spectrum disorder, to milder forms known as Asperger syndrome and pervasive developmental disorder not otherwise specified.

(iii) *Visual impairment and blindness.* The child has, or had previously, a visual impairment that may adversely affect the day-to-day functioning or educational performance, such as blindness, amblyopia, or color blindness.

(iv) *Hearing impairment and deafness.* The child has, or had previously, an impairment in hearing, whether permanent or fluctuating, that adversely affects the child’s day-to-day functioning and educational performance.

(v) *Orthopedic impairment or other physical condition.* The child has, or had previously, a physical deformity, such as amputations and fractures or burns that cause contractures, or an orthopedic impairment, including impairments caused by a congenital anomalies or disease, such as cerebral palsy, spina bifida, multiple sclerosis, or muscular dystrophy.

(vi) *Mental/emotional disorders.* The child has, or had previously, one or more mood or personality disorders or conditions over a long period of time and to a marked degree, such as conduct disorder, oppositional defiant disorder, emotional disturbance, anxiety disorder, obsessive-compulsive disorder, or eating disorder.

(vii) *Attention deficit hyperactivity disorder.* The child has, or had previously, a diagnosis of the neurobehavioral disorders of attention deficit hyperactivity disorder (ADHD) or attention deficit disorder (ADD).

(viii) *Serious mental disorders.* The child has, or had previously, a diagnosis of a serious mental disorder or illness, such as bipolar disorder, depression, psychotic disorders, or schizophrenia.

(ix) *Developmental delay.* The child has been assessed by appropriate diagnostic instruments and procedures and is experiencing delays in one or more of the following areas: Physical development or motor skills, cognitive development, communication, language,

or speech development, social or emotional development, or adaptive development.

(x) *Developmental disability.* The child has, or had previously been diagnosed with a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402), section 102(8). This means a severe, chronic disability of an individual that is attributable to a mental or physical impairment or combination of mental and physical impairments that manifests before the age of 22, is likely to continue indefinitely and results in substantial functional limitations in three or more areas of major life activity. Areas of major life activity include self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, and reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. If a child is given the diagnosis of "developmental disability," do not indicate the individual conditions that form the basis of this diagnosis separately in other data elements.

(xi) *Other diagnosed condition.* The child has, or had previously, a diagnosed condition or other health impairment other than those described in paragraphs (b)(10)(i) through (x) of this section, which requires special medical care, such as asthma, diabetes, chronic illnesses, a diagnosis as HIV positive or AIDS, epilepsy, traumatic brain injury, other neurological disorders, speech/language impairment, learning disability, or substance use issues.

(11) *School enrollment.* Indicate whether the child is a full-time student at, and enrolled in (or in the process of enrolling in), "elementary" or "secondary" education, or is a full or part-time student at and enrolled in a "post-secondary education or training" or "college," as of the earlier of the last day of the report period or the day of exit for a child exiting out-of-home care prior to the end of the report period. A child is still considered enrolled in school if the child would otherwise

be enrolled in a school that is currently out of session. An "elementary or secondary school student" is defined in section 471(a)(30) of the Act as a child that is enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the state or other jurisdiction in which the institution is located, instructed in elementary or secondary education at home in accordance with a home school law of the state or other jurisdiction in which the home is located, in an independent study elementary or secondary education program in accordance with the law of the state or other jurisdiction in which the program is located, which is administered by the local school or school district, or incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by a regularly updated information in the case plan of the child. Enrollment in "post-secondary education or training" refers to full or part-time enrollment in any post-secondary education or training, other than an education pursued at a college or university. Enrollment in "college" refers to a child that is enrolled full or part-time at a college or university. If child has not reached compulsory school age, indicate "not school-age." If the child has reached compulsory school-age, but is not enrolled or is in the process of enrolling in any school setting full-time, indicate "not enrolled."

(12) *Educational level.* Indicate the highest educational level from kindergarten to college or post-secondary education/training completed by the child as of the last day of the report period. If child has not reached compulsory school-age, indicate "not school-age." Indicate "kindergarten" if the child is currently in or about to begin 1st grade. Indicate "1st grade" if the child is currently in or about to begin 2nd grade. Indicate "2nd grade" if the child is currently in or about to begin 3rd grade. Indicate "3rd grade" if the child is currently in or about to begin 4th grade. Indicate "4th grade" if the child is currently in or about to begin 5th grade. Indicate "5th grade" if the child is currently in or about to begin 6th grade. Indicate "6th grade" if the

child is currently in or about to begin 7th grade. Indicate “7th grade” if the child is currently in or about to begin 8th grade. Indicate “8th grade” if the child is currently in or about to begin 9th grade. Indicate “9th grade” if the child is currently in or about to begin 10th grade. Indicate “10th grade” if the child is currently in or about to begin 11th grade. Indicate “11th grade” if the child is currently in or about to begin 12th grade. Indicate “12th grade” if the child has graduated from high school. Indicate “GED” if the child has completed a general equivalency degree or other high school equivalent. Indicate “Post-secondary education or training” if the child has completed any post-secondary education or training, including vocational training, other than an education pursued at a college or university. Indicate “College” if the child has completed at least a semester of study at a college or university.

(13) *Pregnant or parenting.* (i) Indicate whether the child is pregnant as of the end of the report period. Indicate “yes” or “no.”

(ii) Indicate whether the child has ever fathered or bore a child. Indicate “yes” or “no.”

(iii) Indicate whether the child and his/her child(ren) are placed together at any point during the report period, if the response in paragraph (b)(13)(ii) of this section is “yes.” Indicate “yes,” “no,” or “not applicable” if the response in paragraph (b)(13)(ii) of this section is “no.”

(14) *Special education.* Indicate whether the child has an Individualized Education Program (IEP) as defined in section 614(d)(1) of Part B of Title I of the Individuals with Disabilities Education Act (IDEA) and implementing regulations, or an Individualized Family Service Program (IFSP) as defined in section 636 of Part C of Title I of IDEA and implementing regulations, as of the end of the report period. Indicate “yes” if the child has either an IEP or an IFSP or “no” if the child has neither.

(15) *Prior adoption.* Indicate whether the child experienced a prior legal adoption before the current out-of-home care episode. Include any public, private or independent adoption in the United States or adoption in another

country and tribal customary adoptions. Indicate “yes,” “no” or “abandoned” if the information is unknown because the child has been abandoned. “Abandoned” means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.” If the child has experienced a prior legal adoption, the title IV–E agency must complete paragraphs (b)(15)(i) and (ii) of this section; otherwise the title IV–E agency must leave those paragraphs blank.

(i) *Prior adoption date.* Indicate the month and year that the most recent prior adoption was finalized. In the case of a prior intercountry adoption where the adoptive parent(s) readopted the child in the United States, the title IV–E agency must provide the date of the adoption (either the original adoption in the home country or the re-adoption in the United States) that is considered final in accordance with applicable laws.

(ii) *Prior adoption intercountry.* Indicate whether the child’s most recent prior adoption was an intercountry adoption, meaning that the child’s prior adoption occurred in another country or the child was brought into the United States for the purposes of finalizing the prior adoption. Indicate “yes” or “no.”

(16) *Prior guardianship general—(i) Prior guardianship.* Indicate whether the child experienced a prior legal guardianship before the current out-of-home care episode. Include any public, private or independent guardianship(s) in the United States that meets the definition in section 475(7) of the Act. This includes any judicially created relationship between a child and caretaker which is intended to be permanent and self-sustaining, as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control, custody, and decision making. Indicate “yes,” “no,” or “abandoned” if the information is unknown because the child has been abandoned. “Abandoned” means that the child was left alone or with others and the identity of the parent(s) or

legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.” If the child has experienced a prior legal guardianship, the title IV–E agency must complete paragraph (b)(16)(ii) of this section; otherwise the title IV–E agency must leave it blank.

(ii) *Prior guardianship date.* Indicate the month and year that the most recent prior guardianship became legalized.

(17) *Child financial and medical assistance.* Indicate whether the child received financial and medical assistance at any point during the six-month report period. Indicate “child has received support/assistance” if the child was the recipient of such assistance during the report period, and indicate which of the following sources of support described in paragraphs (b)(17)(i) through (viii) of this section “applies” or “does not apply.” Indicate “no support/assistance received” if none of these apply.

(i) *State/Tribal adoption assistance.* The child is receiving an adoption subsidy or other adoption assistance paid for solely by the state or Indian tribe.

(ii) *State/Tribal foster care.* The child is receiving a foster care payment that is solely funded by the state or Indian tribe.

(iii) *Title IV–E adoption subsidy.* The child is determined eligible for a title IV–E adoption assistance subsidy.

(iv) *Title IV–E guardianship assistance.* The child is determined eligible for a title IV–E guardianship assistance subsidy.

(v) *Title IV–A TANF.* The child is living with relatives who are receiving a Temporary Assistance for Needy Families (TANF) cash assistance payment on behalf of the child.

(vi) *Title IV–B.* The child’s living arrangement is supported by funds under title IV–B of the Act.

(vii) *Chafee Program.* The child is living independently and is supported by funds under the John H. Chafee Foster Care Program for Successful Transition to Adulthood.

(viii) *Other.* The child is receiving financial support from another source not previously listed in paragraphs (b)(17)(i) through (vii) of this section.

(18) *Title IV–E foster care during report period.* Indicate whether a title IV–E foster care maintenance payment was paid on behalf of the child at any point during the report period that is claimed under title IV–E foster care with a “yes” or “no,” as appropriate. Indicate “yes” if the child has met all eligibility requirements of section 472(a) of the Act and the title IV–E agency has claimed, or intends to claim, Federal reimbursement for foster care maintenance payments made on the child’s behalf during the report period.

(19) *Total number of siblings.* Indicate the total number of siblings of the child. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV–E agency must indicate “0.” If the title IV–E agency indicates “0,” the title IV–E agency must leave paragraphs (b)(20) and (21) of this section blank.

(20) *Siblings in foster care.* Indicate the number of siblings of the child who are in foster care, as defined in § 1355.20. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV–E agency must leave this paragraph (b)(20) blank. If the child has siblings, but they are not in foster care as defined in § 1355.20, the title IV–E agency must indicate “0.” If the title IV–E agency reported “0,” leave paragraph (b)(21) of this section blank.

(21) *Siblings in living arrangement.* Indicate the number of siblings of the child who are in the same living arrangement as the child, on the last day of the report period. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV–E agency must leave this paragraph (b)(21) blank. If the child has siblings, but they are not in the same living arrangement as the



child, the title IV–E agency must indicate “0.”

(c) *Parent or legal guardian information*—(1) *Year of birth of first parent or legal guardian.* If applicable, indicate the year of birth of the first parent (biological, legal or adoptive) or legal guardian of the child. To the extent that a child has both a parent and a legal guardian, or two different sets of legal parents, the title IV–E agency must report on those who had legal responsibility for the child. We are not seeking information on putative parent(s) in this paragraph (c)(1). If there is only one parent or legal guardian of the child, that person’s year of birth must be reported here. If the child was abandoned indicate “abandoned.” “Abandoned” means that the child was left alone or with others and the identity of the child’s parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.”

(2) *Year of birth of second parent or legal guardian.* If applicable, indicate the year of birth of the second parent (biological, legal or adoptive) or legal guardian of the child. We are not seeking information on putative parent(s) in this paragraph (c)(2). If the child was abandoned, indicate “abandoned.” “Abandoned” means that the child was left alone or with others and the identity of the child’s parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.” Indicate “not applicable” if there is not another parent or legal guardian.

(3) *Tribal membership mother.* For state title IV–E agencies only: Indicate whether the biological or adoptive mother is a member of an Indian tribe. Indicate “yes,” “no,” or “unknown.”

(4) *Tribal membership father.* For state title IV–E agencies only: Indicate whether the biological or adoptive father is a member of an Indian tribe. Indicate “yes,” “no,” or “unknown.”

(5) *Termination/modification of parental rights.* Indicate whether the termination/modification of parental rights for each parent (biological, legal and/or putative) was voluntary or involuntary. “Voluntary” means the parent voluntarily relinquished their parental rights to the title IV–E agency, with or

without court involvement. Indicate “voluntary” or “involuntary.” Indicate “not applicable” if there was no termination/modification and leave paragraphs (c)(5)(i) and (ii) of this section blank.

(i) *Termination/modification of parental rights petition.* Indicate the month, day and year that each petition to terminate/modify the parental rights of a biological, legal and/or putative parent was filed in court, if applicable. Indicate “deceased” if the parent is deceased. If a petition has not been filed, leave this paragraph (c)(5)(i) blank.

(ii) *Termination/modification of parental rights.* Enter the month, day and year that the parental rights were voluntarily or involuntarily terminated/modified, for each biological, legal and/or putative parent, if applicable. If the parent is deceased, enter the date of death.

(d) *Removal information*—(1) *Date of child’s removal.* Indicate the removal date(s) in month, day and year format for each removal of a child who enters the placement and care responsibility of the title IV–E agency. For a child who is removed and is placed initially in foster care, indicate the date that the title IV–E agency received placement and care responsibility. For a child who ran away or whose whereabouts are unknown at the time the child is removed and is placed in the placement and care responsibility of the title IV–E agency, indicate the date that the title IV–E agency received placement and care responsibility. For a child who is removed and is placed initially in a non-foster care setting, indicate the date that the child enters foster care as the date of removal.

(2) *Removal transaction date.* A non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (d)(1) of this section was entered into the information system.

(3) *Environment at removal.* Indicate the type of environment (household or facility) the child was living in at the time of each removal for each removal reported in paragraph (d)(1) of this section. Indicate “parent household” if the child was living in a household that included one or both of the child’s parents, whether biological, adoptive or

legal. Indicate “relative household” if the child was living with a relative(s), the relative(s) is not the child’s legal guardian and neither of the child’s parents were living in the household. Indicate “legal guardian household” if the child was living with a legal guardian(s), the guardian(s) is not the child’s relative and neither of the child’s parents were living in the household. Indicate “relative legal guardian household” if the child was living with a relative(s) who is also the child’s legal guardian. Indicate “justice facility” if the child was in a detention center, jail or other similar setting where the child was detained. Indicate “medical/mental health facility” if the child was living in a facility such as a medical or psychiatric hospital or residential treatment center. Indicate “other” if the child was living in another situation not so described, such as living independently or homeless.

(4) *Child and family circumstances at removal.* Indicate all child and family circumstances that were present at the time of the child’s removal and/or related to the child being placed into foster care for each removal reported in paragraph (d)(1) of this section. Indicate whether each circumstance described in paragraphs (d)(4)(i) through (xxxiv) of this section “applies” or “does not apply” for each removal indicated in paragraph (d)(1) of this section.

(i) *Runaway.* The child has left, without authorization, the home or facility where the child was residing.

(ii) *Whereabouts unknown.* The child’s whereabouts are unknown and the title IV-E agency does not consider the child to have run away.

(iii) *Physical abuse.* Alleged or substantiated physical abuse, injury or maltreatment of the child by a person responsible for the child’s welfare.

(iv) *Sexual abuse.* Alleged or substantiated sexual abuse or exploitation of the child by a person who is responsible for the child’s welfare.

(v) *Psychological or emotional abuse.* Alleged or substantiated psychological or emotional abuse, including verbal abuse, of the child by a person who is responsible for the child’s welfare.

(vi) *Neglect.* Alleged or substantiated negligent treatment or maltreatment

of the child, including failure to provide adequate food, clothing, shelter, supervision or care by a person who is responsible for the child’s welfare.

(vii) *Medical neglect.* Alleged or substantiated medical neglect caused by a failure to provide for the appropriate health care of the child by a person who is responsible for the child’s welfare, although the person was financially able to do so, or was offered financial or other means to do so.

(viii) *Domestic violence.* Alleged or substantiated violent act(s), including any forceful detention of an individual that results in, threatens to result in, or attempts to cause physical injury or mental harm. This is committed by a person against another individual residing in the child’s home and with whom such person is in an intimate relationship, dating relationship, is or was related by marriage, or has a child in common. This circumstance includes domestic violence between the child and his or her partner and applies to a child or youth of any age including those younger and older than the age of majority. This does not include alleged or substantiated maltreatment of the child by a person who is responsible for the child’s welfare.

(ix) *Abandonment.* The child was left alone or with others and the parent or legal guardian’s identity is unknown and cannot be ascertained. This does not include a child left at a “safe haven” as defined by the title IV-E agency. This category does not apply when the identity of the parent(s) or legal guardian(s) is known.

(x) *Failure to return.* The parent, legal guardian or caretaker did not or has not returned for the child or made his or her whereabouts known. This category does not apply when the identity of the parent, legal guardian or caretaker is unknown.

(xi) *Caretaker’s alcohol use.* A parent, legal guardian or other caretaker responsible for the child uses alcohol compulsively that is not of a temporary nature.

(xii) *Caretaker’s drug use.* A parent, legal guardian or other caretaker responsible for the child uses drugs compulsively that is not of a temporary nature.

(xiii) *Child alcohol use.* The child uses alcohol.

(xiv) *Child drug use.* The child uses drugs.

(xv) *Prenatal alcohol exposure.* The child has been identified as prenatally exposed to alcohol, resulting in fetal alcohol spectrum disorders such as fetal alcohol exposure, fetal alcohol effect, or fetal alcohol syndrome.

(xvi) *Prenatal drug exposure.* The child has been identified as prenatally exposed to drugs.

(xvii) *Diagnosed condition.* The child has a clinical diagnosis by a qualified professional of a health, behavioral or mental health condition, such as one or more of the following: Intellectual disability, emotional disturbance, specific learning disability, hearing, speech or sight impairment, physical disability or other clinically diagnosed condition.

(xviii) *Inadequate access to mental health services.* The child and/or child's family has inadequate resources to access the necessary mental health services outside of the child's out-of-home care placement.

(xix) *Inadequate access to medical services.* The child and/or child's family has inadequate resources to access the necessary medical services outside of the child's out-of-home care placement.

(xx) *Child behavior problem.* The child's behavior in his or her school and/or community adversely affects his or her socialization, learning, growth and/or moral development. This includes all child behavior problems, as well as adjudicated and non-adjudicated status or delinquency offenses and convictions.

(xxi) *Death of caretaker.* Existing family stress in caring for the child or an inability to care for the child due to the death of a parent, legal guardian or other caretaker.

(xxii) *Incarceration of caretaker.* The child's parent, legal guardian or caretaker is temporarily or permanently placed in jail or prison which adversely affects his or her ability to care for the child.

(xxiii) *Caretaker's significant impairment—physical/emotional.* A physical or emotional illness or disabling condition of the child's parent, legal guardian or caretaker that adversely limits his or her ability to care for the child.

(xxiv) *Caretaker's significant impairment—cognitive.* The child's parent, legal guardian or caretaker has cognitive limitations that impact his or her ability to function in areas of daily life, which adversely affect his or her ability to care for the child. It also may be characterized by a significantly below-average score on a test of mental ability or intelligence.

(xxv) *Inadequate housing.* The child's or his or her family's housing is substandard, overcrowded, unsafe or otherwise inadequate which results in it being inappropriate for the child to reside.

(xxvi) *Voluntary relinquishment for adoption.* The child's parent has voluntarily relinquished the child by assigning the physical and legal custody of the child to the title IV-E agency, in writing, for the purpose of having the child adopted. This includes a child left at a "safe haven" as defined by the title IV-E agency.

(xxvii) *Child requested placement.* The child, age 18 or older, has requested placement into foster care.

(xxviii) *Sex trafficking.* The child is a victim of sex trafficking at the time of removal.

(xxix) *Parental immigration detention or deportation.* The parent is or was detained or deported by immigration officials.

(xxx) *Family conflict related to child's sexual orientation, gender identity, or gender expression.* There is family conflict related to the child's expressed or perceived sexual orientation, gender identity, or gender expression. This includes any conflict related to the ways in which a child manifests masculinity or femininity.

(xxxi) *Educational neglect.* Alleged or substantiated failure of a parent or caregiver to enroll a child of mandatory school age in school or provide appropriate home schooling or needed special educational training, thus allowing the child or youth to engage in chronic truancy.

(xxxii) *Public agency title IV-E agreement.* The child is in the placement and care responsibility of another public agency that has an agreement with the title IV-E agency pursuant to section

472(a)(2)(B) of the Act and on whose behalf title IV-E foster care maintenance payments are made.

(xxxiii) *Tribal title IV-E agreement.* The child is in the placement and care responsibility of an Indian tribe, tribal organization or consortium with which the title IV-E agency has an agreement and on whose behalf title IV-E foster care maintenance payments are made.

(xxxiv) *Homelessness.* The child or his or her family has no regular or adequate place to live. This includes living in a car, or on the street, or staying in a homeless or other temporary shelter.

(5) *Victim of sex trafficking prior to entering foster care.* Indicate whether the child had been a victim of sex trafficking before the current out-of-home care episode. Indicate “yes” if the child was a victim or “no” if the child had not been a victim.

(i) *Report to law enforcement.* If the title IV-E agency indicated “yes” in paragraph (d)(5) of this section, indicate whether the title IV-E agency made a report to law enforcement for entry into the National Crime Information Center (NCIC) database. Indicate “yes” if the agency made a report to law enforcement and indicate “no” if the agency did not make a report.

(ii) *Date.* If the title IV-E agency indicated “yes” in paragraph (d)(5)(i) of this section, indicate the date that the agency made the report to law enforcement.

(6) *Victim of sex trafficking while in foster care.* Indicate “yes” if the child was a victim of sex trafficking while in out-of-home care during the current out-of-home care episode. Indicate “no” if the child was not a victim of sex trafficking during the current out-of-home care episode.

(i) *Report to law enforcement.* If the title IV-E agency indicated “yes” in paragraph (d)(6) of this section, indicate whether the agency made a report to law enforcement for entry into the NCIC database. Indicate “yes” if the title IV-E agency made a report(s) to law enforcement and indicate “no” if the title IV-E agency did not make a report.

(ii) *Date.* If the title IV-E agency indicated “yes” in paragraph (d)(6)(i) of this section, indicate the date(s) the

agency made the report(s) to law enforcement.

(e) *Living arrangement and provider information—(1) Date of living arrangement.* Indicate the month, day and year representing the first date of placement in each of the child’s living arrangements for each out-of-home care episode. In the case of a child who has run away, whose whereabouts are unknown, or who is already in a living arrangement and remains there when the title IV-E agency receives placement and care responsibility, indicate the date of the Voluntary Placement Agreement or court order providing the title IV-E agency with placement and care responsibility for the child, rather than the date when the child was originally placed in the living arrangement.

(2) *Foster family home.* Indicate whether each of the child’s living arrangements is a foster family home, with a “yes” or “no” as appropriate. If the child has run away or the child’s whereabouts are unknown, indicate “no.” If the title IV-E agency indicates that the child is living in a foster family home, by indicating “yes,” the title IV-E agency must complete paragraph (e)(3) of this section. If the title IV-E agency indicates “no,” the title IV-E agency must complete paragraph (e)(4) of this section.

(3) *Foster family home type.* If the title IV-E agency indicated that the child is living in a foster family home in paragraph (e)(2) of this section, indicate whether each foster family home type listed in paragraphs (e)(3)(i) through (vi) of this section applies or does not apply; otherwise the title IV-E agency must leave paragraph (e)(3) blank.

(i) *Licensed home.* The child’s living arrangement is licensed or approved by the state or tribal licensing/approval authority.

(ii) *Therapeutic foster family home.* The home provides specialized care and services.

(iii) *Shelter care foster family home.* The home is so designated by the state or tribal licensing/approval authority, and is designed to provide short-term or transitional care.

(iv) *Relative foster family home.* The foster parent(s) is related to the child by biological, legal or marital connection and the relative foster parent(s)

lives in the home as his or her primary residence.

(v) *Pre-adoptive home.* The home is one in which the family and the title IV–E agency have agreed on a plan to adopt the child.

(vi) *Kin foster family home.* The home is one in which there is a kin relationship as defined by the title IV–E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child’s family and the foster parent(s) and there is not a legal, biological, or marital connection between the child and foster parent.

(4) *Other living arrangement type.* If the title IV–E agency indicated that the child’s living arrangement is other than a foster family home in paragraph (e)(2) of this section, indicate the type of setting; otherwise the title IV–E agency must leave this paragraph (e)(4) blank. Indicate “group home-family operated” if the child is in a group home that provides 24-hour care in a private family home where the family members are the primary caregivers. Indicate “group home-staff operated” if the child is in a group home that provides 24-hour care for children where the care-giving is provided by shift or rotating staff. Indicate “group home-shelter care” if the child is in a group home that provides 24-hour care which is short-term or transitional in nature, and is designated by the state or tribal licensing/approval authority to provide shelter care. Indicate “residential treatment center” if the child is in a facility that has the purpose of treating children with mental health or behavioral conditions or if the child is placed with a parent who is in a licensed residential family-based treatment facility for substance abuse pursuant to section 472(j) of the Act. This does not include a qualified residential treatment program defined in section 472(k)(4) of the Act. Indicate “qualified residential treatment program” if the child is in a placement that meets all of the requirements of section 472(k)(2)(A) and (4) of the Act. Indicate “child care institution” if the child is in a private child care institution, or a public child care institution which accommodates no more than 25 children, and is licensed by the state or tribal

authority responsible for licensing or approving child care institutions. This includes a setting specializing in providing prenatal, post-partum, or parenting supports for youth pursuant to section 472(k)(2)(B) of the Act, and a setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims pursuant to section 472(k)(2)(D) of the Act. This does not include detention facilities, forestry camps, training schools or any other facility operated primarily for the detention of children who are determined to be delinquent. Indicate “child care institution-shelter care” if the child is in a child care institution and the institution is designated to provide shelter care by the state or tribal authority responsible for licensing or approving child care institutions and is short-term or transitional in nature. Indicate “supervised independent living” if the child is living independently in a supervised setting. Indicate “juvenile justice facility” if the child is in a secure facility or institution where alleged or adjudicated juvenile delinquents are housed. Indicate “medical or rehabilitative facility” if the child is in a facility where an individual receives medical or physical health care, such as a hospital. Indicate “psychiatric hospital” if the child is in a facility that provides emotional or psychological health care and is licensed or accredited as a hospital. Indicate “runaway” if the child has left, without authorization, the home or facility where the child was placed. Indicate “whereabouts unknown” if the child is not in the physical custody of the title IV–E agency or person or institution with whom the child has been placed, the child’s whereabouts are unknown, and the title IV–E agency does not consider the child to have run away. Indicate “placed at home” if the child is home with the parent(s) or legal guardian(s) in preparation for the title IV–E agency to return the child home permanently.

(5) *Location of living arrangement.* Indicate whether each of the child’s living arrangements reported in paragraph (e)(1) of this section is located within or outside of the reporting state

or tribal service area or is outside of the country. Indicate “out-of-state or out-of-tribal service area” if the child’s living arrangement is located outside of the reporting state or tribal service area but inside the United States. Indicate “in-state or in-tribal service area” if the child’s living arrangement is located within the reporting state or tribal service area. Indicate “out-of-country” if the child’s living arrangement is outside of the United States. Indicate “runaway or whereabouts unknown” if the child has run away from his or her living arrangement or the child’s whereabouts are unknown. If the title IV-E agency indicates either “out-of-state or out-of-tribal service area” or “out-of-country” for the child’s living arrangement, the title IV-E agency must complete paragraph (e)(6) of this section; otherwise the title IV-E agency must leave paragraph (e)(6) of this section blank.

(6) *Jurisdiction or country where child is living.* Indicate the state, tribal service area, Indian reservation, or country where the reporting title IV-E agency placed the child for each living arrangement, if the title IV-E agency indicated either “out-of-state” or “out-of-tribal service area” or “out-of-country” in paragraph (e)(5) of this section; otherwise the title IV-E agency must leave this paragraph (e)(6) blank. The title IV-E agency must report the information in a format according to ACF’s specifications.

(7) *Marital status of the foster parent(s).* Indicate the marital status of the child’s foster parent(s) for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. Indicate “married couple” if the foster parents are considered united in matrimony according to applicable laws. Include common law marriage, where provided by applicable laws. Indicate “unmarried couple” if the foster parents are living together as a couple, but are not united in matrimony according to applicable laws. Indicate “separated” if the foster parent is legally separated or is living apart from his or her spouse. Indicate “single adult” if the foster parent is not married and is not living with another individual as part of a couple. If the re-

sponse is either “married couple” or “unmarried couple,” the title IV-E agency must complete the paragraphs for the second foster parent in paragraphs (e)(14) through (18) of this section; otherwise the title IV-E agency must leave those paragraphs blank.

(8) *Child’s relationship to the foster parent(s).* Indicate the type of relationship between the child and his or her foster parent(s), for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. Indicate “relative(s)” if the foster parent(s) is the child’s relative (by biological, legal or marital connection). Indicate “non-relative(s)” if the foster parent(s) is not related to the child (by biological, legal or marital connection). Indicate “kin” if the foster parent(s) has kin relationship to the child as defined by the title IV-E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child’s family and the foster parent(s) and there is not a legal, biological, or marital connection between the child and foster parent.

(9) *Year of birth for first foster parent.* Indicate the year of birth for the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section.

(10) *First foster parent tribal membership.* For state title IV-E agencies only: Indicate whether the first foster parent is a member of an Indian tribe. Indicate “yes,” “no,” or “unknown.”

(11) *Race of first foster parent.* Indicate the race of the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. In general, an individual’s race is determined by the individual. Indicate whether each race category listed in paragraphs (e)(11)(i) through (vii) of this section applies with a “yes” or “no.”

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America) and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown.* The first foster parent does not know his or her race, or at least one race.

(vii) *Race—declined.* The first foster parent has declined to identify a race.

(12) *Hispanic or Latino ethnicity of first foster parent.* Indicate the Hispanic or Latino ethnicity of the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the first foster parent does not know his or her ethnicity indicate "unknown." If the individual refuses to identify his or her ethnicity, indicate "declined."

(13) *Sex of first foster parent.* Indicate whether the first foster parent is "female" or "male."

(14) *Year of birth for second foster parent.* Indicate the birth year of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. The title IV–E agency must leave this paragraph (e)(14) blank if there is

no second foster parent according to paragraph (e)(7) of this section.

(15) *Second foster parent tribal membership.* For state title IV–E agencies only: Indicate whether the second foster parent is a member of an Indian tribe. Indicate "yes," "no," or "unknown."

(16) *Race of second foster parent.* Indicate the race of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. In general, an individual's race is determined by the individual. Indicate whether each race category listed in paragraphs (e)(16)(i) through (vii) of this section applies with a "yes" or "no." The title IV–E agency must leave this paragraph (e)(16) blank if there is no second foster parent according to paragraph (e)(7) of this section.

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America) and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown.* The second foster parent does not know his or her race, or at least one race.

(vii) *Race—declined.* The second foster parent has declined to identify a race.

(17) *Hispanic or Latino ethnicity of second foster parent.* Indicate the Hispanic

or Latino ethnicity of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the second foster parent does not know his or her ethnicity, indicate "unknown." If the individual refuses to identify his or her ethnicity, indicate "declined." The title IV-E agency must leave this paragraph (e)(17) blank if there is no second foster parent according to paragraph (e)(7) of this section.

(18) *Sex of second foster parent.* Indicate whether the second foster parent is "female" or "male."

(f) *Permanency planning—(1) Permanency plan.* Indicate each permanency plan established for the child. Indicate "reunify with parent(s) or legal guardian(s)" if the plan is to keep the child in out-of-home care for a limited time and the title IV-E agency is to work with the child's parent(s) or legal guardian(s) to establish a stable family environment. Indicate "live with other relatives" if the plan is for the child to live permanently with a relative(s) (by biological, legal or marital connection) who is not the child's parent(s) or legal guardian(s). Indicate "adoption" if the plan is to facilitate the child's adoption by relatives, foster parents, kin or other unrelated individuals. Indicate "guardianship" if the plan is to establish a new legal guardianship. Indicate "planned permanent living arrangement" if the plan is for the child to remain in foster care until the title IV-E agency's placement and care responsibility ends. The title IV-E agency must only select "planned permanent living arrangement" consistent with the requirements in section 475(5)(C)(i) of the Act. Indicate "permanency plan has not yet been established."

(2) *Date of permanency plan.* Indicate the month, day and year that each per-

manency plan(s) was established during each out-of-home care episode.

(3) *Date of periodic review(s).* Enter the month, day and year of each periodic review, either by a court or by administrative review (as defined in section 475(6) of the Act) that meets the requirements of section 475(5)(B) of the Act.

(4) *Date of permanency hearing(s).* Enter the month, day and year of each permanency hearing held by a court or an administrative body appointed or approved by the court that meets the requirements of section 475(5)(C) of the Act.

(5) *Caseworker visit dates.* Enter each date in which a caseworker had an in-person, face-to-face visit with the child consistent with section 422(b)(17) of the Act. Indicate the month, day and year of each visit.

(6) *Caseworker visit locations.* Indicate the location of each in-person, face-to-face visit between the caseworker and the child. Indicate "child's residence" if the visit occurred at the location where the child is currently residing, such as the current foster care provider's home, child care institution or facility. Indicate "other location" if the visit occurred at any location other than where the child currently resides, such as the child's school, a court, a child welfare office or in the larger community.

(g) *General exit information.* Provide exit information for each out-of-home care episode. An exit occurs when the title IV-E agency's placement and care responsibility of the child ends.

(1) *Date of exit.* Indicate the month, day and year for each of the child's exits from out-of-home care. An exit occurs when the title IV-E agency's placement and care responsibility of the child ends. If the child has not exited out-of-home care the title IV-E agency must leave this paragraph (g)(1) blank. If this paragraph (g)(1) is applicable, paragraphs (g)(2) and (3) of this section must have a response.

(2) *Exit transaction date.* A non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (g)(1) of this section was entered into the information system.



(3) *Exit reason.* Indicate the reason for each of the child's exits from out-of-home care. Indicate "not applicable" if the child has not exited out-of-home care. Indicate "reunify with parent(s)/ legal guardian(s)" if the child was returned to his or her parent(s) or legal guardian(s) and the title IV–E agency no longer has placement and care responsibility. Indicate "live with other relatives" if the child exited to live with a relative (related by a biological, legal or marital connection) other than his or her parent(s) or legal guardian(s). Indicate "adoption" if the child was legally adopted. Indicate "emancipation" if the child exited care due to age. Indicate "guardianship" if the child exited due to a legal guardianship of the child. Indicate "runaway or whereabouts unknown" if the child ran away or the child's whereabouts were unknown at the time that the title IV–E agency's placement and care responsibility ends. Indicate "death of child" if the child died while in out-of-home care. Indicate "transfer to another agency" if placement and care responsibility for the child was transferred to another agency, either within or outside of the reporting state or tribal service area.

(4) *Transfer to another agency.* If the title IV–E agency indicated the child was transferred to another agency in paragraph (g)(3) of this section, indicate the type of agency that received placement and care responsibility for the child from the following options: "State title IV–E agency," "Tribal title IV–E agency," "Indian tribe or tribal agency (non-IV–E)," "juvenile justice agency," "mental health agency," "other public agency" or "private agency."

(h) *Exit to adoption and guardianship information.* Report information in this paragraph (h) only if the title IV–E agency indicated the child exited to adoption or legal guardianship in paragraph (g)(3) of this section. Otherwise the title IV–E agency must leave paragraphs (h)(1) through (15) of this section blank.

(1) *Marital status of the adoptive parent(s) or guardian(s).* Indicate the marital status of the adoptive parent(s) or legal guardian(s). Indicate "married couple" if the adoptive parents or legal

guardians are considered united in matrimony according to applicable laws. Include common law marriage, where provided by applicable laws. Indicate "married but individually adopting or obtaining legal guardianship" if the adoptive parents or legal guardians are considered united in matrimony according to applicable laws, but are individually adopting or obtaining legal guardianship. Indicate "separated" if the foster parent is legally separated or is living apart from his or her spouse. Indicate "unmarried couple" if the adoptive parents or guardians are living together as a couple, but are not united in matrimony according to applicable laws. Use this response option even if only one person of the unmarried couple is the adoptive parent or legal guardian of the child. Indicate "single adult" if the adoptive parent or legal guardian is not married and is not living with another individual as part of a couple. If the response is "married couple" or "unmarried couple," the title IV–E agency also must complete paragraphs for the second adoptive parent or second legal guardian in paragraphs (h)(8) through (12) of this section; otherwise the title IV–E agency must leave those paragraphs blank.

(2) *Child's relationship to the adoptive parent(s) or guardian(s).* Indicate the type of relationship between the child and his or her adoptive parent(s) or legal guardian(s). Indicate whether each relationship listed in paragraphs (h)(2)(i) through (iv) of this section "applies" or "does not apply."

(i) *Relative(s).* The adoptive parent(s) or legal guardian(s) is the child's relative (by biological, legal or marital connection).

(ii) *Kin.* The adoptive parent(s) or legal guardian(s) has a kin relationship with the child, as defined by the title IV–E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the adoptive parent(s) or legal guardian(s) and there is not a legal, biological, or marital connection between the child and foster parent.

(iii) *Non-relative(s)*. The adoptive parent(s) or legal guardian(s) is not related to the child by biological, legal or marital connection.

(iv) *Foster parent(s)*. The adoptive parent(s) or legal guardian(s) was the child's foster parent(s).

(3) *Date of birth of first adoptive parent or guardian*. Indicate the month, day and year of the birth of the first adoptive parent or legal guardian.

(4) *First adoptive parent or guardian tribal membership*. For state title IV-E agencies only: Indicate whether the first adoptive parent or guardian is a member of an Indian tribe. Indicate "yes," "no" or "unknown."

(5) *Race of first adoptive parent or guardian*. In general, an individual's race is determined by the individual. Indicate whether each race category listed in paragraphs (h)(5)(i) through (vii) of this section applies with a "yes" or "no."

(i) *Race—American Indian or Alaska Native*. An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian*. An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American*. A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander*. A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White*. A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—Unknown*. The first adoptive parent or legal guardian does not know his or her race, or at least one race.

(vii) *Race—Declined*. The first adoptive parent, or legal guardian has declined to identify a race.

(6) *Hispanic or Latino ethnicity of first adoptive parent or guardian*. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the first adoptive parent or legal guardian does not know his or her ethnicity, indicate "unknown." If the individual refuses to identify his or her ethnicity, indicate "declined."

(7) *Sex of first adoptive parent or guardian*. Indicate whether the first adoptive parent is "female" or "male."

(8) *Date of birth of second adoptive parent, guardian, or other member of the couple*. Indicate the month, day and year of the date of birth of the second adoptive parent, legal guardian, or other member of the couple. The title IV-E agency must leave this paragraph (h)(8) blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(9) *Second adoptive parent, guardian, or other member of the couple tribal membership*. For state title IV-E agencies only: Indicate whether the second adoptive parent or guardian is a member of an Indian tribe. Indicate "yes," "no" or "unknown."

(10) *Race of second adoptive parent, guardian, or other member of the couple*. In general, an individual's race is determined by the individual. Indicate whether each race category listed in paragraphs (h)(10)(i) through (vii) of this section applies with a "yes" or "no." The title IV-E agency must leave this paragraph (h)(10) blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(i) *Race—American Indian or Alaska Native*. An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—Unknown.* The second adoptive parent, legal guardian, or other member of the couple does not know his or her race, or at least one race.

(vii) *Race—Declined.* The second adoptive parent, legal guardian, or other member of the couple has declined to identify a race.

(11) *Hispanic or Latino ethnicity of second adoptive parent, guardian, or other member of the couple.* In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the second adoptive parent, legal guardian, or other member of the couple does not know his or her ethnicity, indicate "unknown." If the individual refuses to identify his or her ethnicity, indicate "declined." The title IV–E agency must leave this paragraph (h)(11) blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(12) *Sex of second adoptive parent, guardian, or other member of the couple.* Indicate whether the second adoptive parent, guardian, or other member of the couple is "female" or "male."

(13) *Inter/Intrajurisdictional adoption or guardianship.* Indicate whether the child was placed within the state or tribal service area, outside of the state or tribal service area or into another country for adoption or legal guardianship. Indicate "interjurisdictional adoption or guardianship" if the reporting title IV–E agency placed the child for adoption or legal guardianship outside of the state or tribal service area but within the United States. Indicate "intercountry adoption or guardianship" if the reporting title IV–E agency placed the child for adoption or legal guardianship outside of the United States. Indicate "intrajurisdictional adoption or guardianship" if the reporting title IV–E agency placed the child within the same state or tribal service area as the one with placing responsibility.

(14) *Assistance agreement type.* Indicate the type of assistance agreement between the title IV–E agency and the adoptive parent(s) or legal guardian(s): "Title IV–E adoption assistance agreement"; "State/tribal adoption assistance agreement"; "Adoption-Title IV–E agreement non-recurring expenses only"; "Adoption-Title IV–E agreement Medicaid only"; "Title IV–E guardianship assistance agreement"; "State/tribal guardianship assistance agreement"; or "no agreement" if there is no assistance agreement.

(15) *Siblings in adoptive or guardianship home.* Indicate the number of siblings of the child who are in the same adoptive or guardianship home as the child. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV–E agency must indicate "not applicable." If the child has siblings, but they are not in the same adoptive or guardianship home as the child, the title IV–E agency must indicate "0."

[85 FR 28424, May 12, 2020]

**§ 1355.45 Adoption and guardianship assistance data file elements.**

A title IV–E agency must report the following information for each child in

the adoption and guardianship assistance reporting population, if applicable based on § 1355.42(b).

(a) *General information*—(1) *Title IV-E agency*. Indicate the title IV-E agency responsible for submitting the AFCARS data to ACF per requirements issued by ACF.

(2) *Report date*. The report date corresponds to the end of the current report period. Indicate the last month and the year of the report period.

(3) *Child record number*. The child record number is the encrypted, unique person identification number. The record number must be encrypted in accordance with ACF standards. Indicate the record number for the child.

(b) *Child demographics*—(1) *Child's date of birth*. Indicate the month, day and year of the child's birth.

(2) *Child's sex*. Indicate "male" or "female."

(3) *Child's race*. In general, a child's race is determined by the child or the child's parent(s) or legal guardian(s). Indicate whether each race category listed in the data elements described in paragraphs (b)(2)(i) through (viii) of this section applies with a "yes" or "no."

(i) *Race—American Indian or Alaska Native*. An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains Tribal affiliation or community attachment.

(ii) *Race—Asian*. An Asian child has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American*. A Black or African American child has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander*. A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White*. A White child has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—Unknown*. The child or parent or legal guardian does not know the race, or at least one race of the child. This category does not apply when the child has been abandoned or the parents failed to return and the identity of the child, parent(s), or legal guardian(s) is known.

(vii) *Race—Abandoned*. The child's race is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the parent(s) or legal guardian(s)' identity is unknown and cannot be ascertained. This includes a child left at a "safe haven."

(viii) *Race—Declined*. The child or parent or legal guardian has declined to identify a race.

(4) *Hispanic or Latino ethnicity*. In general, a child's ethnicity is determined by the child or the child's parent(s) or legal guardian(s). A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the child or the child's parent or legal guardian does not know or cannot communicate whether the child is of Hispanic or Latino ethnicity, indicate "unknown." If the child was abandoned indicate "abandoned." Abandoned means that the child was left alone or with others and the parent(s) or legal guardian(s)' identity is unknown and cannot be ascertained. This includes a child left at a "safe haven." If the child or the child's parent(s) or legal guardian(s) refuses to identify the child's ethnicity, indicate "declined."

(c) *Adoption and guardianship assistance agreement information*—(1) *Assistance agreement type*. Indicate whether the child is or was in a finalized adoption with a title IV-E adoption assistance agreement or in a legal guardianship with a title IV-E guardianship assistance agreement, pursuant to sections 473(a) and 473(d) of the Act, in effect during the report period. Indicate "title IV-E adoption assistance agreement" or "title IV-E guardianship assistance agreement," as appropriate.

(2) *Adoption or guardianship subsidy amount*. Indicate the per diem dollar amount of the financial subsidy paid to

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the adoptive parent(s) or legal guardian(s) on behalf of the child during the last month of the current report period, if any. The title IV-E agency must indicate “0” if a financial subsidy was not paid during the last month of the report period.

(d) *Adoption finalization or guardianship legalization date.* Indicate the month, day and year that the child’s adoption was finalized or the guardianship became legalized.

(e) *Agreement termination date.* If the title IV-E agency terminated the adoption assistance or guardianship assistance agreement or the agreement expired during the report period, indicate the month, day and year that the agreement terminated or expired; otherwise leave this data element blank.

(f) *Adoption or guardianship placing agency.* Indicate the agency that placed the child for adoption or legal guardianship. Indicate “title IV-E agency” if the reporting title IV-E agency placed the child for adoption or legal guardianship. Indicate “private agency under agreement” if a private agency placed the child for adoption or legal guardianship through an agreement with the reporting title IV-E agency. Indicate “Indian tribe under contract/agreement” if an Indian tribe, tribal organization or consortia placed the child for adoption or legal guardianship through a contract or an agreement with the reporting title IV-E agency.

[81 FR 90569, Dec. 14, 2016, as amended at 85 FR 28433, May 12, 2020]

### § 1355.46 Compliance.

(a) *Files subject to compliance.* ACF will evaluate the out-of-home care and adoption and guardianship assistance data files that a title IV-E agency submits to determine whether the data complies with the requirements of §1355.43 and the data file submission and data quality standards described in paragraphs (c) and (d) of this section. ACF will exempt records related to a child in either data file whose 18th birthday occurred in a prior report period and will exempt records relating to a child in the adoption and guardianship assistance data file who is in a title IV-E guardianship from a compliance determination as described in paragraph (e) of this section.

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(b) *Errors.* ACF will utilize the error definitions in paragraphs (b)(1) through (5) of this section to assess a title IV-E agency’s out-of-home care and adoption and guardianship assistance data files. This assessment of errors will help ACF to determine if the title IV-E agency’s submitted data files meet the data file submission and data quality standards outlined in paragraphs (c) and (d) of this section. ACF will develop and issue error specifications.

(1) *Missing data.* Missing data refers to instances in which a data element has a blank or otherwise missing response, when such a response is not a valid option as described in §§1355.44 or 1355.45.

(2) *Invalid data.* Invalid data refers to instances in which a data element contains a value that is outside the parameters of acceptable responses or exceeds, either positively or negatively, the acceptable range of response options as described in §§1355.44 or 1355.45.

(3) *Internally inconsistent data.* Internally inconsistent data refers to instances in which a data element fails an internal consistency check designed to validate the logical relationship between data elements within each record. This assessment will identify all data elements involved in a particular check as in error.

(4) *Cross-file errors.* A cross-file error occurs when a cross-file check determines that a response option for a data element recurs across the records in either the out-of-home care data file or adoption and guardianship assistance data file beyond a specified acceptable threshold as specified per ACF.

(5) *Tardy transactions.* Tardy transactions are instances in which the removal transaction date or exit transaction date described in §1355.44(d)(2) and (g)(2) respectively, are entered into the title IV-E agency’s information system more than 30 days after the event.

(c) *Data file standards.* To be in compliance with the AFCARS requirements, the title IV-E agency must submit a data file in accordance with the data file standards described in paragraphs (c)(1) through (3) of this section.

(1) *Timely submission.* ACF must receive the data files on or before the reporting deadline described in § 1355.43(a).

(2) *Proper format.* The data files must meet the technical standards issued by ACF for data file construction and transmission. In addition, each record subject to compliance standards within the data file must have the data elements described in §§ 1355.44(a) and (b)(1) and (2) and 1355.45(a) and (b)(1) and (2) be 100 percent free of missing data, invalid data, and internally inconsistent data (see paragraphs (b)(1) through (3) of this section). ACF will not process a title IV–E agency's data file that does not meet the proper format standard.

(d) *Data quality standards.* (1) To be in compliance with the AFCARS requirements, the title IV–E agency must submit a data file that has no more than 10 percent total of missing, invalid, or internally inconsistent data, or tardy transactions for each data element of applicable records. These standards are in addition to the formatting standards described in paragraph (c)(2) of this section.

(2) *Acceptable cross-file.* The data files must be free of cross-file errors that exceed the acceptable thresholds, as defined by ACF.

(e) *Compliance determination and corrected data.* (1) ACF will first determine whether the title IV–E agency's out-of-home care data file and adoption and guardianship assistance data file meets the data file standards in paragraph (c) of this section. Compliance is determined separately for each data file.

(2) If each data file meets the data file standards, ACF will then determine whether each data file meets the data quality standards in paragraph (d) of this section. For every data element, we will divide the total number of applicable records in error (numerator) by the total number of applicable records (denominator), to determine whether the title IV–E agency has met the applicable data quality standards.

(3) In general, a title IV–E agency that has not met either the data file formatting standards or data quality standards must submit a corrected data file(s) no later than when data is due for the subsequent six month re-

port period (*i.e.*, by May 15 and November 14), as applicable. ACF will determine that the corrected data file(s) is in compliance if it meets the data file and data standards in paragraphs (c) and (d) of this section. Exception: If ACF determines initially that the title IV–E agency's data file has not met the data quality standard related to tardy transactions, ACF will determine compliance with regard to the transaction dates only in the out-of-home care data file submitted for the subsequent report period.

(f) *Noncompliance.* If the title IV–E agency does not submit a corrected data file, or submits a corrected data file that fails to meet the compliance standards in paragraphs (c) and (d) of this section, ACF will notify the title IV–E agency of such and apply penalties as provided in § 1355.47.

(g) *Other assessments.* ACF may use other monitoring tools or assessment procedures to determine whether the title IV–E agency is meeting all of the requirements of §§ 1355.41 through 1355.45.

[81 FR 90569, Dec. 14, 2016, as amended at 85 FR 28434, May 12, 2020]

#### § 1355.47 Penalties.

(a) *Federal funds subject to a penalty.* The funds that are subject to a penalty are the title IV–E agency's claims for title IV–E foster care administration and training for the quarter in which the title IV–E agency is required to submit the data files. For data files due on May 15, ACF will assess the penalty based on the title IV–E agency's claims for the third quarter of the Federal fiscal year. For data files due on November 14, ACF will assess the penalty based on the title IV–E agency's claims for the first quarter of the Federal fiscal year.

(b) *Penalty amounts.* ACF will assess penalties in the following amounts:

(1) *First six month period.* ACF will assess a penalty in the amount of one sixth of one percent ( $\frac{1}{6}$  of 1%) of the funds described in paragraph (a) of this section for the first six month period in which the title IV–E agency's submitted corrected data file does not comply with § 1355.46.

(2) *Subsequent six month periods.* ACF will assess a penalty in the amount of

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one fourth of one percent ( $\frac{1}{4}$  of 1%) of the funds described in paragraph (a) of this section for each subsequent six month period in which the title IV-E agency continues to be out of compliance.

(c) *Penalty reduction from grant.* ACF will offset the title IV-E agency's title IV-E foster care grant award in the amount of the penalty from the title IV-E agency's claims following the title IV-E agency notification of ACF's final determination of noncompliance.

(d) *Appeals.* The title IV-E agency may appeal ACF's final determination of noncompliance to the HHS Departmental Appeals Board pursuant to 45 CFR part 16.

[81 FR 90569, Dec. 14, 2016]

### § 1355.50 Purpose.

Sections 1355.50 through 1355.59 contain the requirements a title IV-E agency must meet to receive Federal financial participation authorized under sections 474(a)(3)(C) and (D), and 474(c) of the Act for the planning, design, development, installation, operation, and maintenance of a comprehensive child welfare information system.

[81 FR 35479, June 2, 2016]

### § 1355.51 Definitions applicable to Comprehensive Child Welfare Information Systems (CCWIS).

(a) The following terms as they appear in §§ 1355.50 through 1355.59 are defined as follows—

*Approved activity* means a project task that supports planning, designing, developing, installing, operating, or maintaining a CCWIS.

*Automated function* means a computerized process or collection of related processes to achieve a purpose or goal.

*Child welfare contributing agency* means a public or private entity that, by contract or agreement with the title IV-E agency, provides child abuse and neglect investigations, placement, or child welfare case management (or any combination of these) to children and families.

*Data exchange* means the automated, electronic submission or receipt of information, or both, between two automated data processing systems.

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*Data exchange standard* means the common data definitions, data formats, data values, and other guidelines that the state's or tribe's automated data processing systems follow when exchanging data.

*New CCWIS project* means a project to build an automated data processing system meeting all requirements in § 1355.52 and all automated functions meet the requirements in § 1355.53(a).

*Non-S/TACWIS project* means an active automated data processing system or project that, prior to the effective date of these regulations, ACF had not classified as a S/TACWIS and for which:

(i) ACF approved a development procurement; or

(ii) The applicable state or tribal agency approved a development procurement below the thresholds of 45 CFR 95.611(a); or

(iii) The operational automated data processing system provided the data for at least one AFCARS or NYTD file for submission to the federal system or systems designated by ACF to receive the report.

*Notice of intent* means a record from the title IV-E agency, signed by the governor, tribal leader, or designated state or tribal official and provided to ACF declaring that the title IV-E agency plans to build a CCWIS project that is below the APD approval thresholds of 45 CFR 95.611(a).

*S/TACWIS project* means an active automated data processing system or project that, prior to the effective date of these regulations, ACF classified as a S/TACWIS and for which:

(i) ACF approved a procurement to develop a S/TACWIS; or

(ii) The applicable state or tribal agency approved a development procurement for a S/TACWIS below the thresholds of 45 CFR 95.611(a).

*Transition period* means the 24 months after the effective date of these regulations.

(b) Other terms as they appear in §§ 1355.50 through 1355.59 are defined in 45 CFR 95.605.

[81 FR 35479, June 2, 2016]

### § 1355.52 CCWIS project requirements.

(a) *Efficient, economical, and effective requirement.* The title IV-E agency's

CCWIS must support the efficient, economical, and effective administration of the title IV-B and IV-E plans pursuant to section 474(a)(3)(C)(iv) of the Act by:

(1) Improving program management and administration by maintaining all program data required by federal, state or tribal law or policy;

(2) Appropriately applying information technology;

(3) Not requiring duplicative application system development or software maintenance; and

(4) Ensuring costs are reasonable, appropriate, and beneficial.

(b) *CCWIS data requirements.* The title IV-E agency's CCWIS must maintain:

(1) Title IV-B and title IV-E data that supports the efficient, effective, and economical administration of the programs including:

(i) Data required for ongoing federal child welfare reports;

(ii) Data required for title IV-E eligibility determinations, authorizations of services, and expenditures under IV-B and IV-E;

(iii) Data to support federal child welfare laws, regulations, and policies; and

(iv) Case management data to support federal audits, reviews, and other monitoring activities;

(2) Data to support state or tribal child welfare laws, regulations, policies, practices, reporting requirements, audits, program evaluations, and reviews;

(3) For states, data to support specific measures taken to comply with the requirements in section 422(b)(9) of the Act regarding the state's compliance with the Indian Child Welfare Act; and

(4) For each state, data for the National Child Abuse and Neglect Data System.

(c) *Reporting requirements.* The title IV-E agency's CCWIS must use the data described in paragraph (b) of this section to:

(1) Generate, or contribute to, required title IV-B or IV-E federal reports according to applicable formatting and submission requirements; and

(2) Generate, or contribute to, reports needed by state or tribal child

welfare laws, regulations, policies, practices, reporting requirements, audits, and reviews that support programs and services described in title IV-B and title IV-E.

(d) *Data quality requirements.* (1) The CCWIS data described in paragraph (b) of this section must:

(i) Meet the most rigorous of the applicable federal, and state or tribal standards for completeness, timeliness, and accuracy;

(ii) Be consistently and uniformly collected by CCWIS and, if applicable, child welfare contributing agency systems;

(iii) Be exchanged and maintained in accordance with confidentiality requirements in section 471(a)(8) of the Act, and 45 CFR 205.50, and 42 U.S.C. 5106a(b)(2)(B)(viii) through (x) of the Child Abuse Prevention and Treatment Act, if applicable, and other applicable federal and state or tribal laws;

(iv) Support child welfare policies, goals, and practices; and

(v) Not be created by default or inappropriately assigned.

(2) The title IV-E agency must implement and maintain automated functions in CCWIS to:

(i) Regularly monitor CCWIS data quality;

(ii) Alert staff to collect, update, correct, and enter CCWIS data;

(iii) Send electronic requests to child welfare contributing agency systems to submit current and historical CCWIS data to the CCWIS;

(iv) Prevent, to the extent practicable, the need to re-enter data already captured or exchanged with the CCWIS; and

(v) Generate reports of continuing or unresolved CCWIS data quality problems.

(3) The title IV-E agency must conduct biennial data quality reviews to:

(i) Determine if the title IV-E agency and, if applicable, child welfare contributing agencies, meet the requirements of paragraphs (b), (d)(1), and (d)(2) of this section; and

(ii) Confirm that the bi-directional data exchanges meet the requirements of paragraphs (e) and (f) of this section, and other applicable ACF regulations and policies.



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(4) The title IV–E agency must enhance CCWIS or the electronic bi-directional data exchanges or both to correct any findings from reviews described at paragraph (d)(3) of this section.

(5) The title IV–E agency must develop, implement, and maintain a CCWIS data quality plan in a manner prescribed by ACF and include it as part of Annual or Operational APDs submitted to ACF as required in 45 CFR 95.610. The CCWIS data quality plan must:

(i) Describe the comprehensive strategy to promote data quality including the steps to meet the requirements at paragraphs (d)(1) through (3) of this section; and

(ii) Report the status of compliance with paragraph (d)(1) of this section.

(e) *Bi-directional data exchanges.* (1) The CCWIS must support efficient, economical, and effective bi-directional data exchanges to exchange relevant data with:

(i) Systems generating the financial payments and claims for titles IV–B and IV–E per paragraph (b)(1)(ii) of this section, if applicable;

(ii) Systems operated by child welfare contributing agencies that are collecting or using data described in paragraph (b) of this section, if applicable;

(iii) Each system used to calculate one or more components of title IV–E eligibility determinations per paragraph (b)(1)(ii) of this section, if applicable; and

(iv) Each system external to CCWIS used by title IV–E agency staff to collect CCWIS data, if applicable.

(2) To the extent practicable, the title IV–E agency’s CCWIS must support one bi-directional data exchange to exchange relevant data, including data that may benefit IV–E agencies and data exchange partners in serving clients and improving outcomes, with each of the following state or tribal systems:

(i) Child abuse and neglect system(s);

(ii) System(s) operated under title IV–A of the Act;

(iii) Systems operated under title XIX of the Act including:

(A) Systems to determine Medicaid eligibility described in 42 CFR 433.111(b)(2)(ii)(A); and

(B) Medicaid Management Information Systems as defined at 42 CFR 433.111(b)(2)(ii)(B);

(iv) Systems operated under title IV–D of the Act;

(v) Systems operated by the court(s) of competent jurisdiction over title IV–E foster care, adoption, and guardianship programs;

(vi) Systems operated by the state or tribal education agency, or school districts, or both.

(f) *Data exchange standard requirements.* The title IV–E agency must use a single data exchange standard that describes data, definitions, formats, and other specifications upon implementing a CCWIS:

(1) For bi-directional data exchanges between CCWIS and each child welfare contributing agency; and

(2) For data exchanges with systems described under paragraph (e)(1)(iv) of this section.

(g) *Automated eligibility determination requirements.* (1) A state title IV–E agency must use the same automated function or the same group of automated functions for all title IV–E eligibility determinations.

(2) A tribal title IV–E agency must, to the extent practicable, use the same automated function or the same group of automated functions for all title IV–E eligibility determinations.

(h) *Software provision requirement.* The title IV–E agency must provide a copy of the agency-owned software that is designed, developed, or installed with FFP and associated documentation to the designated federal repository within the Department upon request.

(i) *Submission requirements.* (1) Before claiming funding in accordance with a CCWIS cost allocation, a title IV–E agency must submit an APD or, if below the APD submission thresholds defined at 45 CFR 95.611, a Notice of Intent that includes:

(i) A description of how the CCWIS will meet the requirements in paragraphs (a) through (h) of this section and, if applicable §1355.54;

(ii) A list of all automated functions included in the CCWIS; and

(iii) A notation of whether each automated function listed in paragraph (i)(1)(ii) of this section meets, or when

implemented will meet, the following requirements:

(A) The automated function supports at least one requirement of this section or, if applicable § 1355.54;

(B) The automated function is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function; and

(C) The automated function complies with the CCWIS design requirements described under § 1355.53(a), unless exempted in accordance with § 1355.53(b).

(2) Annual APD Updates and Operational APDs for CCWIS projects must include:

(i) An updated list of all automated functions included in the CCWIS;

(ii) A notation of whether each automated function listed in paragraph (i)(2)(i) of this section meets the requirements of paragraph (i)(1)(iii)(B) of this section; and

(iii) A description of changes to the scope or the design criteria described at § 1355.53(a) for any automated function listed in paragraph (i)(2)(i) of this section.

(j) *Other applicable requirements.* Regulations at 45 CFR 95.613 through 95.621 and 95.626 through 95.641 are applicable to all CCWIS projects below the APD submission thresholds at 45 CFR 95.611.

[81 FR 35479, June 3, 2016]

#### § 1355.53 CCWIS design requirements.

(a) Except as exempted in paragraph (b) of this section, automated functions contained in a CCWIS must:

(1) Follow a modular design that includes the separation of business rules from core programming;

(2) Be documented using plain language;

(3) Adhere to a state, tribal, or industry defined standard that promotes efficient, economical, and effective development of automated functions and produces reliable systems; and

(4) Be capable of being shared, leveraged, and reused as a separate component within and among states and tribes.

(b) CCWIS automated functions may be exempt from one or more of the re-

quirements in paragraph (a) of this section if:

(1) The CCWIS project meets the requirements of § 1355.56(b) or (f)(1); or

(2) ACF approves, on a case-by-case basis, an alternative design proposed by a title IV-E agency that is determined by ACF to be more efficient, economical, and effective than what is found in paragraph (a) of this section.

[81 FR 35481, June 2, 2016]

#### § 1355.54 CCWIS options.

If a project meets, or when completed will meet, the requirements of § 1355.52, then ACF may approve CCWIS funding described at § 1355.57 for other ACF-approved data exchanges or automated functions that are necessary to achieve title IV-E or IV-B programs goals.

[81 FR 35481, June 2, 2016]

#### § 1355.55 Review and assessment of CCWIS projects.

ACF will review, assess, and inspect the planning, design, development, installation, operation, and maintenance of each CCWIS project on a continuing basis, in accordance with APD requirements in 45 CFR part 95, subpart F, to determine the extent to which the project meets the requirements in §§ 1355.52, 1355.53, 1355.56, and, if applicable, § 1355.54.

[81 FR 35481, June 2, 2016]

#### § 1355.56 Requirements for S/TACWIS and non-S/TACWIS projects during and after the transition period.

(a) During the transition period a title IV-E agency with a S/TACWIS project may continue to claim title IV-E funding according to the cost allocation methodology approved by ACF for development or the operational cost allocation plan approved by the Department, or both.

(b) A S/TACWIS project must meet the submission requirements of § 1355.52(i)(1) during the transition period to qualify for the CCWIS cost allocation methodology described in § 1355.57(a) after the transition period.

(c) A title IV-E agency with a S/TACWIS may request approval to initiate a new CCWIS and qualify for the CCWIS cost allocation methodology described in § 1355.57(b) by meeting the

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submission requirements of § 1355.52(i)(1).

(d) A title IV–E agency that elects not to transition a S/TACWIS project to a CCWIS project must:

(1) Notify ACF in an APD or Notice of Intent submitted during the transition period of this election; and

(2) Continue to use the S/TACWIS through its life expectancy in accordance with 45 CFR 95.619.

(e) A title IV–E agency that elects not to transition its S/TACWIS project to a CCWIS and fails to meet the requirements of paragraph (d) of this section is subject to funding recoupment described under § 1355.58(d).

(f) A title IV–E agency with a non-S/TACWIS (as defined in § 1355.51) that elects to build a CCWIS or transition to a CCWIS must meet the submission requirements of § 1355.52(i)(1):

(1) During the transition period to qualify for a CCWIS cost allocation as described at § 1355.57(a); or

(2) At any time to request approval to initiate a new CCWIS and qualify for a CCWIS cost allocation as described at § 1355.57(b).

[81 FR 35481, June 2, 2016]

### § 1355.57 Cost allocation for CCWIS projects.

(a) *CCWIS cost allocation for projects transitioning to CCWIS.* (1) All automated functions developed after the transition period for projects meeting the requirements of § 1355.56(b) or § 1355.56(f)(1) must meet the CCWIS design requirements described under § 1355.53(a), unless exempted by § 1355.53(b)(2).

(2) The Department may approve the applicable CCWIS cost allocation for an automated function of a project transitioning to a CCWIS if the automated function:

(i) Supports programs authorized under titles IV–B or IV–E, and at least one requirement of § 1355.52 or, if applicable § 1355.54; and

(ii) Is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function.

(b) *CCWIS cost allocation for new CCWIS projects.* (1) Unless exempted in

accordance with § 1355.53(b)(2), all automated functions of a new CCWIS project must meet the CCWIS design requirements described under § 1355.53(a).

(2) An automated function of a CCWIS project described in paragraph (b)(1) of this section may qualify for a CCWIS cost allocation if the automated function:

(i) Supports programs authorized under titles IV–B or IV–E, and at least one requirement of § 1355.52 or, if applicable § 1355.54; and

(ii) Is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function.

(c) *CCWIS cost allocation for approved activities.* The Department may approve a CCWIS cost allocation for an approved activity for a CCWIS project meeting the requirements of paragraph (a) or (b) of this section.

(d) *Project cost allocation.* A title IV–E agency must allocate project costs in accordance with applicable HHS regulations and other guidance.

(e) *CCWIS cost allocation.* (1) A title IV–E agency may allocate CCWIS development and operational costs to title IV–E for the share of approved activities and automated functions that:

(i) Are approved by the Department; (ii) Meet the requirements of paragraphs (a), (b), or (c) of this section; and

(iii) Benefit federal, state or tribal funded participants in programs and allowable activities described in title IV–E of the Act to the title IV–E program.

(2) A title IV–E agency may also allocate CCWIS development costs to title IV–E for the share of system approved activities and automated functions that meet requirements (e)(1)(i) and (ii) of this section and:

(i) Benefit title IV–B programs; or (ii) Benefit both title IV–E and child welfare related programs.

(f) *Non-CCWIS cost allocation.* Title IV–E costs not previously described in this section may be charged to title IV–E in accordance with § 1356.60(d).

[81 FR 35481, June 2, 2016]

**§ 1355.58 Failure to meet the conditions of the approved APD.**

(a) In accordance with 45 CFR 75.371 through 75.375 and 45 CFR 95.635, ACF may suspend title IV-B and title IV-E funding approved in the APD for a CCWIS if ACF determines that the title IV-E agency fails to comply with APD requirements in 45 CFR part 95, subpart F, or meet the requirements at § 1355.52 or, if applicable, § 1355.53, § 1355.54, or § 1355.56.

(b) Suspension of CCWIS funding begins on the date that ACF determines the title IV-E agency failed to:

(1) Comply with APD requirements in 45 CFR part 95, subpart F; or

(2) Meet the requirements at § 1355.52 or, if applicable, § 1355.53, § 1355.54, or § 1355.56 and has not corrected the failed requirements according to the time frame in the approved APD.

(c) The suspension will remain in effect until the date that ACF:

(1) Determines that the title IV-E agency complies with 45 CFR part 95, subpart F; or

(2) Approves a plan to change the application to meet the requirements at § 1355.52 and, if applicable, § 1355.53, § 1355.54, or § 1355.56.

(d) If ACF suspends an APD, or the title IV-E agency voluntarily ceases the design, development, installation, operation, or maintenance of an approved CCWIS, ACF may recoup all title IV-E funds claimed for the CCWIS project.

[81 FR 35482, June 2, 2016]

**§ 1355.59 [Reserved]****PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV-E**

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APPENDIX A TO PART 1356—NYTD DATA ELEMENTS

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APPENDIX C TO PART 1356—CALCULATING SAMPLE SIZE FOR NYTD FOLLOW-UP POPULATIONS

AUTHORITY: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1302.

**§ 1356.10 Scope.**

This part applies to title IV-E agency programs for foster care maintenance payments, adoption assistance payments, related foster care and adoption administrative and training expenditures, and the independent living services program under title IV-E of the Act.

[77 FR 946, Jan. 6, 2012]

**§ 1356.20 Title IV-E plan document and submission requirements.**

(a) To be in compliance with the title IV-E plan requirements and to be eligible to receive Federal financial participation (FFP) in the costs of foster care maintenance payments and adoption assistance under this part, a title IV-E agency must have a plan approved by the Secretary that meets the requirements of this part, part 1355, section 471(a) of the Act and for Tribal title IV-E agencies, section 479B(c) of the

Act. The title IV–E plan must be submitted to the appropriate Regional Office, ACYF, in a form determined by the title IV–E agency.

(b) Failure by a title IV–E agency to comply with the requirements and standards for the data reporting system for foster care and adoption (§1355.40 of this chapter) shall be considered a substantial failure by the title IV–E agency in complying with the plan.

(c) The following procedures for approval of plans and amendments apply to the title IV–E program:

(1) *Plan.* The plan consists of written documents furnished by the title IV–E agency to cover its program under part E of title IV. After approval of the original plan by the Commissioner, ACYF, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that ACYF may determine whether the plan continues to meet Federal requirements and policies.

(2) *Submittal.* Plans and revisions of the plans are submitted first to the State governor or his/her designee, or the Tribal leader or his/her designee for review and then to the regional office, ACYF. Title IV–E agencies are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(3) *Review.* Staff in the regional offices are responsible for review of plans and amendments. They also initiate discussion with the title IV–E agency on clarification of significant aspects of the plan which come to their attention in the course of this review. Plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the title IV–E agency.

(4) *Action.* ACYF has the authority to approve plans and amendments thereto which provide for the administration of foster care maintenance payments and adoption assistance programs under section 471 of the Act. The Commis-

sioner, ACYF, retains the authority to determine that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval. The Regional Office, ACYF, formally notifies the title IV–E agency of the actions taken on plans or revisions.

(5) *Basis for approval.* Determinations as to whether plans (including plan amendments and administrative practice under the plans) originally meet or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations.

(6) *Prompt approval of plans.* The determination as to whether a plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 45th day following the date on which the plan submittal is received in the regional office, unless the Regional Office, ACYF, has secured from the title IV–E agency a written agreement to extend that period.

(7) *Prompt approval of plan amendments.* Any amendment of an approved plan may, at the option of the title IV–E agency, be considered as a submission of a new plan. If the title IV–E agency requests that such amendment be so considered, the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 45th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Office, ACYF, has secured from the title IV–E agency a written agreement to extend that period. In absence of request by a title IV–E agency that an amendment of an approved plan shall be considered as a submission of a new plan, the procedures under §201.6(a) and (b) shall be applicable.

(8) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis or, in the case of a Tribal title

IV-E agency, in operation in the Tribal title IV-E agency's entire service area. The same applies with respect to plan amendments.

(d) Once the title IV-E plan has been submitted and approved, it shall remain in effect until amendments are required. An amendment is required if there is any significant and relevant change in the information or assurances in the plan, or the organization, policies or operations described in the plan.

[77 FR 946, Jan. 6, 2012]

**§ 1356.21 Foster care maintenance payments program implementation requirements.**

(a) *Statutory and regulatory requirements of the Federal foster care program.* To implement the foster care maintenance payments program provisions of the title IV-E plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a title IV-E agency must meet the requirements of this section, 45 CFR 1356.22, 45 CFR 1356.30, and sections 472, 475(1), 475(4), 475(5), 475(6), and for a Tribal title IV-E agency section 479(B)(c)(1)(C)(ii)(II) of the Act.

(b) *Reasonable efforts.* The title IV-E agency must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the "reasonable efforts" requirements of section 471(a)(15) (as implemented through section 472(a)(2) of the Act), the title IV-E agency must meet the requirements of paragraphs (b) and (d) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the paramount concern.

(1) *Judicial determination of reasonable efforts to prevent a child's removal from the home.* (i) When a child is removed

from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

(2) *Judicial determination of reasonable efforts to finalize a permanency plan.* (i) The title IV-E agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

(ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the schedule prescribed in paragraph (b)(2)(i) of this section, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

(3) *Circumstances in which reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family.* Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the title IV-E agency obtains a judicial determination that such efforts are not required because:

(i) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State, or for a Tribal title IV-E agency, Tribal law,

which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) A court of competent jurisdiction has determined that the parent has been convicted of:

(A) Murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(B) Voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or

(D) A felony assault that results in serious bodily injury to the child or another child of the parent; or,

(iii) The parental rights of the parent with respect to a sibling have been terminated involuntarily.

(4) *Concurrent planning.* Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.

(5) *Use of the Federal Parent Locator Service.* The State agency may seek the services of the Federal Parent Locator Service to search for absent parents at any point in order to facilitate a permanency plan.

(c) *Contrary to the welfare determination.* Under section 472(a)(2) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster

care maintenance payments for the duration of that stay in foster care.

(d) *Documentation of judicial determinations.* The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

(1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations except for a Tribal title IV-E agency for the first 12 months that agency's title IV-E plan is in effect as provided for in section 479B(c)(1)(C)(ii)(I) of the Act.

(3) Court orders that reference State or Tribal law to substantiate judicial determinations are not acceptable, even if such law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

(e) *Trial home visits.* A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

(f) *Case review system.* In order to satisfy the provisions of section 471(a)(16)

of the Act regarding a case review system, each title IV–E agency’s case review system must meet the requirements of sections 475(5) and 475(6) of the Act.

(g) *Case plan requirements.* In order to satisfy the case plan requirements of sections 471(a)(16), 475(1) and 475(5)(A) and (D) of the Act, the title IV–E agency must promulgate policy materials and instructions for use by staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must:

(1) Be a written document, which is a discrete part of the case record, in a format determined by the title IV–E agency, which is developed jointly with the parent(s) or guardian of the child in foster care; and

(2) Be developed within a reasonable period, to be established by the title IV–E agency, but in no event later than 60 days from the child’s removal from the home pursuant to paragraph (k) of this section;

(3) Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interests and special needs of the child. (FFP is not available when a court orders a placement with a specific foster care provider);

(4) Include a description of the services offered and provided to prevent removal of the child from the home and to reunify the family; and

(5) Document the steps to finalize a placement when the case plan goal is or becomes adoption or placement in another permanent home in accordance with sections 475(1)(E) and (5)(E) of the Act. When the case plan goal is adoption, at a minimum, such documentation shall include child-specific recruitment efforts such as the use of State, Tribal, regional, and national

adoption exchanges including electronic exchange systems.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0140. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

(h) *Application of the permanency hearing requirements.* (1) To meet the requirements of the permanency hearing, the title IV–E agency must, among other requirements, comply with section 475(5)(C) of the Act.

(2) In accordance with paragraph (b)(3) of this section, when a court determines that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are not required.

(3) If the title IV–E agency concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the title IV–E agency must document to the court the compelling reason for the alternate plan. Examples of a compelling reason for establishing such a permanency plan may include:

(i) The case of an older teen who specifically requests that emancipation be established as his/her permanency plan;

(ii) The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child’s foster parents have committed to raising him/her to the age of majority and to facilitate visitation with the disabled parent; or,

(iii) the Tribe has identified another planned permanent living arrangement for the child.



(4) When an administrative body, appointed or approved by the court, conducts the permanency hearing, the procedural safeguards set forth in the definition of *permanency hearing* must be so extended by the administrative body.

(i) *Application of the requirements for filing a petition to terminate parental rights at section 475(5)(E) of the Social Security Act.* (1) Subject to the exceptions in paragraph (i)(2) of this section, the title IV–E agency must file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

(i) Whose child has been in foster care under the responsibility of the title IV–E agency for 15 of the most recent 22 months. The petition must be filed by the end of the child’s fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the title IV–E agency:

(A) Must calculate the 15 out of the most recent 22 month period from the date the child is considered to have entered foster care as defined at section 475(5)(F) of the Act and § 1355.20 of this part;

(B) Must use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period;

(C) Must not include trial home visits or runaway episodes in calculating 15 months in foster care; and,

(D) Need only apply section 475(5)(E) of the Act to a child once if the title IV–E agency does not file a petition because one of the exceptions at paragraph (i)(2) of this section applies;

(ii) Whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State or for a Tribal title IV–E agency, Tribal law). The petition to terminate parental rights must be filed within 60 days of the judicial determination that the child is an abandoned infant; or,

(iii) Who has been convicted of one of the felonies listed at paragraph (b)(3)(ii) of this section. Under such circumstances, the petition to terminate parental rights must be filed within 60 days of a judicial determination that

reasonable efforts to reunify the child and parent are not required.

(2) The title IV–E agency may elect not to file or join a petition to terminate the parental rights of a parent per paragraph (i)(1) of this section if:

(i) At the option of the title IV–E agency, the child is being cared for by a relative;

(ii) The title IV–E agency has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child. Compelling reasons for not filing a petition to terminate parental rights include, but are not limited to:

(A) Adoption is not the appropriate permanency goal for the child; or,

(B) No grounds to file a petition to terminate parental rights exist; or,

(C) The child is an unaccompanied refugee minor as defined in 45 CFR 400.111; or

(D) There are international legal obligations or compelling foreign policy reasons that would preclude terminating parental rights; or

(iii) The title IV–E agency has not provided to the family, consistent with the time period in the case plan, services that the title IV–E agency deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

(3) When the title IV–E agency files or joins a petition to terminate parental rights in accordance with paragraph (i)(1) of this section, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child.

(j) *Child of a minor parent in foster care.* Foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, who is the parent of a son or daughter in the same home or institution, must include amounts which are necessary to cover costs incurred on behalf of the child’s son or daughter. Said costs must be limited to funds expended on items listed in the definition of *foster care maintenance payments* in § 1355.20 of this part.

(k) *Removal from the home of a specified relative.* (1) For the purposes of

meeting the requirements of section 472(a)(1) of the Act, a removal from the home must occur pursuant to:

(i) A voluntary placement agreement entered into by a parent or guardian which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or

(ii) A judicial order for a physical or constructive removal of the child from a parent or specified relative.

(2) A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the title IV-E agency.

(3) A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.

(1) *Living with a specified relative.* For purposes of meeting the requirements for living with a specified relative prior to removal from the home under section 472(a)(1) of the Act, all of the conditions under section 472(a)(3), and for Tribal title IV-E agencies section 479B(c)(1)(C)(ii)(II) of the Act, one of the two following situations must apply:

(1) The child was living with the parent or specified relative, and was AFDC eligible in that home in the month of the voluntary placement agreement or initiation of court proceedings; or

(2) The child had been living with the parent or specified relative within six months of the month of the voluntary placement agreement or the initiation of court proceedings, and the child would have been AFDC eligible in that month if s/he had still been living in that home.

(m) *Review of payments and licensing standards.* In meeting the requirements of section 471(a)(11) of the Act, the title IV-E agency must review at reasonable, specific, time-limited periods to be established by the agency:

(1) The amount of the payments made for foster care maintenance to assure their continued appropriateness, and that the amount made to a licensed or approved relative or kinship

foster family home is the same as the amount that would have been made if the child was placed in a licensed or approved non-relative foster family home;

(2) The amount of the payments made for adoption assistance to assure their continued appropriateness; and

(3) The licensing or approval standards for child care institutions and foster family homes.

(n) *Foster care goals.* The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law or Tribal law by statute, code, resolution, Tribal proceedings or administrative regulation with the force of law.

(o) *Notice and right to be heard.* The title IV-E agency must provide the foster parent(s) of a child and any preadoptive parent or relative providing care for the child with timely notice of and the opportunity to be heard in any proceedings held with respect to the child during the time the child is in the care of such foster parent, preadoptive parent, or relative caregiver. Notice of and opportunity to be heard does not include the right to standing as a party to the case.

[65 FR 4088, Jan. 25, 2000, as amended at 66 FR 58677, Nov. 23, 2001; 77 FR 947, Jan. 6, 2012; 88 FR 66708, Sept. 28, 2023]

**§ 1356.22 Implementation requirements for children voluntarily placed in foster care.**

(a) As a condition of receipt of Federal financial participation (FFP) in foster care maintenance payments for a dependent child removed from his home under a voluntary placement agreement, the title IV-E agency must meet the requirements of:

(1) Section 472 of the Act, as amended;

(2) Sections 422(b)(8) and 475(5) of the Act;

(3) 45 CFR 1356.21(e), (f), (g), (h), and (i); and

(4) The requirements of this section.

(b) Federal financial participation is available only for voluntary foster care maintenance expenditures made within the first 180 days of the child's placement in foster care unless there has been a judicial determination by a court of competent jurisdiction, within

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the first 180 days of such placement, to the effect that the continued voluntary placement is in the best interests of the child.

(c) The title IV-E agency must establish and maintain a uniform procedure or system, consistent with State or Tribal law, for revocation by the parent(s) of a voluntary placement agreement and return of the child.

[65 FR 4090, Jan. 25, 2000, as amended at 66 FR 58677, Nov. 23, 2001; 77 FR 949, Jan. 6, 2012]

### § 1356.30 Safety requirements for foster care and adoptive home providers.

(a) The title IV-E agency must provide documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents.

(b) The title IV-E agency may not approve or license any prospective foster or adoptive parent, nor may the title IV-E agency claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the title IV-E agency finds that, based on a criminal records check conducted in accordance with paragraph (a) of this section, a court of competent jurisdiction has determined that the prospective foster or adoptive parent has been convicted of a felony involving:

- (1) Child abuse or neglect;
- (2) Spousal abuse;
- (3) A crime against a child or children (including child pornography); or,
- (4) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

(c) The title IV-E agency may not approve or license any prospective foster or adoptive parent, nor may the title IV-E agency claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the title IV-E agency finds, based on a criminal records

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check conducted in accordance with paragraph (a) of this section, that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has, within the last five years, been convicted of a felony involving:

- (1) Physical assault;
- (2) Battery; or,
- (3) A drug-related offense.
- (d) [Reserved]

(e) In all cases where the State opted out of the criminal records check requirement, as permitted prior to the amendments made by section 152 of Public Law 109-248, the licensing file for that foster or adoptive family must contain documentation which verifies that safety considerations with respect to the caretaker(s) have been addressed.

(f) In order for a child care institution to be eligible for title IV-E funding, the licensing file for the institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed.

[65 FR 4090, Jan. 25, 2000, as amended at 77 FR 949, Jan. 6, 2012]

### § 1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.

(a) To implement the adoption assistance program provisions of the title IV-E plan and to be eligible for Federal financial participation in adoption assistance payments under this part, the title IV-E agency must meet the requirements of this section and section 471(a), applicable provisions of section 473, and section 475(3) of the Act.

(b) The adoption assistance agreement for payments pursuant to section 473(a)(2) must meet the requirements of section 475(3) of the Act and must:

- (1) Be signed and in effect at the time of or prior to the final decree of adoption. A copy of the signed agreement must be given to each party; and
- (2) Specify its duration; and
- (3) Specify the nature and amount of any payment, services and assistance to be provided under such agreement and, for purposes of eligibility under title XIX of the Act, specify that the child is eligible for Medicaid services; and

(4) Specify, with respect to agreements entered into on or after October 1, 1983, that the agreement shall remain in effect regardless of the place of residence of the adoptive parents at any given time.

(c) There must be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments.

(d) In the event an adoptive family moves from one place of residence to another, the family may apply for social services on behalf of the adoptive child in the new place of residence. If a needed service(s) specified in the adoption assistance agreement is not available in the new place of residence, the title IV-E agency making the original adoption assistance payment remains financially responsible for providing the specified service(s).

(e) A title IV-E agency may make an adoption assistance agreement with adopting parent(s) who reside in another State or a Tribal service area. If so, all provisions of this section apply.

(f) The title IV-E agency must actively seek ways to promote the adoption assistance program.

[48 FR 23116, May 23, 1983, as amended at 53 FR 50220, Dec. 14, 1988; 77 FR 949, Jan. 6, 2012]

#### **§ 1356.41 Nonrecurring expenses of adoption.**

(a) The amount of the payment made for nonrecurring expenses of adoption shall be determined through agreement between the adopting parent(s) and the title IV-E agency administering the program. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

(b) The agreement for nonrecurring expenses may be a separate document or a part of an agreement for either State, Tribal, or Federal adoption assistance payments or services.

(c) There must be no income eligibility requirement (means test) for adopting parents in determining whether payments for nonrecurring expenses of adoption shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

(d) For purposes of payment of nonrecurring expenses of adoption, the

title IV-E agency must determine that the child is a “child with special needs” as defined in section 473(c) of the Act, and that the child has been placed for adoption in accordance with applicable laws; the child need not meet the categorical eligibility requirements at section 473(a)(2).

(e)(1) The title IV-E agency must notify all appropriate courts and all public and licensed private nonprofit adoption agencies of the availability of funds for the nonrecurring expenses of adoption of children with special needs as well as where and how interested persons may apply for these funds. This information should routinely be made available to all persons who inquire about adoption services.

(2) The agreement for nonrecurring expenses must be signed at the time of or prior to the final decree of adoption. Claims must be filed with the title IV-E agency within two years of the date of the final decree of adoption.

(f)(1) Funds expended by the title IV-E agency under an adoption assistance agreement, with respect to nonrecurring adoption expenses incurred by or on behalf of parents who adopt a child with special needs, shall be considered an administrative expenditure of the title IV-E Adoption Assistance Program. Federal reimbursement is available at a 50 percent matching rate, for title IV-E agency expenditures up to \$2,000, for any adoptive placement.

(2) Title IV-E agencies may set a reasonable lower maximum which must be based on reasonable charges, consistent with State, Tribal, and local practices, for special needs adoptions within the State or Tribal service area. The basis for setting a lower maximum must be documented and available for public inspection.

(3) In cases where siblings are placed and adopted, either separately or as a unit, each child is treated as an individual with separate reimbursement for nonrecurring expenses up to the maximum amount allowable for each child.

(g) Federal financial participation for nonrecurring expenses of adoption is limited to costs incurred by or on behalf of adoptive parents that are not otherwise reimbursed from other

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sources. Payments for nonrecurring expenses shall be made either directly by the title IV-E agency or through another public or licensed nonprofit private agency.

(h) When the adoption of the child involves a placement outside the State or Tribal service area, the title IV-E agency that enters into an adoption assistance agreement under section 473(a)(1)(B)(ii) of the Act or under a State or Tribal subsidy program will be responsible for paying the nonrecurring adoption expenses of the child. In cases where there is placement outside the State or Tribal service area but no agreement for other Federal, Tribal, or State adoption assistance, the title IV-E agency in the jurisdiction in which the final adoption decree is issued will be responsible for reimbursement of nonrecurring expenses if the child meets the requirements of section 473(c).

(i) The term “nonrecurring adoption expenses” means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State, Tribal or Federal law, and which have not been reimbursed from other sources or other funds. “Other expenses which are directly related to the legal adoption of a child with special needs” means the costs of the adoption incurred by or on behalf of the parents and for which parents carry the ultimate liability for payment. Such costs may include the adoption study, including health and psychological examination, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process.

(j) Failure to honor all eligible claims will be considered non-compliance by the title IV-E agency with title IV-E of the Act.

(k) A title IV-E expenditure is considered made in the quarter during which the payment was made by a title IV-E agency to a private nonprofit agency, individual or vendor payee.

[53 FR 50220, Dec. 14, 1988, as amended at 77 FR 949, Jan. 6, 2012]

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### § 1356.50 Withholding of funds for non-compliance with the approved title IV-E plan.

(a) To be in compliance with the title IV-E plan requirements, a title IV-E agency must meet the requirements of the Act and 45 CFR 1356.20, 1356.21, 1356.30, and 1356.40 of this part.

(b) To be in compliance with the title IV-E plan requirements, a title IV-E agency that chooses to claim FFP for voluntary placements must meet the requirements of the Act, 45 CFR 1356.22 and paragraph (a) of this section; and

(c) For purposes of this section, the procedures in § 1355.39 of this chapter apply.

[48 FR 23117, May 23, 1983, as amended at 65 FR 4091, Jan. 25, 2000; 66 FR 58677, Nov. 23, 2001; 77 FR 950, Jan. 6, 2012]

### § 1356.60 Fiscal requirements (title IV-E).

(a) *Federal matching funds for foster care maintenance and adoption assistance payments.* (1) Federal financial participation (FFP) is available to title IV-E agencies under an approved title IV-E plan for allowable costs in expenditures for:

(i) Foster care maintenance payments as defined in section 475(4) of the Act, made in accordance with §§ 1356.20 through 1356.30, section 472 of the Act, and, for a Tribal title IV-E agency, section 479B of the Act; and

(ii) Adoption assistance payments made in accordance with §§ 1356.20 and 1356.40, applicable provisions of section 473, section 475(3), and, for a Tribal title IV-E agency, section 479B of the Act.

(2) Federal financial participation is available at the rate of the Federal medical assistance percentage as defined in section 1905(b), 474(a)(1) and (2), and 479B(d) of the Act as applicable, definitions, and pertinent regulations as promulgated by the Secretary, or the designee.

(b) *Federal matching funds for title IV-E agency training for foster care and adoption assistance under title IV-E.* (1) Federal financial participation is available at the rate of seventy-five percent (75%) in the costs of:

(i) Training personnel employed or preparing for employment by the title

IV-E agency administering the plan, and;

(ii) Providing short-term training (including travel and per diem expenses) to current or prospective foster or adoptive parents and the members of the state licensed or approved child care institutions providing care to foster and adopted children receiving title IV-E assistance.

(2) All training activities and costs funded under title IV-E shall be included in the agency's training plan for title IV-B.

(3) Short and long term training at educational institutions and in-service training may be provided in accordance with the provisions of §§ 235.63 through 235.66(a) of this title.

(c) *Federal matching funds for other title IV-E agency administrative expenditures for foster care and adoption assistance under title IV-E.* Federal financial participation is available at the rate of fifty percent (50%) for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan. The State's cost allocation plan shall identify which costs are allocated and claimed under this program.

(1) The determination and redetermination of eligibility, fair hearings and appeals, rate setting and other costs directly related only to the administration of the foster care program under this part are deemed allowable administrative costs under this paragraph. They may not be claimed under any other section or Federal program.

(2) The following are examples of allowable administrative costs necessary for the administration of the foster care program:

- (i) Referral to services;
- (ii) Preparation for and participation in judicial determinations;
- (iii) Placement of the child;
- (iv) Development of the case plan;
- (v) Case reviews;
- (vi) Case management and supervision;
- (vii) Recruitment and licensing of foster homes and institutions;
- (viii) Rate setting;
- (ix) A proportionate share of related agency overhead;
- (x) Costs related to data collection and reporting; and

(xi) Costs related to legal representation described in paragraph (c)(4) of this section.

(3) Allowable administrative costs do not include the costs of social services provided to the child, the child's family or foster family which provide counseling or treatment to ameliorate or remedy personal problems, behaviors or home conditions.

(4) The following are allowable administrative costs of legal representation:

(i) Legal representation in foster care proceedings provided by an attorney representing the title IV-E agency or any other public agency (including an Indian tribe) which has an agreement in effect under which the other agency has placement and care responsibility of a title IV-E eligible child pursuant to 472(a)(2)(B)(ii) of the Act;

(ii) Independent legal representation provided by an attorney representing a child in title IV-E foster care, a child who is a candidate for title IV-E foster care, the child's parent(s), the child's relative caregiver(s), and the child's Indian custodian(s) in foster care and other civil legal proceedings as necessary to carry out the requirements in the agency's title IV-E foster care plan. Independent legal representation in civil proceedings includes facilitating, arranging, brokering, advocating, or otherwise linking clients with providers and services as identified in the child's case plan pursuant to sections 422, 471(a)(16), and 475 of the Act; and

(iii) Legal representation provided by an attorney representing an Indian child's tribe (as defined by 25 U.S.C.1903(5)), or representation of an Indian child's tribe provided by a non-attorney, when the child's tribe participates or intervenes in any state court proceeding for the foster care placement or termination of parental rights of an Indian child who is in title IV-E foster care or an Indian child who is a candidate for title IV-E foster care.

(d) *Cost of the data collection system.*

(1) Costs related to data collection system initiation, implementation and operation may be charged as an administrative cost of title IV-E at the 50 percent matching rate subject to the restrictions in paragraph (d)(2) of this section

(2) For information systems used for purposes other than those specified by section 479 of the Act, costs must be allocated and must bear the same ratio as the foster care and adoption population bears to the total population contained in the information system as verified by reports from all other programs included in the system.

(e) *Federal matching funds for CCWIS and Non-CCWIS.* Federal matching funds are available at the rate of fifty percent (50%). Requirements for the cost allocation of CCWIS and non-CCWIS project costs are at §1355.57 of this chapter.

[47 FR 30925, July 15, 1982, as amended at 48 FR 23117, May 23, 1983; 53 FR 50221, Dec. 14, 1988; 58 FR 67938, 67947, Dec. 22, 1993; 65 FR 4091, Jan. 25, 2000; 66 FR 58677, Nov. 23, 2001; 77 FR 950, Jan. 6, 2012; 81 FR 35482, June 2, 2016; 87 FR 42339, July 15, 2022; 89 FR 40417, May 10, 2024]

§§ 1356.65–1356.66 [Reserved]

**§ 1356.67 Procedures for the transfer of placement and care responsibility of a child from a State to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement.**

(a) Each State with a title IV-E plan approved under section 471 of the Act must establish and maintain procedures, in consultation with Indian Tribes, for the transfer of responsibility for the placement and care of a child under a State title IV-E plan to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement in a way that does not affect a child's eligibility for, or payment of, title IV-E and the child's eligibility for medical assistance under title XIX of the Act.

(b) The procedures must, at a minimum, provide for the State to:

(1) Determine, if the eligibility determination is not already completed, the child's eligibility under section 472 or 473 of the Act at the time of the transfer of placement and care responsibility

of a child to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement.

(2) Provide essential documents and information necessary to continue a child's eligibility under title IV-E and Medicaid programs under title XIX to the Tribal title IV-E agency, including, but not limited to providing:

(i) All judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts described in section 471(a)(15) of the Act have been made;

(ii) Other documentation the State has that relates to the child's title IV-E eligibility under sections 472 and 473 of the Act;

(iii) Information and documentation available to the agency regarding the child's eligibility or potential eligibility for other Federal benefits;

(iv) The case plan developed pursuant to section 475(1) of the Act, including health and education records of the child pursuant to section 475(1)(C) of the Act; and

(v) Information and documentation of the child's placement settings, including a copy of the most recent provider's license or approval.

[77 FR 950, Jan. 6, 2012]

**§ 1356.68 Tribal title IV-E agency requirements for in-kind administrative and training contributions from third-party sources.**

(a) *Option to claim in-kind expenditures from third-party sources for non-Federal share of administrative and training costs.* A Tribal title IV-E agency may claim allowable in-kind expenditures from third-party sources for the purpose of determining the non-Federal share of administrative or training costs subject to paragraphs (b) through (d) of this section.

(b) *In-kind expenditures for fiscal years 2010 and 2011—*(1) *Administrative costs.* A Tribal title IV-E agency may claim allowable in-kind expenditures from third-party sources of up to 25 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(C), (D) or (E) of the Act.

(2) *Training costs.* A Tribal title IV-E agency may claim in-kind training expenditures of up to 12 percent of the total training funds expended during a fiscal year quarter pursuant to section 474(a)(3)(A) and (B) of the Act, but only from the following sources:

- (i) A State or local government;
- (ii) An Indian Tribe, Tribal organization, or Tribal consortium other than the Indian Tribe, organization, or consortium submitting the title IV-E plan;
- (iii) A public institution of higher education;
- (iv) A Tribal College or University (as defined in section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c)); and
- (v) A private charitable organization.

(c) *In-kind expenditures for fiscal years 2012 and thereafter—(1) Administrative costs.* A Tribal title IV-E agency may claim in-kind expenditures from third-party sources of up to 50 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(C), (D) or (E) of the Act.

(2) *Training costs.* A Tribal title IV-E agency may claim in-kind training expenditures of up to 25 percent (or 30 percent consistent with section 203(b) of Pub. L. 110-351) of the total training funds expended during each quarter of fiscal year 2012 pursuant to section 474(a)(3)(A) and (B) of the Act. For fiscal year 2013 and thereafter, a Tribal title IV-E agency may claim in-kind training expenditures of up to 25 percent of the total training funds expended during a fiscal quarter pursuant to section 474(a)(3)(A) and (B) of the Act.

(3) *Third-party sources.* A Tribal title IV-E agency may claim in-kind training expenditures for training funds from any allowable third-party source.

[77 FR 950, Jan. 6, 2012]

#### §§ 1356.69–1356.70 [Reserved]

#### § 1356.71 Federal review of the eligibility of children in foster care and the eligibility of foster care providers in title IV-E programs.

(a) *Purpose, scope and overview of the process.* (1) This section sets forth requirements governing Federal reviews of compliance with the title IV-E eligibility provisions as they apply to chil-

dren and foster care providers under paragraphs (a) and (b) of section 472 of the Act.

(2) The requirements of this section apply to title IV-E agencies that receive Federal payments for foster care under title IV-E of the Act.

(3) The review process begins with a primary review of foster care cases for the title IV-E eligibility requirements.

(i) *Title IV-E agencies in substantial compliance.* Title IV-E agencies determined to be in substantial compliance based on the primary review will be subject to another review in three years.

(ii) *Title IV-E agencies not in substantial compliance.* Title IV-E agencies that are determined not to be in substantial compliance based on the primary review will develop and implement a program improvement plan designed to correct the areas of non-compliance. A secondary review will be conducted after the completion of the program improvement plan. A subsequent primary review will be held three years from the date of the secondary review.

(b) *Composition of review team and preliminary activities preceding an on-site review.* (1) The review team must be composed of representatives of the title IV-E agency, and ACF's Regional and Central Offices.

(2) The title IV-E agency must provide ACF with the complete payment history for each of the sample and oversample cases prior to the on-site review.

(c) *Sampling guidance and conduct of review.* (1) The list of sampling units in the target population (*i.e.*, the sampling frame) will be drawn by ACF statistical staff from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data which are transmitted by the title IV-E agency to ACF. The sampling frame will consist of cases of children who were eligible for foster care maintenance payments during the reporting period reflected in a title IV-E agency's most recent AFCARS data submission. For the initial primary review, if these data are not available or are deficient, an alternative sampling frame, consistent with one AFCARS six-month reporting period, will be selected by



ACF in conjunction with the title IV–E agency.

(2) A sample of 80 cases (plus a 10 percent oversample of eight cases) from the title IV–E foster care program will be selected for the primary review utilizing probability sampling methodologies. Usually, the chosen methodology will be simple random sampling, but other probability samples may be utilized, when necessary and appropriate.

(3) Cases from the oversample will be substituted and reviewed for each of the original sample of 80 cases which is found to be in error.

(4) At the completion of the primary review, the review team will determine the number of ineligible cases. When the total number of ineligible cases does not exceed eight, ACF can conclude with a probability of 88 percent that in a population of 1000 or more cases the population ineligibility case error rate is less than 15 percent and the title IV–E agency will be considered in substantial compliance. For primary reviews held subsequent to the initial primary reviews, the acceptable population ineligibility case error rate threshold will be reduced from less than 15 percent (eight or fewer ineligible cases) to less than 10 percent (four or fewer ineligible cases)). A title IV–E agency which meets this standard is considered to be in “substantial compliance” (see paragraph (h) of this section). A disallowance will be assessed for the ineligible cases for the period of time the cases are ineligible.

(5) A title IV–E agency which has been determined to be in “noncompliance” (*i.e.*, not in substantial compliance) will be required to develop a program improvement plan according to the specifications discussed in paragraph (i) of this section, as well as undergo a secondary review. For the secondary review, a sample of 150 cases (plus a 10 percent oversample of 15 cases) will be drawn from the most recent AFCARS submission. Usually, the chosen methodology will be simple random sampling, but other probability samples may be utilized, when necessary and appropriate. Cases from the oversample will be substituted and reviewed for each of the original sample of 150 cases which is found to be in error.

(6) At the completion of the secondary review, the review team will calculate both the sample case ineligibility and dollar error rates for the cases determined ineligible during the review. An extrapolated disallowance equal to the lower limit of a 90 percent confidence interval for the population total dollars in error for the amount of time corresponding to the AFCARS reporting period will be assessed if both the child/provider (case) ineligibility and dollar error rates exceed 10 percent. If neither, or only one, of the error rates exceeds 10 percent, a disallowance will be assessed for the ineligible cases for the period of time the cases are ineligible.

(d) *Requirements subject to review.* Title IV–E agencies will be reviewed against the requirements of title IV–E of the Act regarding:

(1) The eligibility of the children on whose behalf the foster care maintenance payments are made (section 472(a)(1)–(4) of the Act) to include:

(i) Judicial determinations regarding “reasonable efforts” and “contrary to the welfare” in accordance with § 1356.21(b) and (c), respectively;

(ii) Voluntary placement agreements in accordance with § 1356.22;

(iii) Responsibility for placement and care vested with the title IV–E or other public agency per section 472(a)(2)(B) of the Act;

(iv) Placement in a licensed foster family home or child care institution; and,

(v) Eligibility for AFDC under such State plan as it was in effect on July 16, 1996 per section 472(a)(3) or 479B(c)(1)(C)(ii)(II) of the Act, as appropriate.

(2) Allowable payments made to foster care providers who comport with sections 471(a)(10), 471(a)(20), 472(b) and (c), and 479B(c)(2) of the Act and § 1356.30.

(e) *Review instrument.* A title IV–E foster care eligibility review checklist will be used when conducting the eligibility review.

(f) *Eligibility determination—child.* The case record of the child must contain sufficient documentation to verify a child’s eligibility in accordance with paragraph (d)(1) of this section, in

order to substantiate payments made on the child's behalf.

(g) *Eligibility determination—provider.*

(1) For each case being reviewed, the title IV-E agency must make available a licensing file which contains the licensing history, including a copy of the certificate of licensure/approval or letter of approval, for each of the providers in the following categories:

- (i) Public child care institutions with 25 children or less in residence;
- (ii) Private child care institutions;
- (iii) Group homes; and
- (iv) Foster family homes, including relative homes.

(2) The licensing file must contain documentation that the title IV-E agency has complied with the safety requirements for foster and adoptive placements in accordance with §1356.30.

(3) If the licensing file does not contain sufficient information to support a child's placement in a licensed facility, the title IV-E agency may provide supplemental information from other sources (e.g., a computerized database).

(h) *Standards of compliance.* (1) Disallowances will be taken, and plans for program improvement required, based on the extent to which a title IV-E agency is not in substantial compliance with recipient or provider eligibility provisions of title IV-E, or applicable regulations in 45 CFR parts 1355 and 1356.

(2) Substantial compliance and non-compliance are defined as follows:

(i) *Substantial compliance*—For the primary review (of the sample of 80 cases), no more than eight of the title IV-E cases reviewed may be determined to be ineligible. (This critical number of allowable "errors," i.e., ineligible cases, is reduced to four errors or less in primary reviews held subsequent to the initial primary review). For the secondary review (if required), *substantial compliance* means either the case ineligibility or dollar error rate does not exceed 10 percent.

(ii) *Noncompliance*—means not in substantial compliance. For the primary review (of the sample of 80 cases), nine or more of the title IV-E cases reviewed must be determined to be ineligible. (This critical number of allowable "errors," i.e., ineligible cases, is reduced to five or more in primary re-

views subsequent to the initial primary review). For the secondary review (if required), *noncompliance* means both the case ineligibility and dollar error rates exceed 10 percent.

(3) ACF will notify the title IV-E agency in writing within 30 calendar days after the completion of the review of whether the title IV-E agency is, or is not, operating in substantial compliance.

(4) Title IV-E agencies which are determined to be in substantial compliance must undergo a subsequent review after a minimum of three years.

(i) *Program improvement plans.* (1) Title IV-E agencies which are determined to be in noncompliance with recipient or provider eligibility provisions of title IV-E, or applicable regulations in 45 CFR Parts 1355 and 1356, will develop a program improvement plan designed to correct the areas determined not to be in substantial compliance. The program improvement plan will:

(i) Be developed jointly by title IV-E agency and Federal staff;

(ii) Identify the areas in which the title IV-E agency's program is not in substantial compliance;

(iii) Not extend beyond one year. A title IV-E agency will have a maximum of one year in which to implement and complete the provisions of the program improvement plan unless State/Tribal legislative action is required. In such instances, an extension may be granted with the title IV-E agency and ACF negotiating the terms and length of such extension that shall not exceed the last day of the first legislative session after the date of the program improvement plan; and

(iv) Include:

(A) Specific goals;

(B) The action steps required to correct each identified weakness or deficiency; and,

(C) a date by which each of the action steps is to be completed.

(2) Title IV-E agencies determined not to be in substantial compliance as a result of a primary review must submit the program improvement plan to ACF for approval within 90 calendar days from the date the title IV-E agency receives written notification that it is not in substantial compliance. This

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deadline may be extended an additional 30 calendar days when a title IV-E agency submits additional documentation to ACF in support of cases determined to be ineligible as a result of the on-site eligibility review.

(3) The ACF Regional Office will intermittently review, in conjunction with the title IV-E agency, the title IV-E agency's progress in completing the prescribed action steps in the program improvement plan.

(4) If a title IV-E agency does not submit an approvable program improvement plan in accordance with the provisions of paragraphs (i)(1) and (2) of this section, ACF will move to a secondary review in accordance with paragraph (c) of this section.

(j) *Disallowance of funds.* The amount of funds to be disallowed will be determined by the extent to which a title IV-E agency is not in substantial compliance with recipient or provider eligibility provisions of title IV-E, or applicable regulations in 45 CFR parts 1355 and 1356.

(1) Title IV-E agencies which are found to be in substantial compliance during the primary or secondary review will have disallowances (if any) determined on the basis of individual cases reviewed and found to be in error. The amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time that each case has been ineligible.

(2) Title IV-E agencies which are found to be in noncompliance during the primary review will have disallowances determined on the basis of individual cases reviewed and found to be in error, and must implement a program improvement plan in accordance with the provisions contained within it. A secondary review will be conducted no later than during the AFCARS reporting period which immediately follows the program improvement plan completion date on a sample of 150 cases drawn from the title IV-E agency's most recent AFCARS data. If both the case ineligibility and dollar error rates exceed 10 percent, the title IV-E agency is not in compliance and an additional disallowance will be determined based on extrapolation from the sample to the universe of claims

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paid for the duration of the AFCARS reporting period (*i.e.*, all title IV-E funds expended for a case during the quarter(s) that case is ineligible, including administrative costs). If either the case ineligibility or dollar rate does not exceed 10 percent, the amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time the case has been determined to be ineligible.

(3) The title IV-E agency will be liable for interest on the amount of funds disallowed by the Department, in accordance with the provisions of 45 CFR 30.18.

(4) Title IV-E agencies may appeal any disallowance actions taken by ACF to the HHS Departmental Appeals Board in accordance with regulations at 45 CFR part 16.

[65 FR 4091, Jan. 25, 2000, as amended at 66 FR 58677, Nov. 23, 2001; 77 FR 951, Jan. 6, 2012]

### § 1356.80 Scope of the National Youth in Transition Database.

The requirements of the National Youth in Transition Database (NYTD) §§1356.81 through 1356.86 of this part apply to the agency in any State, the District of Columbia, or Territory, that administers, or supervises the administration of the Chafee Foster Care Independence Program (CFCIP) under section 477 of the Social Security Act (the Act).

[73 FR 10365, Feb. 26, 2008]

### § 1356.81 Reporting population.

The reporting population is comprised of all youth in the following categories:

(a) *Served population.* Each youth who receives an independent living service paid for or provided by the State agency during the reporting period.

(b) *Baseline population.* Each youth who is in foster care as defined in 45 CFR 1355.20 and reaches his or her 17th birthday during Federal fiscal year (FFY) 2011, and such youth who reach a 17th birthday during every third year thereafter.

(c) *Follow-up population.* Each youth who reaches his or her 19th or 21st birthday in a Federal fiscal year and had participated in data collection as

part of the baseline population, as specified in section 1356.82(a)(2) of this part. A youth has participated in the outcomes data collection if the State agency reports to ACF a valid response (*i.e.*, a response option other than “declined” and “not applicable”) to any of the outcomes-related elements described in section 1356.83(g)(37) through (g)(58) of this part.

[73 FR 10365, Feb. 26, 2008]

#### § 1356.82 Data collection requirements.

(a) The State agency must collect applicable information as specified in section 1356.83 of this part on the reporting population defined in section 1356.81 of this part in accordance with the following:

(1) For each youth in the served population, the State agency must collect information for the data elements specified in section 1356.83(b) and 1356.83(c) of this part on an ongoing basis, for as long as the youth receives services.

(2) For each youth in the baseline population, the State agency must collect information for the data elements specified in section 1356.83(b) and 1356.83(d) of this part. The State agency must collect this information on a new baseline population every three years.

(i) For each youth in foster care who turns age 17 in FFY 2011, the State agency must collect this information within 45 days following the youth's 17th birthday, but not before that birthday.

(ii) Every third Federal fiscal year thereafter, the State agency must collect this information on each youth in foster care who turns age 17 during the year within 45 days following the youth's 17th birthday, but not before that birthday.

(iii) The State agency must collect this information using the survey questions in appendix B of this part entitled “Information to collect from all youth surveyed for outcomes, whether in foster care or not.”

(3) For each youth in the follow-up population, the State agency must collect information on the data elements specified in sections 1356.83(b) and 1356.83(e) of this part within the reporting period of the youth's 19th and 21st birthday. The State agency must col-

lect the information using the appropriate survey questions in appendix B of this part, depending upon whether the youth is in foster care.

(b) The State agency may select a sample of the 17-year-olds in the baseline population to follow over time consistent with the sampling requirements described in section 1356.84 of this part to satisfy the data collection requirements in paragraph (a)(3) of this section for the follow-up population. A State that samples must identify the youth at age 19 who participated in the outcomes data collection as part of the baseline population at age 17 who are not in the sample in accordance with 45 CFR 1356.83(e).

[73 FR 10365, Feb. 26, 2008]

#### § 1356.83 Reporting requirements and data elements.

(a) *Reporting periods and deadlines.* The six-month reporting periods are from October 1 to March 31 and April 1 to September 30. The State agency must submit data files that include the information specified in this section to ACF on a semi-annual basis, within 45 days of the end of the reporting period (*i.e.*, by May 15 and November 14).

(b) *Data elements for all youth.* The State agency must report the data elements described in paragraphs (g)(1) through (g)(13) of this section for each youth in the entire reporting population defined in section 1356.81 of this part.

(c) *Data elements for served youth.* The State agency must report the data elements described in paragraphs (g)(14) through (g)(33) of this section for each youth in the served population defined in section 1356.81(a) of this part.

(d) *Data elements for baseline youth.* The State agency must report the data elements described in paragraphs (g)(34) through (g)(58) of this section for each youth in the baseline population defined in section 1356.81(b) of this part.

(e) *Data elements for follow-up youth.* The State agency must report the data elements described in paragraphs (g)(34) through (g)(58) of this section for each youth in the follow-up population defined in section 1356.81(c) of this part or alternatively, for each youth selected in accordance with the sampling

procedures in section 1356.84 of this part. A State that samples must identify in the outcomes reporting status element described in paragraph (g)(34), the 19-year-old youth who participated in the outcomes data collection as a part of the baseline population at age 17, who are not in the sample.

(f) *Single youth record.* The State agency must report all applicable data elements for an individual youth in one record per reporting period.

(g) *Data element descriptions.* For each element described in paragraphs (g)(1) through (58) of this section, the State agency must indicate the applicable response as instructed.

(1) *State.* State means the State responsible for reporting on the youth. Indicate the first two digits of the State's Federal Information Processing Standard (FIPS) code for the State submitting the report to ACF.

(2) *Report date.* The report date corresponds with the end of the current reporting period. Indicate the last month and the year of the reporting period.

(3) *Record number.* The record number is the encrypted, unique person identification number for the youth. The State agency must apply and retain the same encryption routine or method for the person identification number across all reporting periods. The record number must be encrypted in accordance with ACF standards. Indicate the record number for the youth.

(i) If the youth is in foster care as defined in 45 CFR 1355.20 or was during the current or previous reporting period, the State agency must use and report to the NYTD the same person identification number for the youth the State agency reports to AFCARS. The person identification number must remain the same for the youth wherever the youth is living and in any subsequent NYTD reports.

(ii) If the youth was never in the State's foster care system as defined in 45 CFR 1355.20, the State agency must assign a person identification number that must remain the same for the youth wherever the youth is living and in any subsequent reports to NYTD.

(4) *Date of birth.* The youth's date of birth. Indicate the year, month, and day of the youth's birth.

(5) *Sex.* The youth's sex. Indicate whether the youth is male or female as appropriate.

(6) *Race: American Indian or Alaska Native.* In general, a youth's race is determined by the youth or the youth's parent(s). An American Indian or Alaska Native youth has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment. Indicate whether this racial category applies for the youth, with a "yes" or "no."

(7) *Race: Asian.* In general, a youth's race is determined by the youth or the youth's parent(s). An Asian youth has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam. Indicate whether this racial category applies for the youth, with a "yes" or "no."

(8) *Race: Black or African American.* In general, a youth's race is determined by the youth or the youth's parent(s). A Black or African American youth has origins in any of the black racial groups of Africa. Indicate whether this racial category applies for the youth, with a "yes" or "no."

(9) *Race: Native Hawaiian or Other Pacific Islander.* In general, a youth's race is determined by the youth or the youth's parent(s). A Native Hawaiian or Other Pacific Islander youth has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands. Indicate whether this racial category applies for the youth, with a "yes" or "no."

(10) *Race: White.* In general, a youth's race is determined by the youth or the youth's parent(s). A White youth has origins in any of the original peoples of Europe, the Middle East, or North Africa. Indicate whether this racial category applies for the youth, with a "yes" or "no."

(11) *Race: unknown.* The race, or at least one race of the youth is unknown, or the youth and/or parent is not able to communicate the youth's race. Indicate whether this category applies for the youth, with a "yes" or "no."

(12) *Race: declined.* The youth or parent has declined to identify a race. Indicate whether this category applies for the youth, with a “yes” or “no.”

(13) *Hispanic or Latino ethnicity.* In general, a youth’s ethnicity is determined by the youth or the youth’s parent(s). A youth is of Hispanic or Latino ethnicity if the youth is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate which category applies, with “yes,” “no,” “unknown” or “declined,” as appropriate. “Unknown” means that the youth and/or parent is unable to communicate the youth’s ethnicity. “Declined” means that the youth or parent has declined to identify the youth’s Hispanic or Latino ethnicity.

(14) *Foster care status—services.* The youth receiving services is or was in foster care during the reporting period if the youth is or was in the placement and care responsibility of the State title IV-B/IV-E agency in accordance with the definition of foster care in 45 CFR 1355.20. Indicate whether the youth is or was in foster care at any point during the reporting period, with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(15) *Local agency.* The local agency is the county or equivalent jurisdictional unit that has primary responsibility for placement and care of a youth who is in foster care consistent with the definition in 45 CFR 1355.20, or that has primary responsibility for providing services to a youth who is not in foster care. Indicate the five-digit Federal Information Processing Standard (FIPS) code(s) that corresponds to the identity of the county or equivalent unit jurisdiction(s) that meets these criteria during the reporting period. If a youth who is not in foster care is provided services by a centralized unit only, rather than a county agency, indicate “centralized unit.” If the youth is not in the served population this element must be left blank.

(16) *Federally recognized tribe.* The youth is enrolled in or eligible for membership in a federally recognized tribe. The term “federally recognized tribe” means any Indian tribe, band, nation, or other organized group or

community of Indians, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450 *et seq.*). Indicate “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(17) *Adjudicated delinquent.* Adjudicated delinquent means that a State or Federal court of competent jurisdiction has adjudicated the youth as a delinquent. Indicate “yes,” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(18) *Educational level.* Educational level means the highest educational level completed by the youth. For example, for a youth currently in 11th grade, “10th grade” is the highest educational level completed. Post-secondary education or training refers to any post-secondary education or training, other than an education pursued at a college or university. College refers to completing at least a semester of study at a college or university. Indicate the highest educational level completed by the youth during the reporting period. If the youth is not in the served population this element must be left blank.

(19) *Special education.* The term “special education,” means specifically designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. Indicate whether the youth has received special education instruction during the reporting period with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(20) *Independent living needs assessment.* An independent living needs assessment is a systematic procedure to identify a youth’s basic skills, emotional and social capabilities, strengths, and needs to match the youth with appropriate independent living services. An independent living

needs assessment may address knowledge of basic living skills, job readiness, money management abilities, decision-making skills, goal setting, task completion, and transitional living needs. Indicate whether the youth received an independent living needs assessment that was paid for or provided by the State agency during the reporting period with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(21) *Academic support.* Academic supports are services designed to help a youth complete high school or obtain a General Equivalency Degree (GED). Such services include the following: Academic counseling; preparation for a GED, including assistance in applying for or studying for a GED exam; tutoring; help with homework; study skills training; literacy training; and help accessing educational resources. Academic support does not include a youth’s general attendance in high school. Indicate whether the youth received academic supports during the reporting period that were paid for or provided by the State agency with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(22) *Post-secondary educational support.* Post-secondary educational support are services designed to help a youth enter or complete a post-secondary education and include the following: Classes for test preparation, such as the Scholastic Aptitude Test (SAT); counseling about college; information about financial aid and scholarships; help completing college or loan applications; or tutoring while in college. Indicate whether the youth received post-secondary educational support during the reporting period that was paid for or provided by the State agency with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(23) *Career preparation.* Career preparation services focus on developing a youth’s ability to find, apply for, and retain appropriate employment. Career preparation includes the following types of instruction and support services: Vocational and career assessment,

including career exploration and planning, guidance in setting and assessing vocational and career interests and skills, and help in matching interests and abilities with vocational goals; job seeking and job placement support, including identifying potential employers, writing resumes, completing job applications, developing interview skills, job shadowing, receiving job referrals, using career resource libraries, understanding employee benefits coverage, and securing work permits; retention support, including job coaching; learning how to work with employers and other employees; understanding workplace values such as timeliness and appearance; and understanding authority and customer relationships. Indicate whether the youth received career preparation services during the reporting period that was paid for or provided by the State agency with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(24) *Employment programs or vocational training.* Employment programs and vocational training are designed to build a youth’s skills for a specific trade, vocation, or career through classes or on-site training. Employment programs include a youth’s participation in an apprenticeship, internship, or summer employment program and do not include summer or after-school jobs secured by the youth alone. Vocational training includes a youth’s participation in vocational or trade programs and the receipt of training in occupational classes for such skills as cosmetology, auto mechanics, building trades, nursing, computer science, and other current or emerging employment sectors. Indicate whether the youth attended an employment program or received vocational training during the reporting period that was paid for or provided by the State agency, with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(25) *Budget and financial management.* Budget and financial management assistance includes the following types of training and practice: Living within a budget; opening and using a checking and savings account; balancing a checkbook; developing consumer

awareness and smart shopping skills; accessing information about credit, loans and taxes; and filling out tax forms. Indicate whether the youth received budget and financial management assistance during the reporting period that was paid for or provided by the State agency with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(26) *Housing education and home management training.* Housing education includes assistance or training in locating and maintaining housing, including filling out a rental application and acquiring a lease, handling security deposits and utilities, understanding practices for keeping a healthy and safe home, understanding tenants rights and responsibilities, and handling landlord complaints. Home management includes instruction in food preparation, laundry, housekeeping, living cooperatively, meal planning, grocery shopping and basic maintenance and repairs. Indicate whether the youth received housing education or home management training during the reporting period that was paid for or provided by the State agency with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(27) *Health education and risk prevention.* Health education and risk prevention includes providing information about: Hygiene, nutrition, fitness and exercise, and first aid; medical and dental care benefits, health care resources and insurance, prenatal care and maintaining personal medical records; sex education, abstinence education, and HIV prevention, including education and information about sexual development and sexuality, pregnancy prevention and family planning, and sexually transmitted diseases and AIDS; substance abuse prevention and intervention, including education and information about the effects and consequences of substance use (alcohol, drugs, tobacco) and substance avoidance and intervention. Health education and risk prevention does not include the youth’s actual receipt of direct medical care or substance abuse treatment. Indicate whether the youth received these services during the re-

porting period that were paid for or provided by the State agency with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(28) *Family support and healthy marriage education.* Such services include education and information about safe and stable families, healthy marriages, spousal communication, parenting, responsible fatherhood, childcare skills, teen parenting, and domestic and family violence prevention. Indicate whether the youth received these services that were paid for or provided by the State agency during the reporting period with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(29) *Mentoring.* Mentoring means that the youth has been matched with a screened and trained adult for a one-on-one relationship that involves the two meeting on a regular basis. Mentoring can be short-term, but it may also support the development of a long-term relationship. While youth often are connected to adult role models through school, work, or family, this service category only includes a mentor relationship that has been facilitated, paid for or provided by the State agency or its staff. Indicate whether the youth received mentoring services that were paid for or provided by the State agency during the reporting period with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(30) *Supervised independent living.* Supervised independent living means that the youth is living independently under a supervised arrangement that is paid for or provided by the State agency. A youth in supervised independent living is not supervised 24 hours a day by an adult and often is provided with increased responsibilities, such as paying bills, assuming leases, and working with a landlord, while under the supervision of an adult. Indicate whether the youth was living in a supervised independent living setting that was paid for or provided by the State agency during the reporting period with a “yes” or “no” as appropriate. If the youth is not



in the served population this element must be left blank.

(31) *Room and board financial assistance.* Room and board financial assistance is a payment that is paid for or provided by the State agency for room and board, including rent deposits, utilities, and other household start-up expenses. Indicate whether the youth received financial assistance for room and board that was paid for or provided by during the reporting period with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(32) *Education financial assistance.* Education financial assistance is a payment that is paid for or provided by the State agency for education or training, including allowances to purchase textbooks, uniforms, computers, and other educational supplies; tuition assistance; scholarships; payment for educational preparation and support services (i.e., tutoring), and payment for GED and other educational tests. This financial assistance also includes vouchers for tuition or vocational education or tuition waiver programs paid for or provided by the State agency. Indicate whether the youth received education financial assistance during the reporting period that was paid for or provided by the State agency with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(33) *Other financial assistance.* Other financial assistance includes any other payments made or provided by the State agency to help the youth live independently. Indicate whether the youth received any other financial assistance that was paid for or provided by the State agency during the reporting period with a “yes” or “no” as appropriate. If the youth is not in the served population this element must be left blank.

(34) *Outcomes reporting status.* The outcomes reporting status represents the youth’s participation, or lack thereof, in the outcomes data collection. If the State agency collects and reports information on any of the data elements in paragraphs (g)(37) through (g)(58) of this section for a youth in the baseline or follow-up sample or population, indicate that the youth partici-

pated. If a youth is in the baseline or follow-up sample or population, but the State agency is unable to collect the information, indicate the reason and leave the data elements in paragraph (g)(37) through (g)(58) of this section blank. If a 19-year old youth in the follow-up population is not in the sample, indicate that the youth is not in the sample. If the youth is not in the baseline or follow-up population this element must be left blank.

(i) *Youth participated.* The youth participated in the outcome survey, either fully or partially.

(ii) *Youth declined.* The State agency located the youth successfully and invited the youth’s participation, but the youth declined to participate in the data collection.

(iii) *Parent declined.* The State agency invited the youth’s participation, but the youth’s parent/guardian declined to grant permission. This response may be used only when the youth has not reached the age of majority in the State and State law or policy requires a parent/guardian’s permission for the youth to participate in information collection activities.

(iv) *Incapacitated.* The youth has a permanent or temporary mental or physical condition that prevents him or her from participating in the outcomes data collection.

(v) *Incarcerated.* The youth is unable to participate in the outcomes data collection because of his or her incarceration.

(vi) *Runaway/missing.* A youth in foster care is known to have run away or be missing from his or her foster care placement.

(vii) *Unable to locate/invite.* The State agency could not locate a youth who is not in foster care or otherwise invite such a youth’s participation.

(viii) *Death.* The youth died prior to his participation in the outcomes data collection.

(ix) *Not in sample.* The 19-year-old youth participated in the outcomes data collection as a part of the baseline population at age 17, but the youth is not in the State’s follow-up sample. This response option applies only when the outcomes data collection is required on the follow-up population of 19-year-old youth.

(35) *Date of outcome data collection.* The date of outcome data collection is the latest date that the agency collected data from a youth for the elements described in paragraphs (g)(38) through (g)(58) of this section. Indicate the month, day and year of the outcomes data collection. If the youth is not in the baseline or follow-up population this element must be left blank.

(36) *Foster care status—outcomes.* The youth is in foster care if the youth is under the placement and care responsibility of the State title IV-B/IV-E agency in accordance with the definition of foster care in 45 CFR 1355.20. Indicate whether the youth is in foster care on the date of outcomes data collection with a “yes” or “no” as appropriate. If the youth is not in the baseline or follow-up population this element must be left blank.

(37) *Current full-time employment.* A youth is employed full-time if employed at least 35 hours per week, in one or multiple jobs, as of the date of the outcome data collection. Indicate whether the youth is employed full-time, with a “yes” or “no” as appropriate. If the youth does not answer this question indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(38) *Current part-time employment.* A youth is employed part-time if employed between one and 34 hours per week, in one or multiple jobs, as of the date of the outcome data collection. Indicate whether the youth is employed part-time, with a “yes” or “no.” If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(39) *Employment-related skills.* A youth has obtained employment-related skills if the youth completed an apprenticeship, internship, or other on-the-job training, either paid or unpaid, in the past year. The experience must help the youth acquire employment-related skills, such as specific trade skills such as carpentry or auto mechanics, or office skills such as word processing or use of office equipment. Indicate whether the youth has obtained employment-related skills, with

a “yes” or “no” as appropriate. If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(40) *Social Security.* A youth is receiving some form of Social Security if receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), either directly or as a dependent beneficiary as of the date of the outcome data collection. SSI payments are made to eligible low-income persons with disabilities. SSDI payments are made to persons with a certain amount of work history who become disabled. A youth may receive SSDI payments through a parent. Indicate whether the youth is receiving a form of Social Security payments, with a “yes” or “no” as appropriate. If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(41) *Educational aid.* A youth is receiving educational aid if using a scholarship, voucher (including education or training vouchers pursuant to section 477(h)(2) of the Social Security Act), grant, stipend, student loan, or other type of educational financial aid to cover educational expenses as of the date of the outcome data collection. Scholarships, grants, and stipends are funds awarded for spending on expenses related to gaining an education. “Student loan” means a government-guaranteed, low-interest loan for students in post-secondary education. Indicate whether the youth is receiving educational aid with a “yes” or “no” as appropriate. If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(42) *Public financial assistance.* A youth is receiving public financial assistance if receiving ongoing cash welfare payments from the government to cover some of his or her basic needs, as of the date of the outcome data collection. Public financial assistance does not include government payments or subsidies for specific purposes, such as unemployment insurance, child care subsidies, education assistance, food stamps or housing assistance. Indicate

whether the youth is receiving public financial assistance, with “yes” or “no” as appropriate, and “not applicable” for a youth still in foster care. If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(43) *Public food assistance.* A youth is receiving public food assistance if receiving food stamps in any form (i.e., government-sponsored checks, coupons or debit cards) to buy eligible food at authorized stores as of the date of the outcome data collection. This definition includes receiving public food assistance through the Women, Infants, and Children (WIC) program. Indicate whether the youth is receiving some form of public food assistance with “yes” or “no,” and “not applicable” for a youth still in foster care. If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(44) *Public housing assistance.* A youth is receiving public housing assistance if the youth is living in government-funded public housing, or receiving a government-funded housing voucher to pay for part of his/her housing costs as of the date of the outcome data collection. CFCIP room and board payments are not included in this definition. Indicate whether the youth is receiving housing assistance with “yes” or “no” and “not applicable” for a youth still in foster care. If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(45) *Other financial support.* A youth has other financial support if receiving any other periodic and/or significant financial resources or support from another source not listed in the elements described in paragraphs (g)(41) through (g)(44) of this section as of the date of outcome data collection. Such support can include payments from a spouse or family member (biological, foster or adoptive), child support that the youth receives for him or herself, or funds from a legal settlement. This definition does not include occasional gifts, such as birthday or graduation checks

or small donations of food or personal incidentals, child care subsidies, child support for a youth’s child, or other financial support which does not benefit the youth directly in supporting himself or herself. Indicate whether the youth is receiving any other financial support with a “yes” or “no.” If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(46) *Highest educational certification received.* A youth has received an education certificate if the youth has a high school diploma or general equivalency degree (GED), vocational certificate, vocational license, associate’s degree (e.g., A.A.), bachelor’s degree (e.g., B.A. or B.S.), or a higher degree as of the date of the outcome data collection. Indicate the highest degree that the youth has received. If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(i) A vocational certificate is a document stating that a person has received education or training that qualifies him or her for a particular job, e.g., auto mechanics or cosmetology.

(ii) A vocational license is a document that indicates that the State or local government recognizes an individual as a qualified professional in a particular trade or business.

(iii) An associate’s degree is generally a two-year degree from a community college.

(iv) A bachelor’s degree is a four-year degree from a college or university.

(v) A higher degree indicates a graduate degree, such as a Master’s Degree or a Juris Doctor (J.D.).

(vi) None of the above means that the youth has not received any of the above educational certifications.

(47) *Current enrollment and attendance.* Indicate whether the youth is enrolled in and attending high school, GED classes, or postsecondary vocational training or college, as of the date of the outcome data collection. A youth is still considered enrolled in and attending school if the youth would otherwise be enrolled in and attending a school that is currently out of session.

Indicate whether the youth is currently enrolled and attending school with a “yes” or “no.” If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(48) *Connection to adult.* A youth has a connection to an adult if, as of the date of the outcome data collection, the youth knows an adult who he or she can go to for advice or guidance when there is a decision to make or a problem to solve, or for companionship when celebrating personal achievements. The adult must be easily accessible to the youth, either by telephone or in person. This can include, but is not limited to adult relatives, parents or foster parents. The definition excludes spouses, partners, boyfriends or girlfriends and current caseworkers. Indicate whether the youth has such a connection with an adult with a “yes” or “no.” If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(49) *Homelessness.* A youth is considered to have experienced homelessness if the youth had no regular or adequate place to live. This definition includes situations where the youth is living in a car or on the street, or staying in a homeless or other temporary shelter. For a 17-year-old youth in the baseline population, the data element relates to a youth’s lifetime experiences. For a 19- or 21-year-old youth in the follow-up population, the data element relates to the youth’s experience in the past two years. Indicate if the youth has been homeless with a “yes” or “no.” If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(50) *Substance abuse referral.* A youth has received a substance abuse referral if the youth was referred for an alcohol or drug abuse assessment or counseling. For a 17-year-old youth in the baseline population, the data element relates to a youth’s lifetime experience. For a 19- or 21-year-old youth in the follow-up population, the data element relates to the youth’s experience

in the past two years. This definition includes either a self-referral or referral by a social worker, school staff, physician, mental health worker, foster parent, or other adult. Alcohol or drug abuse assessment is a process designed to determine if someone has a problem with alcohol or drug use. Indicate whether the youth had a substance abuse referral with a “yes” or “no.” If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(51) *Incarceration.* A youth is considered to have been incarcerated if the youth was confined in a jail, prison, correctional facility, or juvenile or community detention facility in connection with allegedly committing a crime (misdemeanor or felony). For a 17-year-old youth in the baseline population, the data element relates to a youth’s lifetime experience. For a 19- or 21-year-old youth in the follow-up population, the data element relates to the youth’s experience in the past two years. Indicate whether the youth was incarcerated with a “yes” or “no.” If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(52) *Children.* A youth is considered to have a child if the youth has given birth herself, or the youth has fathered any children who were born. For a 17-year-old youth in the baseline population, the data element relates to a youth’s lifetime experience. For a 19- or 21-year-old youth in the follow-up population, the data element refers to children born to the youth in the past two years only. This refers to biological parenthood. Indicate whether the youth had a child with a “yes” or “no.” If the youth does not answer this question, indicate “declined.” If the youth is not in the baseline or follow-up population this element must be left blank.

(53) *Marriage at child’s birth.* A youth is married at the time of the child’s birth if he or she was united in matrimony according to the laws of the State to the child’s other parent. Indicate whether the youth was married to

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the child's other parent at the time of the birth of any child reported in the element described in paragraph (g)(52) of this section with a "yes" or "no". If the youth does not answer this question, indicate "declined." If the answer to the element described in paragraph (g)(52) of this section is "no," indicate "not applicable." If the youth is not in the baseline or follow-up population this element must be left blank.

(54) *Medicaid.* A youth is receiving Medicaid if the youth is participating in a Medicaid-funded State program, which is a medical assistance program supported by the Federal and State government under title XIX of the Social Security Act as of the date of outcomes data collection. Indicate whether the youth receives Medicaid with "yes," "no," or "don't know" as appropriate. If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(55) *Other health insurance coverage.* A youth has other health insurance if the youth has a third party pay (other than Medicaid) for all or part of the costs of medical care, mental health care, and/or prescription drugs, as of the date of the outcome data collection. This definition includes group coverage offered by employers, schools or associations, an individual health plan, self-employed plans, or inclusion in a parent's insurance plan. This also could include access to free health care through a college, Indian Health Service, or other source. Medical or drug discount cards or plans are not insurance. Indicate "yes", "no", or "don't know" as appropriate. If the youth does not answer this question, indicate "declined."

(56) *Health insurance type: Medical.* If the youth has indicated that he or she has health insurance coverage in the element described in paragraph (g)(55) of this section, indicate whether the youth has insurance that pays for all or part of medical health care services. Indicate "yes", "no", or "don't know" as appropriate, or "not applicable" if the youth did not indicate any health insurance coverage. If the youth does not answer this question, indicate "declined." If the youth is not in the base-

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line or follow-up population this element must be left blank.

(57) *Health insurance type: Mental health.* If the youth has indicated that he or she has medical health insurance coverage as described in paragraph (g)(56) of this section, indicate whether the youth has insurance that pays for all or part of the costs for mental health care services, such as counseling or therapy. Indicate "yes", "no", or "don't know" as appropriate, or "not applicable" if the youth did not indicate having medical health insurance coverage. If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(58) *Health insurance type: Prescription drugs.* If the youth has indicated that he or she has medical health insurance coverage as described in paragraph (g)(56) of this section, indicate whether the youth has insurance coverage that pays for part or all of the costs of some prescription drugs. Indicate "yes", "no", or "don't know" as appropriate, or "not applicable" if the youth did not indicate having medical health insurance coverage. If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(h) *Electronic reporting.* The State agency must report all data to ACF electronically according to ACF's specifications and appendix A of this part.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number OMB 0970–0340. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[73 FR 10365, Feb. 26, 2008, as amended at 77 FR 952, Jan. 6, 2012]

#### § 1356.84 Sampling.

(a) The State agency may collect and report the information required in section 1356.83(e) of this part on a sample of the baseline population consistent with the sampling requirements described in paragraphs (b) and (c) of this section.

(b) The State agency must select the follow-up sample using simple random sampling procedures based on random numbers generated by a computer program, unless ACF approves another sampling procedure. The sampling universe consists of youth in the baseline population consistent with 45 CFR 1356.81(b) who participated in the State agency's data collection at age 17.

(c) The sample size is based on the number of youth in the baseline population who participated in the State agency's data collection at age 17.

(1) If the number of youth in the baseline population who participated in the outcome data collection at age 17 is 5,000 or less, the State agency must calculate the sample size using the formula in appendix C of this part, with the Finite Population Correction (FPC). The State agency must increase the resulting number by 30 percent to allow for attrition, but the sample size may not be larger than the number of youth who participated in data collection at age 17.

(2) If the number of youth in the baseline population who participated in the outcome data collection at age 17 is greater than 5,000, the State agency must calculate the sample size using the formula in appendix C of this part, without the FPC. The State agency must increase the resulting number by 30 percent to allow for attrition, but the sample size must not be larger than the number of youth who participated in data collection at age 17.

[73 FR 10365, Feb. 26, 2008]

#### § 1356.85 Compliance.

(a) *File submission standards.* A State agency must submit a data file in accordance with the following file submission standards:

(1) *Timely data.* The data file must be received in accordance with the reporting period and timeline described in section 1356.83(a) of this part;

(2) *Format.* The data file must be in a format that meets ACF's specifications; and

(3) *Error-free information.* The file must contain data in the general and demographic elements described in section 1356.83(g)(1) through (g)(5), (g)(14), and (g)(36) of this part that is 100 per-

cent error-free as defined in paragraph (c) of this section.

(b) *Data standards.* A State agency also must submit a file that meets the following data standards:

(1) *Error-free.* The data for the applicable demographic, service and outcomes elements defined in section 1356.83(g)(6) through (13), (g)(15) through (35) and (g)(37) through (58) of this part must be 90 percent error-free as described and assessed according to paragraph (c) of this section.

(2) *Outcomes universe.* In any Federal fiscal year for which the State agency is required to submit information on the follow-up population, the State agency must submit a youth record containing at least outcomes data for the outcomes status element described in section 1356.83(g)(34) of this part on each youth for whom the State agency reported outcome information as part of the baseline population. Alternatively, if the State agency has elected to conduct sampling in accordance with section 1356.84 of this part, the State agency must submit a record containing at least outcomes data for the outcomes status element described in section 1356.83(g)(34) of this part on each 19-year-old youth in the follow-up population, inclusive of those youth who are not in the sample, and each 21-year-old youth in the follow-up sample.

(3) *Outcomes participation rate.* The State agency must report outcome information on each youth in the follow-up population at the rates described in paragraphs (b)(3)(i) through (iii) of this section. A youth has participated in the outcomes data collection if the State agency collected and reported a valid response (i.e., a response option other than "declined" or "not applicable") to any of the outcomes-related elements described in section 1356.83(g)(37) through (g)(58) of this part. ACF will exclude from the calculation of the participation rate any youth in the follow-up population who is reported as deceased, incapacitated or incarcerated in section 1356.83(g)(34) at the time information on the follow-up population is required.

(i) *Foster care youth participation rate.* The State agency must report outcome information on at least 80 percent of youth in the follow-up population who

are in foster care on the date of outcomes data collection as indicated in section 1356.83(g)(35) and (g)(36) of this part.

(ii) *Discharged youth participation rate.* The State agency must report outcome information on at least 60 percent of youth in the follow-up population who are not in foster care on the date of outcomes data collection as indicated in section 1356.83(g)(35) and (g)(36) of this part.

(iii) *Effect of sampling on participation rates.* For State agencies electing to sample in accordance with section 1356.84 and appendix C of this part, ACF will apply the outcome participation rates in paragraphs (b)(2)(i) and (ii) of this section to the required sample size for the State.

(c) *Errors.* ACF will assess each State agency's data file for the following types of errors: Missing data, out-of-range data, or internally inconsistent data. The amount of errors acceptable for each reporting period is described in paragraphs (a) and (b) of this section.

(1) Missing data is any element that has a blank response when a blank response is not a valid response option as described in section 1356.83(g) of this part.

(2) Out-of-range data is any element that contains a value that is outside the parameters of acceptable responses or exceeds, either positively or negatively, the acceptable range of response options as described in section 1356.83(g) of this part; and

(3) Internally inconsistent data is any element that fails an internal consistency check designed to evaluate the logical relationship between elements in each record. The evaluation will identify all elements involved in a particular check as in error.

(d) *Review for compliance.* (1) ACF will determine whether a State agency's data file for each reporting period is in compliance with the file submission standards and data standards in paragraphs (a) and (b) of this section.

(i) For State agencies that achieve the file submission standards, ACF will determine whether the State agency's data file meets the data standards.

(ii) For State agencies that do not achieve the file submission standards

or data standards, ACF will notify the State agency that they have an opportunity to submit a corrected data file by the end of the subsequent reporting period in accordance with paragraph (e) of this section.

(2) ACF may use monitoring tools or assessment procedures to determine whether the State agency is meeting all the requirements of section 1356.81 through 1356.85 of this part.

(e) *Submitting corrected data and non-compliance.* A State agency that does not submit a data file that meets the standards in section 1356.85 of this part will have an opportunity to submit a corrected data file in accordance with paragraphs (e)(1) and (e)(2) of this section.

(1) A State agency must submit a corrected data file no later than the end of the subsequent reporting period as defined in section 1356.83(a) of this part (i.e., by September 30 or March 31).

(2) If a State agency fails to submit a corrected data file that meets the compliance standards in section 1356.85 of this part and the deadline in paragraph (e)(1) of this section, ACF will make a final determination that the State is out of compliance, notify the State agency, and apply penalties as defined in section 1356.86 of this part.

[73 FR 10365, Feb. 26, 2008]

#### § 1356.86 Penalties for noncompliance.

(a) *Definition of Federal funds subject to a penalty.* The funds that are subject to a penalty are the CFCIP funds allocated or reallocated to the State agency under section 477(c)(1) of the Act for the Federal fiscal year that corresponds with the reporting period for which the State agency was required originally to submit data according to section 1356.83(a) of this part.

(b) *Assessed penalty amounts.* ACF will assess penalties in the following amounts, depending on the area of non-compliance:

(1) *Penalty for not meeting file submission standards.* ACF will assess a penalty in an amount equivalent to two and one half percent (2.5%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the file

submission standards defined in section 1356.85(a) of this part.

(2) *Penalty for not meeting certain data standards.* ACF will assess a penalty in an amount equivalent to:

(i) One and one quarter percent (1.25%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the data standard for error-free data as defined in section 1356.85(b)(1) of this part.

(ii) One and one quarter percent (1.25%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the outcome universe standard defined in section 1356.85(b)(2) of this part.

(iii) One half of one percent (0.5%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the participation rate for youth in foster care standard defined in section 1356.85(b)(3)(i) of this part.

(iv) One half of one percent (0.5%) of the funds subject to a penalty for each reporting period in which ACF makes a

final determination that the State agency's data file does not comply with the participation rate for discharged youth standard defined in section 1356.85(b)(3)(ii) of this part.

(c) *Calculation of the penalty amount.* ACF will add together any assessed penalty amounts described in paragraphs (b)(1) or (b)(2) of this section to determine the total calculated penalty result. If the total calculated penalty result is less than one percent of the funds subject to a penalty, the State agency will be penalized in the amount of one percent.

(d) *Notification of penalty amount.* ACF will advise the State agency in writing of a final determination of non-compliance and the amount of the total calculated penalty as determined in paragraph (c) of this section.

(e) *Interest.* The State agency will be liable for interest on the amount of funds penalized by the Department, in accordance with the provisions of 45 CFR 30.18.

(f) *Appeals.* The State agency may appeal, pursuant to 45 CFR part 16, ACF's final determination to the HHS Departmental Appeals Board.

[73 FR 10365, Feb. 26, 2008, as amended at 77 FR 952, Jan. 6, 2012]

#### APPENDIX A TO PART 1356—NYTD DATA ELEMENTS

Element No.	Element name	Responses options	Applicable population
1 .....	State .....	2 digit FIPS code.	All youth in served, baseline and follow-up populations.
2 .....	Report date .....	CYYMM. CC = century year (i.e., 20). YY = decade year (00–99). MM = month (01–12).	
3 .....	Record number .....	Encrypted, unique person identification number.	
4 .....	Date of birth .....	CCYYMMDD. CC = century year (i.e., 20). YY = decade year (00–99). MM = month (01–12). DD = day (01–31).	
5 .....	Sex .....	Male. Female.	
6 .....	Race—American Indian or Alaska Native.	Yes .....	
7 .....	Race—Asian .....	No. Yes.	
8 .....	Race—Black or African American	No. Yes.	
9 .....	Race—Native Hawaiian or Other Pacific Islander.	No. Yes.	
10 .....	Race—White .....	No. Yes.	
11 .....	Race—Unknown .....	No. Yes. No.	



Element No.	Element name	Responses options	Applicable population
12 .....	Race—Declined .....	Yes. No.	Served population only.
13 .....	Hispanic or Latino Ethnicity .....	Yes. No. Unknown. Declined.	
14 .....	Foster care status—services .....	Yes .....	
15 .....	Local agency .....	No. FIPS code(s). Centralized unit.	
16 .....	Federally-recognized tribe .....	Yes. No.	Served population only.
17 .....	Adjudicated delinquent .....	Yes. No.	
18 .....	Education level .....	Less than 6th grade .....	
		6th grade.	
		7th grade.	
		8th grade.	
		9th grade.	
		10th grade.	
		11th grade.	
		12th grade.	
		Postsecondary education or training.	
		College, at least one semester.	
19 .....	Special education .....	Yes. No.	
20 .....	Independent living needs assessment.	Yes.	
21 .....	Academic support .....	No. Yes.	
22 .....	Post-secondary educational support.	No. Yes.	
23 .....	Career preparation .....	No. Yes.	
24 .....	Employment programs or vocational training.	No. Yes.	
25 .....	Budget and financial management	No. Yes.	
26 .....	Housing education and home management training.	No. Yes.	
27 .....	Health education and risk prevention.	No. Yes.	
28 .....	Family Support/Healthy Marriage Education.	No. Yes.	
29 .....	Mentoring .....	No. Yes.	Baseline and follow-up populations (with the exception of the response option “not in sample” which is applicable to 19-year olds in the follow-up only).
30 .....	Supervised independent living .....	No. Yes.	
31 .....	Room and board financial assistance.	No. Yes.	
32 .....	Education financial assistance .....	No. Yes.	
33 .....	Other financial assistance .....	No. Yes.	
34 .....	Outcomes reporting status .....	Youth Participated .....	
		Youth Declined.	
		Parent Declined.	
		Youth Incapacitated.	
		Incarcerated.	
		Runaway/Missing.	
		Unable to locate/invite.	
		Death.	
		Not in sample.	
35 .....	Date of outcome data collection ...	CCYYMMDD .....	Baseline and follow-up populations.
		CC = century year (i.e., 20).	

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Element No.	Element name	Responses options	Applicable population
		YY = decade year (00–99). MM = month (01–12). DD = day (01–31).	
36 .....	Foster care status-outcomes .....	Yes. No.	
37 .....	Current full-time employment .....	Yes. No. Declined.	
38 .....	Current part-time employment .....	Yes. No. Declined.	
39 .....	Employment-related skills .....	Yes. No. Declined.	
40 .....	Social Security .....	Yes. No. Declined.	
41 .....	Educational aid .....	Yes. No. Declined.	
42 .....	Public financial assistance .....	Yes .....	Follow-up population not in foster care.
43 .....	Public food assistance .....	No. Not applicable. Declined. Yes. No. Not applicable. Declined.	
44 .....	Public housing assistance .....	Yes. No. Not applicable. Declined.	
45 .....	Other financial support .....	Yes .....	Baseline and follow-up population.
46 .....	Highest educational certification received.	No. Declined. High school diploma/GED. Vocational certificate. Vocational license. Associate's degree. Bachelor's degree. Higher degree. None of the above. Declined.	
47 .....	Current enrollment and attendance.	Yes.	
48 .....	Connection to adult .....	No. Declined. Yes. No. Declined.	
49 .....	Homelessness .....	Yes. No. Declined.	
50 .....	Substance abuse referral .....	Yes. No. Declined.	
51 .....	Incarceration .....	Yes. No. Declined.	
52 .....	Children .....	Yes. No. Declined.	
53 .....	Marriage at child's birth .....	Yes. No. Not applicable. Declined.	
54 .....	Medicaid .....	Yes. No. Don't know. Declined.	
55 .....	Other health insurance .....	Yes .....	Baseline and follow-up population.
		No.	

Element No.	Element name	Responses options	Applicable population
56 .....	Health insurance type—medical ...	Don't know. Declined. Yes. No. Don't know. Not Applicable. Declined. Yes.	
57 .....	Health insurance type—mental health.	No. Don't know. Not applicable. Declined. Yes. No. Don't know. Not applicable. Declined.	
58 .....	Health insurance type—prescription drugs.	Yes. No. Don't know. Not applicable. Declined.	

[77 FR 952, Jan. 6, 2012]

## APPENDIX B TO PART 1356—NYTD YOUTH OUTCOME SURVEY

Topic/element No.	Question to youth and response options	Definition
<b>INFORMATION TO COLLECT FROM ALL YOUTH SURVEYED FOR OUTCOMES, WHETHER IN FOSTER CARE OR NOT</b>		
Current full-time employment (37).	Currently are you employed full-time? Yes No Declined	"Full-time" means working at least 35 hours per week at one or multiple jobs.
Current part-time employment (38).	Currently are you employed part-time? Yes No Declined	"Part-time" means working at least 1–34 hours per week at one or multiple jobs.
Employment-related skills (39)	In the past year, did you complete an apprenticeship, internship, or other on-the-job training, either paid or unpaid? Yes No Declined	This means apprenticeships, internships, or other on-the-job trainings, either paid or unpaid, that helped the youth acquire employment-related skills (which can include specific trade skills such as carpentry or auto mechanics, or office skills such as word processing or use of office equipment).
Social Security (40) .....	Currently are you receiving social security payments (Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), or dependents' payments)? Yes No Declined	These are payments from the government to meet basic needs for food, clothing, and shelter of a person with a disability. A youth may be receiving these payments because of a parent or guardian's disability, rather than his/her own.
Educational Aid (41) .....	Currently are you using a scholarship, grant, stipend, student loan, voucher, or other type of educational financial aid to cover any educational expenses? Yes No Declined	Scholarships, grants, and stipends are funds awarded for spending on expenses related to gaining an education. "Student loan" means a government-guaranteed, low-interest loan for students in post-secondary education.
Other financial support (45) .....	Currently are you receiving any periodic and/or significant financial resources or support from another source not previously indicated and excluding paid employment? Yes No Declined	This means periodic and/or significant financial support from a spouse or family member (biological, foster or adoptive), child support that the youth receives or funds from a legal settlement. This does not include occasional gifts, such as birthday or graduation checks or small donations of food or personal incidentals, child care subsidies, child support for a youth's child or other financial help that does not benefit the youth directly in supporting himself or herself.

Topic/element No.	Question to youth and response options	Definition
Highest educational certification received (46).	<p>What is the highest educational degree or certification that you have received?</p> <p><input type="checkbox"/> High school diploma/GED</p> <p><input type="checkbox"/> Vocational certificate</p> <p><input type="checkbox"/> Vocational license</p> <p><input type="checkbox"/> Associate's degree (e.g., A.A.)</p> <p><input type="checkbox"/> Bachelor's degree (e.g., B.A. or B.S.)</p> <p><input type="checkbox"/> Higher degree</p> <p><input type="checkbox"/> None of the above</p> <p><input type="checkbox"/> Declined</p>	<p>"Vocational certificate" means a document stating that a person has received education or training that qualifies him or her for a particular job, e.g., auto mechanics or cosmetology. "Vocational license" means a document that indicates that the State or local government recognizes an individual as a qualified professional in a particular trade or business. An Associate's degree is generally a two-year degree from a community college, and a Bachelor's degree is a four-year degree from a college or university. "Higher degree" indicates a graduate degree, such as a Masters or Doctorate degree. "None of the above" means that the youth has not received any of the above educational certifications.</p>
Current enrollment and attendance (47).	<p>Currently are you enrolled in and attending high school, GED classes, post-high school vocational training, or college?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Declined</p>	<p>This means both enrolled in and attending high school, GED classes, or postsecondary vocational training or college. A youth is still considered enrolled in and attending school if the youth would otherwise be enrolled in and attending a school that is currently out of session (e.g., Spring break, summer vacation, etc.).</p>
Connection to adult (48) .....	<p>Currently is there at least one adult in your life, other than your caseworker, to whom you can go for advice or emotional support?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Declined</p>	<p>This refers to an adult who the youth can go to for advice or guidance when there is a decision to make or a problem to solve, or for companionship to share personal achievements. This can include, but is not limited to, adult relatives, parents or foster parents. The definition excludes spouses, partners, boyfriends or girlfriends and current caseworkers. The adult must be easily accessible to the youth, either by telephone or in person.</p>
Homelessness (49) .....	<p>Have you ever been homeless?</p> <p>OR</p> <p><input type="checkbox"/> In the past two years, were you homeless at any time?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Declined</p>	<p>"Homeless" means that the youth had no regular or adequate place to live. This includes living in a car, or on the street, or staying in a homeless or other temporary shelter.</p>
Substance abuse referral (50)	<p>Have you ever referred yourself or has someone else referred you for an alcohol or drug abuse assessment or counseling?</p> <p>OR</p> <p><input type="checkbox"/> In the past two years, did you refer yourself, or had someone else referred you for an alcohol or drug abuse assessment or counseling?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Declined</p>	<p>This includes either self-referring or being referred by a social worker, school staff, physician, mental health worker, foster parent, or other adult for an alcohol or drug abuse assessment or counseling. Alcohol or drug abuse assessment is a process designed to determine if someone has a problem with alcohol or drug use.</p>
Incarceration (51) .....	<p>Have you ever been confined in a jail, prison, correctional facility, or juvenile or community detention facility, in connection with allegedly committing a crime?</p> <p>OR</p> <p><input type="checkbox"/> In the past two years, were you confined in a jail, prison, correctional facility, or juvenile or community detention facility, in connection with allegedly committing a crime?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Declined</p>	<p>This means that the youth was confined in a jail, prison, correctional facility, or juvenile or community detention facility in connection with a crime (misdemeanor or felony) allegedly committed by the youth.</p>
Children (52) .....	<p>Have you ever given birth or fathered any children that were born?</p> <p>OR</p>	<p>This means giving birth to or fathering at least one child that was born. If males do not know, answer "No."</p>

Topic/element No.	Question to youth and response options	Definition
Marriage at Child's Birth (53) ...	In the past two years, did you give birth to or father any children that were born? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Declined If you responded yes to the previous question, were you married to the child's other parent at the time each child was born? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Declined	This means that when every child was born the youth was married to the other parent of the child.
Medicaid (54) .....	Currently are you on Medicaid [or use the name of the State's medical assistance program under title XIX]? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know <input type="checkbox"/> Declined	Medicaid (or the State medical assistance program) is a health insurance program funded by the government.
Other Health insurance Coverage (55).	Currently do you have health insurance, other than Medicaid? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know <input type="checkbox"/> Declined	"Health insurance" means having a third party pay for all or part of health care. Youth might have health insurance such as group coverage offered by employers or schools, or individual policies that cover medical and/or mental health care and/or prescription drugs, or youth might be covered under parents' insurance. This also could include access to free health care through a college, Indian Tribe, or other source.
Health insurance type—medical (56).	Does your health insurance coverage include coverage for medical services? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know <input type="checkbox"/> Not Applicable <input type="checkbox"/> Declined	This means that the youth's health insurance covers at least some medical services or procedures. This question is for only those youth who responded "yes" to having health insurance.
Health insurance type—mental health (57).	Does your health insurance include coverage for mental health services? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know <input type="checkbox"/> Not Applicable <input type="checkbox"/> Declined	This means that the youth's health insurance covers at least some mental health services. This question is for only those youth who responded "yes" to having health insurance with medical coverage.
Health insurance type—prescription drugs (58).	Does your health insurance include coverage for prescription drugs? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know <input type="checkbox"/> Declined	This means that the youth's health insurance covers at least some prescription drugs. This question is for only those youth who responded "yes" to having health insurance with medical coverage.
<b>ADDITIONAL OUTCOMES INFORMATION TO COLLECT FROM YOUTH OUT OF FOSTER CARE</b>		
Public financial assistance (42)	Currently are you receiving ongoing welfare payments from the government to support your basic needs? [The State may add and/or substitute the name(s) of the State's welfare program]. <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Declined	This refers to ongoing welfare payments from the government to support your basic needs. Do not consider payments or subsidies for specific purposes, such as unemployment insurance, child care subsidies, education assistance, food stamps or housing assistance in this category.
Public food assistance (43) .....	Currently are you receiving public food assistance? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Declined	Public food assistance includes food stamps, which are government-issued coupons or debit cards that recipients can use to buy eligible food at authorized stores. Public food assistance also includes assistance from the Women, Infants and Children (WIC) program.

Topic/element No.	Question to youth and response options	Definition
Public housing assistance (44)	Currently are you receiving any sort of housing assistance from the government, such as living in public housing or receiving a housing voucher? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Declined	Public housing is rental housing provided by the government to keep rents affordable for eligible individuals and families, and a housing voucher allows participants to choose their own housing while the government pays part of the housing costs. This does not include payments from the child welfare agency for room and board payments.

[77 FR 952, Jan. 6, 2012]

#### APPENDIX C TO PART 1356—CALCULATING SAMPLE SIZE FOR NYTD FOLLOW-UP POPULATIONS

##### 1. Using Finite Population Correction

The Finite Population Correction (FPC) is applied when the sample is drawn from a

population of one to 5,000 youth, because the sample is more than five percent of the population.

$$\bullet \text{ Sample size with FPC} = \frac{(\text{Py})(\text{Pn}) + \text{Std. error}^2}{\text{Std. error}^2 + \frac{(\text{Py})(\text{Pn})}{N}}$$

• (Py)(Pn), an estimate of the percent of responses to a dichotomous variable, is (.50)(.50) for the most conservative estimate.

$$\bullet \text{ Standard error} = \frac{\text{Acceptable level of error}}{Z \text{ coefficient}}$$

• Acceptable level of error = .05 (results are plus or minus five percentage points from the actual score)

• Z = 1.645 (90 percent confidence interval)

$$\bullet \text{ Standard error, 90 percent confidence interval} = \frac{.05}{1.645} = .0303951$$

• N = number of youth from whom the sample is being drawn

##### 2. Not Using Finite Population Correction

The FPC is not applied when the sample is drawn from a population of over 5,000 youth.

$$\bullet \text{ Sample size without FPC, 90 percent confidence interval} = \frac{(\text{Py})(\text{Pn})}{\text{Std. Error}^2} = \frac{(.50)(.50)}{(.0303951)^2} = 271$$

[73 FR 10372, Feb. 26, 2008]

#### PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV-B

Sec.

1357.10 Scope and definitions.

1357.15 Comprehensive child and family services plan requirements.

1357.16 Annual progress and services reports.

1357.20 Child abuse and neglect programs.

1357.25 Requirements for eligibility for additional payments under section 427.

1357.30 State fiscal requirements (title IV-B, subpart 1, child welfare services).

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1357.32 State fiscal requirements (title IV-B, subpart 2, family preservation and family support services).

1357.40 Direct payments to Indian Tribal Organizations (title IV-B, subpart 1, child welfare services).

1357.50 Direct payments to Indian Tribal organizations (title IV-B, subpart 2, family preservation and support services).

AUTHORITY: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1302.

### § 1357.10 Scope and definitions.

(a) *Scope.* This part applies to State and Indian Tribal programs for child welfare services under subpart 1, and family preservation and family support services under subpart 2 of title IV-B of the Act.

(b) *Eligibility.* Child and family services under title IV-B, subparts 1 and 2, must be available on the basis of need for services and must not be denied on the basis of income or length of residence in the State or within the Indian Tribe's jurisdiction.

(c) *Definitions.*

*Child and Family Services Plan (CFSP)* means the document, developed through joint planning, which describes the publicly-funded State child and family services continuum (family support and family preservation services; child welfare services, including child abuse and neglect prevention, intervention, and treatment services; services to support reunification, adoption, kinship care, foster care, independent living, or other permanent living arrangements). For Indian Tribes, the document describes the child welfare and/or family preservation and support services to be provided by the Indian Tribe; includes goals and objectives both for improved outcomes for the safety, permanency and well-being of children and families and for service delivery system reform; specifies the services and other implementation activities that will be undertaken to carry out the goals and objectives; and includes plans for program improvement and allocation of resources.

*Child welfare services* means public social services directed to accomplish the following purposes:

(1) Protecting and promoting the welfare and safety of all children, including individuals with disabilities; homeless, dependent, or neglected children;

(2) Preventing or remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation, or delinquency of children;

(3) Preventing the unnecessary separation of children from their families by identifying family problems and assisting families in resolving their problems and preventing the breakup of the family where the prevention of child removal is desirable and possible;

(4) Restoring to their families children who have been removed and may be safely returned, by the provision of services to the child and the family;

(5) Assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption; and

(6) Placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate.

*Children* refers to individuals from birth to the age of 21 (or such age of majority as provided under State law) including infants, children, youth, adolescents, and young adults.

*Community-based services* refers to programs delivered in accessible settings in the community and responsive to the needs of the community and the individuals and families residing therein. These services may be provided under public or private nonprofit auspices.

*Families* includes, but is not limited to, biological, adoptive, foster, and extended families.

*Family preservation services* refers to services for children and families designed to protect children from harm and help families (including foster, adoptive, and extended families) at risk or in crisis, including—

(1) Preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families, where possible;

(2) Service programs designed to help children, where appropriate, return to families from which they have been removed; or be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some

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other planned, permanent living arrangement;

(3) Service programs designed to provide follow-up care to families to whom a child has been returned after a foster care placement;

(4) Respite care of children to provide temporary relief for parents and other caregivers (including foster parents);

(5) Services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition; and

(6) Case management services designed to stabilize families in crisis such as transportation, assistance with housing and utility payments, and access to adequate health care.

*Family support services* means community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, and otherwise to enhance child development. Family support services may include:

(1) Services, including in-home visits, parent support groups, and other programs designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition;

(2) Respite care of children to provide temporary relief for parents and other caregivers;

(3) Structured activities involving parents and children to strengthen the parent-child relationship;

(4) Drop-in centers to afford families opportunities for informal interaction with other families and with program staff;

(5) Transportation, information and referral services to afford families access to other community services, in-

cluding child care, health care, nutrition programs, adult education literacy programs, legal services, and counseling and mentoring services; and

(6) Early developmental screening of children to assess the needs of such children, and assistance to families in securing specific services to meet these needs.

*Joint planning* means an ongoing partnership process between ACF and the State and between ACF and an Indian Tribe in the development, review, analysis, and refinement and/or revision of the State's and the Indian Tribe's child and family services plan. Joint planning involves discussions, consultation, and negotiation between ACF and the State or Indian Tribe in all areas of CFSP creation such as, but not limited to, identifying the service needs of children, youth, and families; selecting the unmet service needs that will be addressed; developing goals and objectives that will result in improving outcomes for children and families; developing a plan to meet the matching requirements; and establishing a more comprehensive, coordinated and effective child and family services delivery system. The expectation of joint planning is that both ACF and the State or Indian Tribe will reach agreement on substantive and procedural matters related to the CFSP.

[61 FR 58655, Nov. 18, 1996]

#### **§ 1357.15 Comprehensive child and family services plan requirements.**

(a) *Scope.* (1) The CFSP provides an opportunity to lay the groundwork for a system of coordinated, integrated, culturally relevant family focused services. This section describes the requirements for the development, implementation and phase-in of the five-year comprehensive child and family services plan (CFSP). The State's CFSP must meet the requirements of both of the following programs. The Indian Tribe's CFSP must meet the requirements of one or both of the following programs depending on the Tribe's eligibility:

(i) Child welfare services under title IV-B, subpart 1; and

(ii) Family preservation and family support services under title IV-B, subpart 2.



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(2) For States only, the CFSP also must contain information on the following programs:

(i) The independent living program under title IV-E, section 477 of the Act; and

(ii) The Child Abuse and Neglect State grant program (known as the Basic State Grant) under the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5101 et. seq.).

(3) States must meet all requirements of this section except those that apply only to Indian Tribes. Indian Tribes must meet the requirements of this section only as specified.

(4) States and eligible Indian Tribes have the option to phase-in the requirements for a consolidated CFSP. The consolidated CFSP requirements must be in place by June 30, 1997 and meet the requirements of 45 CFR 1357.16.

(b) *Eligibility for funds.* (1) In order to receive funding under title IV-B, subparts 1 and 2, each State and eligible Indian Tribe must submit and have approved a consolidated, five-year Child and Family Services Plan (CFSP) and a CFS-101, Budget Request and Estimated Expenditure Report that meets the requirements under 45 CFR 1357.16.

(2) States and Indian Tribes that are consolidating the requirements for a CFSP in FY 1995, in accordance with §1357.15(a), must submit the CFSP and a CFS-101 for FY 1995 and 1996 by June 30, 1995.

(3) States and eligible Indian Tribes choosing to phase-in the requirements for a consolidated CFSP in FY 1996 and 1997 must submit the CFSP, the CFS-101 for FY 1995 for subpart 1 and 2, and the CFS-101 for subpart 2 for FY 1996 by June 30, 1995.

(4) The CFSP will be approved only if the plan was developed jointly by ACF and the State (or the Indian Tribe), and only after broad consultation by the State (and the Indian Tribe) with a wide range of appropriate public and non-profit private agencies and community-based organizations with experience in administering programs of services for children and families (including family preservation and support services).

(5) By June 30, 1996, each grantee must submit and have approved the

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first Annual Progress and Services Report and a CFS 101 for FY 1997 that meets the statutory and regulatory requirements of title IV-B, subparts 1 and 2.

(6) The Annual Progress and Services Report will be approved if it was developed jointly by ACF and the State (or the Indian Tribe) and if it meets the requirements of 45 CFR 1357.16.

(7) The five-year CFSP for FYs 1995-1999 may be submitted in the format of the State's or the Indian Tribe's choice and must be submitted no later than June 30, 1995, to the appropriate ACF Regional Office.

(c) *Assurances.* The following assurances will remain in effect on an ongoing basis and will need to be re-submitted only if a significant change in the State or the Indian Tribe's program affects an assurance:

(1) The State or Indian Tribe must assure that it will participate in any evaluations the Secretary of HHS may require.

(2) The State or Indian Tribe must assure that it will administer the CFSP in accordance with methods determined by the Secretary to be proper and efficient.

(3) The State or Indian Tribe must assure that it has a plan for the training and use of paid paraprofessional staff, with particular emphasis on the full-time or part-time employment of low-income persons, as community service aides; and a plan for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State or Tribe.

(4) The State or Indian Tribe must assure that standards and requirements imposed with respect to child care under title XX shall apply with respect to day care services, if provided under the CFSP, except insofar as eligibility for such services is involved.

(d) *The child and family services plan (CFSP): general.* The State and the Indian Tribe must base the development of the CFSP on a planning process that includes:

(1) broad involvement and consultation with a wide range of appropriate public and non-profit private agencies and community-based organizations,

parents, including parents who are involved or have experience with the child welfare system, and others;

(2) coordination of the provision of services under the plan with other Federal and federally assisted programs serving children and families, including youth and adolescents; and

(3) collection of existing or available information to help determine vulnerable or at-risk populations or target areas; assess service needs and resources; identify gaps in services; select priorities for targeting funding and services; formulate goals and objectives; and develop opportunities for bringing about more effective and accessible services for children and families.

(e) *State agency administering the programs.* (1) The State's CFSP must identify the name of the State agency that will administer the title IV-B programs under the plan. Except as provided by statute, the same agency is required to administer or supervise the administration of all programs under titles IV-B and IV-E of the Act and the social services block grant program under title XX of the Act. (See the definition of "State agency" in 45 CFR 1355.20.)

(2) The CFSP must include a description of the organization and function of the State agency and organizational charts as appropriate. It also must identify the organizational unit(s) within the State agency responsible for the operation and administration of the CFSP, and include a description of the unit's organization and function and a copy of the organizational chart(s).

(f) *Indian Tribal organization administering the program(s).* (1) The Indian Tribe's CFSP must provide the name of the Indian Tribal organization (ITO) designated to administer funds under title IV-B, subpart 1, child welfare services and/or under subpart 2, family preservation and family support services. If the Indian Tribe receives funds under both subparts, the same agency or organization must administer both programs.

(2) The Indian Tribe's CFSP must include a description of the organization and function of the office responsible for the operation and administration of the CFSP, an organizational chart of

that office, and a description of how that office relates to Tribal and other offices operating or administering services programs within the Indian Tribe's service area (e.g., Indian Health Service.)

(g) *Vision Statement.* The CFSP must include a vision statement which articulates the grantee's philosophy in providing child and family services and developing or improving a coordinated service delivery system. The vision should reflect the service principles at section 1355.25.

(h) *Goals.* The CFSP must specify the goals, based on the vision statement, that will be accomplished during and by the end of the five-year period of the plan. The goals must be expressed in terms of improved outcomes for and the safety, permanency and well-being of children and families, and in terms of a more comprehensive, coordinated, and effective child and family service delivery system.

(i) *Objectives.* (1) The CFSP must include the realistic, specific, quantifiable and measurable objectives that will be undertaken to achieve each goal. Each objective should focus on outcomes for children, youth, and/or their families or on elements of service delivery (such as quality) that are linked to outcomes in important ways. Each objective should include both interim benchmarks and a long-term timetable, as appropriate, for achieving the objective.

(2) For States and Indian Tribes administering the title IV-B, subpart 1 program, the CFSP must include objectives to make progress in covering additional political subdivisions, reaching additional children in need of services, expanding and strengthening the range of existing services, and developing new types of services.

(j) *Measures of progress.* The CFSP must describe the methods to be used in measuring the results, accomplishments, and annual progress toward meeting the goals and objectives, especially the outcomes for children, youth, and families. Processes and procedures assuring the production of valid and reliable data and information must be specified. The data and information must be capable of determining

whether or not the interim benchmarks and multiyear timetable for accomplishing CFSP goals and objectives are being met.

(k) *Baseline information.* (1) For FY 1995, the State and the Indian Tribe must base the development of the CFSP vision, goals, objectives, and funding and service decisions on an analysis of available baseline information and any trends over time on indicators in the following areas: the well-being of children and families; the needs of children and families; the nature, scope, and adequacy of existing child and family and related social services. Additional and updated information on service needs and organizational capacities must be obtained throughout the five-year period to measure progress in accomplishing the goals and objectives cited in the CFSP. A description of how this process will continue to be carried out must be included in the CFSP, and any revisions should be provided in the Annual Progress and Services Report.

(2) The State must collect and analyze State-wide information on family preservation and family support services currently available to families and children, including the nature and scope of existing public and privately funded family support and family preservation services; the extent to which each service is available and being provided in different geographic areas and to different types of families; and important gaps in service, including mismatches between available services and family needs as identified through baseline data and the consultation process. Other services which impact on the ability to preserve and support families may be included in the assessment. The Indian Tribe must collect and analyze information on family preservation and family support services currently available within their service delivery area including the information in this paragraph as appropriate. An Indian Tribe may submit documentation prepared to satisfy the requirements of other Federal child welfare grants, or contracts (such as the section 638 reporting form), along with a descriptive addendum addressing specifically the family preservation and family support services available.

(3) The CFSP must include a summary of the information used in developing the plan; an explanation of how this information and analysis were used in developing the goals, objectives, and funding and service decisions, including decisions about geographic targeting and service mix; a description of how information will be used to measure progress over the five-year period; and how this information will be used to facilitate the coordination of services.

(1) *Consultation.* (1) The State's CFSP must describe the internal and external consultation process used to obtain broad and active involvement of major actors across the entire spectrum of the child and family service delivery system in the development of the plan. The description should explain how this process was coordinated with or was a part of other planning processes in the State; how it led or will lead to improved coordination of services.

(2) The Indian Tribe's CFSP must describe the consultation process appropriate to its needs and circumstances used to obtain the active involvement of major actors providing child and family services within the Tribe's area of jurisdiction.

(3) For States and Indian Tribes, the consultation process must involve:

(i) All appropriate offices and agencies within the State agency or within the Indian Tribal service delivery system (e.g., child protective services (CPS), foster care and adoption, the social services block grant, reunification services, independent living, and other services to youth;)

(ii) In a State-supervised, county-administered State, county social services and/or child welfare directors or representatives of the county social services/child welfare administrators' association;

(iii) A wide array of State, local, Tribal, and community-based agencies and organizations, both public and private nonprofit with experience in administering programs of services for infants, children, youth, adolescents, and families, including family preservation and family support services;

(iv) Parents, including birth and adoptive parents, foster parents, families with a member with a disability,

children both in and outside the child welfare system, and consumers of services from diverse groups;

(v) For States, representatives of Indian Tribes within the State;

(vi) For States, representatives of local government (e.g., counties, cities, and other communities, neighborhoods, or areas where needs for services are great;)

(vii) Representatives of professional and advocacy organizations (including, for example foundations and national resource centers with expertise to assist States and Indian Tribes to design, expand, and improve the delivery of services); individual practitioners working with children and families; the courts; representatives or other States or Indian Tribes with experience in administering family preservation and family support services; and academicians, especially those assisting the child and family service agency with management information systems, training curricula, and evaluations;

(viii) Representatives of State and local agencies administering Federal and federally assisted programs which may include: Head Start; the local education agency (school-linked social services, adult education and literacy programs, Part H programs); developmental disabilities; nutrition services (Food Stamps, Special Supplemental Food Program for Women, Infants and Children (WIC)); Title IV-A; runaway youth, youth gang, juvenile justice programs and youth residential and training institutions; child care and development block grant (CCDBG) and respite care programs; domestic and community violence prevention and services programs; housing programs; the health agency (substance abuse, Healthy Start, maternal and child health, Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), mental health, and public health nursing); law enforcement; Children's Trust Funds; Community-Based Family Resource Programs, and new Federal initiatives such as the Empowerment Zones and Enterprise Communities Program; and

(ix) Administrators, supervisors and front line workers (direct service providers) of the State child and family services agency.

(4) The CFSP must describe the ongoing consultation process that each grantee will use to ensure the continued involvement of a wide range of major actors in meeting the goals and objectives over the five-year operational period of the plan and developing the Annual Progress and Services Report.

(m) *Services coordination.* (1) States must include in the ongoing coordination process representatives of the full range of child and family services provided by the State agency as well as other service delivery systems providing social, health, education, and economic services (including mental health, substance abuse, developmental disabilities, and housing) to improve access and deliver a range of services to children and their families.

(2) The State's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other Federal or federally assisted programs serving the same populations to achieve the goals and objectives in the plan. The description must include the participants in the process and examples of how the process led or will lead to additional coordination of services (e.g., integrated service models, improved accessibility, use of a consolidated application or intake form, inter-disciplinary training, coordinated case management for several programs, pooled resources through blended financing, shared information across services providers and compatible and linked automated information systems, co-location of several services or programs.)

(3) The Indian Tribe must include in the coordination process representatives of other Federal or federally assisted child and family services or related programs. The Indian Tribe's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other Federal or federally assisted programs serving the same populations to achieve the goals and objectives in the plan. The descriptions must include the participants in the process and any examples of how the process led or will lead to additional coordination of services.

(n) *Services.* (1) The State's CFSP must describe the publicly funded child and family services continuum: child welfare services (including child abuse and neglect prevention, intervention, and treatment services; and foster care); family preservation services; family support services; and services to support reunification, adoption, kinship care, independent living, or other permanent living arrangements.

(2) The Indian Tribe's CFSP must describe the child welfare services (including child abuse and neglect prevention, intervention, treatment services and foster care) and/or the family support and family preservation services to be provided.

(3) For each service described, the CFSP must include the following information, or it must be listed on the CFS-101, Part II:

- (i) The population(s) to be served;
- (ii) The geographic area(s) where the services will be available;
- (iii) The estimated number of individuals and/or families to be served;
- (iv) The estimated expenditures for these services from Federal, State, local, and donated sources, including title IV-B, subparts 1 and 2, the CAPTA program referenced in paragraph (a) of this section, and the independent living program.

(o) *Family preservation and family support services and linkages to other social and health services.* (1) The State's CFSP must explain how the funds under title IV-B, subpart 2 of the Act, will be used to develop or expand family support and family preservation services; how the family support and family preservation services relate to existing family support and family preservation services; and how these family support and preservation services will be linked to other services in the child and family services continuum.

(2) The State's CFSP must explain whether and/or how funds under the CAPTA and independent living programs are coordinated with and integrated into the child and family services continuum described in the plan.

(3) The State's CFSP must describe the existing or current linkages and the coordination of services between the services in the child and family

services continuum and the services in other public services systems (e.g., health, education, housing, substance abuse, the courts), and other Federal and non-federally funded public and nonprofit private programs (e.g., Children's Trust Funds, Community-Based Family Resource Programs, private foundations.)

(p) *Services in relation to service principles.* The CFSP must describe how the child and family services to be provided are designed to assure the safety and protection of children as well as the preservation and support of families, and how they are or will be designed to be consistent with the other service principles in 45 CFR 1355.25.

(q) *Services in relation to permanency planning.* For States administering both title IV-B programs (subparts 1 and 2), the CFSP must explain how these services will help meet the permanency provisions for children and families in sections 422(b)(9) and 471 of the Act (e.g., preplacement preventive services, reunification services, independent living services.) The CFSP must describe the arrangements, jointly developed with the Indian Tribes within its borders, made for the provision of the child welfare services and protections in section 422(b)(9) to Indian children under both State and Tribal jurisdiction.

(r) *Decision-making process: selection of family support programs for funding.* The State's CFSP must include an explanation of how agencies and organizations were selected for funding to provide family support services and how these agencies and organizations meet the requirement that family support services be community-based.

(s) *Significant portion of funds used for family support and family preservation services.* With each fiscal year's budget request, each State must indicate the specific percentage of family preservation and family support funds (title IV-B, subpart 2) that the State will expend for community-based family support and for family preservation services, and the rationale for the decision. The State must have an especially strong rationale if the request for either percentage is below 25 percent. It must also include an explanation of how this distribution was reached and why it

meets the requirements that a “significant portion” of the service funds must be spent for each service. Examples of important considerations might include the nature of the planning efforts that led to the decision, the level of existing State effort in each area, and the resulting need for new or expanded services.

(t) *Staff training, technical assistance, and evaluation.* (1) The State’s CFSP must include a staff development and training plan in support of the goals and objectives in the CFSP which addresses both of the title IV-B programs covered by the plan. This training plan also must be combined with the training plan under title IV-E as required by 45 CFR 1356.60(b)(2). Training must be an on-going activity and must include content from various disciplines and knowledge bases relevant to child and family services policies, programs and practices. Training content must also support the cross-system coordination consultation basic to the development of the CFSP.

(2) The State’s CFSP must describe the technical assistance activities that will be undertaken in support of the goals and objectives in the plan.

(3) The State’s CFSP must describe any evaluation and research activities underway or planned with which the State agency is involved or participating and which are related to the goals and objectives in the plan.

(u) *Quality assurance.* The State must include in the CFSP a description of the quality assurance system it will use to regularly assess the quality of services under the CFSP and assure that there will be measures to address identified problems.

(v) *Distribution of the CFSP and the annual progress and services report.* The CFSP must include a description of how the State and the Indian Tribe will make available to interested parties the CFSP and the Annual Progress and Services Report. (See 45 CFR 1355.21(c) and 45 CFR 1357.16(d)). State agencies and Indian Tribal organizations within the State must exchange copies of

their CFSPs and their annual services reports.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0047. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[61 FR 58656, Nov. 18, 1996, as amended at 66 FR 58677, Nov. 23, 2001]

#### **§ 1357.16 Annual progress and services reports.**

(a) *Annual progress and services reports.* Annually, each State and each Indian Tribe must conduct an interim review of the progress made in the previous year toward accomplishing the goals and objectives in the plan, based on updated information. In developing paragraphs (a)(2) through (a)(4) of this section, the State and the Indian Tribe must involve the agencies, organizations, and individuals who are a part of the on-going CFSP-related consultation and coordination process. On the basis of this review, each State and Indian Tribe must prepare and submit to ACF, and make available to the public, an Annual Progress and Services Report which must include the following—

(1) A report on the specific accomplishments and progress made in the past fiscal year toward meeting each goal and objective, including improved outcomes for children and families, and a more comprehensive, coordinated, effective child and family services continuum;

(2) Any revisions in the statement of goals and objectives, or to the training plan, if necessary, to reflect changed circumstances;

(3) For Indian Tribes, a description of the child welfare and/or family preservation and family support services to be provided in the upcoming fiscal year highlighting any changes in services or program design and including the information required in 45 CFR 1357.15(n);

(4) For States, a description of the child protective, child welfare, family preservation, family support, and independent living services to be provided in the upcoming fiscal year highlighting any additions or changes in

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services or program design and including the information required in 45 CFR 1357.15(n);

(5) Information on activities in the areas of training, technical assistance, research, evaluation, or management information systems that will be carried out in the upcoming fiscal year in support of the goals and objectives in the plan;

(6) For States only, the information required to meet the maintenance of effort (non-supplantation) requirement in section 432(a)(7) and (8) of the Act;

(7) For States and eligible Indian Tribes phasing in requirements for a consolidated CFSP, information on activities and progress directed toward a consolidated plan by June 30, 1996 or 1997. The report must include information that demonstrates States' and eligible Indian Tribes' progress toward the consolidation of a CFSP, including activities that have been accomplished and still need to be accomplished; and

(8) Any other information the State or the Indian Tribe wishes to include.

(b) *Submittal of the annual progress and services report and CFS-101.* (1) The State and the Indian Tribe must send the Annual Progress and Services Report and the CFS-101 to the appropriate ACF Regional Office no later than June 30 of the year prior to the fiscal year in which the services will be provided (e.g., the report submitted and made public by June 30, 1996 will describe the services to be provided in FY 1997. The report covering FY 1998 services must be submitted by June 30, 1997.)

(2) In order for States and eligible Indian Tribes to receive title IV-B, subparts 1 and 2 allocations a CFS-101 must be submitted for each fiscal year.

(3) States and Indian Tribes which have consolidated the requirements for title IV-B, subparts 1 and 2, must submit the CFS-101 to the appropriate ACF Regional Office no later than June 30 of the year prior to the fiscal year in which the services will be provided (e.g., for FY 1997 allocations, the CFS-101 must be submitted by June 30, 1996; for FY 1998 allocations, the CFS-101 must be submitted by June 30, 1997.)

(4) States and eligible Indian Tribes choosing to phase-in the requirements for a consolidated CFSP must:

(i) Submit by June 30, 1996 a CFS-101 for title IV-B, subpart 1 for FY 1996 allocations; a CFS-101 for title IV-B, subpart 2 for FY 1997 allocations; and, if a State or eligible Indian Tribe chooses, a CFS-101 for subpart 1 FY 1997 allocations.

(ii) Submit by June 30, 1997 a CFS-101 for title IV-B, subpart 1 for FY 1997 allocations, if not previously submitted by June 30, 1996; and a CFS-101 for FY 1998 for subparts 1 and 2 allocations.

(c) *Annual progress and services reports on FY 1994 family support and family preservation services.* Each State and Indian Tribe that used FY 1994 funds under title IV-B, subpart 2, for services must describe in the CFSP what services were provided, the population(s) served, and the geographic areas where services were available. The CFSP also must include the amount of FY 1994 funds used for planning, for family preservation services, for family support services, and a brief statement on how these services met the service priorities of the State or the Indian Tribe.

(d) *Availability of the annual progress and services report.* The State and the Indian Tribe must make the Annual Progress and Services Report available to the public including the agencies, organizations, and individuals with which the State or the Indian Tribe is coordinating services or consulting and to other interested members of the public. Each State and eligible Indian Tribe within the State must exchange copies of their Annual Progress and Services Reports.

(e) *FY 1999 Final Review.* In FY 1999, each State and eligible Indian Tribe must conduct a final review of progress toward accomplishing the goals and objectives in the plan. On the basis of the final review, it must—

(1) Prepare a final report on the progress made toward accomplishing the goals and objectives; and

(2) Send the final report to the ACF Regional Office and make it available to the public.

(f) *FY 2000 Five-Year State Plan.* Based on the FY 1999 final review and final Annual Progress and Services Report, and in consultation with a broad range of agencies, organizations, and individuals, the States and eligible Indian Tribes must develop a new five-year

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CFSP following the requirements of 45 CFR 1357.15.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0047. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[61 FR 58659, Nov. 18, 1996, as amended at 66 FR 58677, Nov. 23, 2001]

### § 1357.20 Child abuse and neglect programs.

The State agency must assure that, with regard to any child abuse and neglect programs or projects funded under title IV-B of the Act, the requirements of section 106(b)(1) and (2) of the Child Abuse Prevention and Treatment Act, as amended, are met. These requirements relate to the State plan and assurances required for the Child Abuse and Neglect State Grant Program.

[61 FR 58660, Nov. 18, 1996]

### § 1357.25 Requirements for eligibility for additional payments under section 427.

(a) For any fiscal year after FY 1979 in which a sum in excess of \$141,000,000 is appropriated under Section 420 of the Act, a State is not eligible for payment of an amount greater than the amount for which it would be eligible if the appropriation were equal to \$141,000,000 unless the State complies with the requirements of Section 427(a) of the Act.

(b) In meeting the requirements for the inventory and statewide information system in sections 427 (a)(1) and (2)(A) of the Act, the inventory and statewide information system must include those children under the placement and care responsibility of the State title IV-B or IV-E agencies. At the State's discretion, other children may be included. The six month requirement in section 427(a)(1) and the twelve month requirement in section 427(a)(2)(A) of the Act must also be met.

(The requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0138)

(c) If, for each of any two consecutive fiscal years after FY 1979, there is appropriated under Section 420 of the Act a sum equal to or greater than \$266,000,000, a State's allotment amount for any fiscal year after two such consecutive fiscal years shall be reduced to an amount equal to what the allotment amount would have been for FY 1979 unless the State has implemented the requirements of section 427(b) of the Act.

(d) In meeting the requirements of section 427(a)(2)(B) of the Act for dispositional hearings the State agency must meet the requirements of section 475(5)(C) of the Act and 45 CFR 1356.21(e).

(e) A State may appeal a final decision by ACYF that the State has not met the requirements of this section and section 427 of the Act to the Department Grant Appeals Board under the provisions of 45 CFR part 16.

[48 FR 23118, May 23, 1983]

### § 1357.30 State fiscal requirements (title IV-B, subpart 1, child welfare services).

(a) *Scope.* The requirements of this section shall apply to all funds allotted or reallocated to States under title IV-B, subpart 1.

(b) *Allotments.* Allotments for each State shall be determined in accordance with section 421 of the Act.

(c) *Payments.* Payments to States shall be made in accordance with section 423 of the Act.

(d) *Enforcement and termination.* In the event of a State's failure to comply with the terms of the grant under title IV-B, subpart 1, the provisions of 45 CFR 75.371 through 75.372 will apply.

(e) *Matching or cost-sharing.* Federal financial participation is available only if costs are incurred in implementing sections 422, 423, and 425 of the Act in accordance with the grants administration requirements of 45 CFR part 75 with the following conditions—

(1) The State's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(2) The total of Federal funds used for the following purposes under title IV-B, subpart 1 may not exceed an amount equal to the FY 1979 Federal payment under title IV-B:



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(i) Child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, plus;

(ii) Foster care maintenance payments, plus;

(iii) Adoption assistance payments.

(3) Notwithstanding paragraph (e)(2) of this section, State expenditures required to match the title IV-B, subpart 1 allotment may include foster care maintenance expenditures in any amount.

(f) *Prohibition against purchase or construction of facilities.* Funds awarded under title IV-B may not be used for the purchase or construction of facilities.

(g) *Maintenance of effort.* (1) A State may not receive an amount of Federal funds under title IV-B in excess of the Federal payment made in FY 1979 under title IV-B unless the State's total expenditure of State and local appropriated funds for child welfare services under title IV-B of the Act is equal to or greater than the total of the State's expenditure from State and local appropriated funds used for similar covered services and programs under title IV-B in FY 1979.

(2) In computing a State's level of expenditures under this section in FY 1979 and any subsequent fiscal year, the following costs shall not be included—

(i) Expenditures and costs for child day care necessary to support the employment of a parent or other relative;

(ii) Foster care maintenance payments; and

(iii) Adoption assistance payments.

(3) A State applying for an amount of Federal funds under title IV-B greater than the amount of title IV-B, subpart 1 funds received by that State in FY 1979 shall certify:

(i) The amount of their expenditure in FY 1979 for child welfare services as described in paragraphs (g)(1) and (2) of this section, and

(ii) The amount of State and local funds that have been appropriated and are available for child welfare services as described in paragraphs (g)(1) and (2) of this section for the fiscal year for which application for funds is being made. Records verifying the required certification shall be maintained by

the State and made available to the Secretary as necessary to confirm compliance with this section.

(h) *Reallotment.* (1) When a State certifies to the Commissioner that funds available to that State under its title IV-B, subpart 1 allotment will not be required, those funds shall be available for reallotment to other States.

(2) When a State, after receiving notice from the Commissioner of the availability of funds, does not certify by a date fixed by the Commissioner that it will be able to expend during the period stated in paragraph (i) of this section all of the funds available to it under its title IV-B, subpart 1 allotment, those funds shall be available for reallotment to other States.

(3) The Commissioner may reallot available funds to another State when it is determined that—

(i) The requesting State's plan requires funds in excess of the State's original allotment; and

(ii) the State will be able to expend the additional funds during the period stated in paragraph (i) of this section.

(i) *Time limit on expenditures.* Funds under title IV-B, subpart 1, must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

[61 FR 58660, Nov. 18, 1996, as amended at 81 FR 3023, Jan. 20, 2016]

**§ 1357.32 State fiscal requirements  
(title IV-B, subpart 2, family preservation and family support services).**

(a) *Scope.* The requirements of this section apply to all funds allocated to States under title IV-B, subpart 2, of the Act.

(b) *Allotments.* The annual allotment to each State shall be made in accordance with section 433 of the Act.

(c) *Payments.* Payments to each State will be made in accordance with section 434 of the Act.

(d) *Matching or cost sharing.* Funds used to provide services in FY 1994 and in subsequent years will be federally reimbursed at 75 percent of allowable expenditures. (This is the same Federal financial participation rate as title IV-B, subpart 1.) Federal funds, however, will not exceed the amount of the State's allotment.

(1) The State's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(2) Except as provided by Federal statute, other Federal funds may not be used to meet the matching requirement.

(e) *Prohibition against purchase or construction of facilities.* Funds awarded under title IV-B may not be used for the purchase or construction of facilities.

(f) *Maintenance of effort.* States may not use the Federal funds under title IV-B, subpart 2, to supplant Federal or non-Federal funds for existing family preservation and family support services. For the purpose of implementing this requirement, "non-Federal funds" means State funds. ACF will collect information annually from each State on expenditures for family support and family preservation using the State fiscal year 1992 as the base year.

(g) *Time limits on expenditures.* Funds must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

(h) *Administrative costs.* (1) States claiming Federal financial participation for services provided in FY 1994 and subsequent years may not claim more than 10 percent of expenditures under subpart 2 for administrative costs. There is no limit on the percentage of administrative costs which may be reported as State match.

(2) For the purposes of title IV-B, subpart 2, "administrative costs" are costs of auxiliary functions as identified through as agency's accounting system which are:

(i) Allocable (in accordance with the agency's approved cost allocation plan) to the title IV-B, subpart 2 program cost centers;

(ii) necessary to sustain the direct effort involved in administering the State plan for title IV-B, subpart 2, or an activity providing service to the program; and

(iii) centralized in the grantee department or in some other agency, and may include but are not limited to the following: Procurement; payroll; personnel functions; management, maintenance and operation of space and property; data processing and com-

puter services; accounting; budgeting; auditing.

(3) Program costs are costs, other than administrative costs, incurred in connection with developing and implementing the CFSP (e.g., delivery of services, planning, consultation, coordination, training, quality assurance measures, data collection, evaluations, supervision).

[61 FR 58661, Nov. 18, 1996]

**§ 1357.40 Direct payments to Indian Tribal Organizations (title IV-B, subpart 1, child welfare services).**

(a) *Who may apply for direct funding?* Any Indian Tribal Organization (ITO) that meets the definitions in section 428(c) of the Act, or any consortium or other group of eligible Tribal organizations authorized by the membership of the Tribes to act for them is eligible to apply for direct funding if the ITO, consortium or group has a plan for child welfare services that is jointly developed by the ITO and the Department.

(b) *Title IV-B Child and Family Services Plan (CFSP).* (1) In order to receive funds under title IV-B, subpart 1, beginning in FY 1995, the Indian Tribe or Tribal organization must have in effect an approved five-year child and family services plan that meets the applicable requirements of § 1357.15 of this part.

(2) The Indian Tribe or Tribal organization must also comply with section 422(b)(1-8) of the Act; 45 CFR part 1355 (except that the requirements in § 1355.30 for a single Tribal agency and Governor's review of the CFSP do not apply); and other applicable requirements of §§ 1357.10 and 1357.16.

(c) *Information related to the requirements of Section 422(b)(9) of the Act.* The following information must be submitted with the assurances required to be eligible for title IV-B, subpart 1 funds:

(1) A description of the arrangements, jointly developed with the State, made for the provision of the child welfare services and protections in section 422(b)(9) to Indian children under both State and Tribal jurisdiction;

(2) A statement of the legal responsibility, if any, for children who are in foster care on the reservation and those awaiting adoption;

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(3) A description of Tribal jurisdiction in civil and criminal matters, existence or nonexistence of a Tribal court and the type of court and codes, if any;

(4) An identification of the standards for foster family homes and institutional care and day care;

(5) The Indian Tribal organization's political subdivisions, if any;

(6) Whether the Tribal organization is controlled, sanctioned or chartered by the governing body of Indians to be served and if so, documentation of that fact;

(7) Any limitations on authorities granted to the Indian Tribal organizations; and

(8) The Tribal resolution(s) authorizing an application for a direct title IV-B, subpart 1 grant under this Part.

(d) *Grants: General.* (1) Grants may be made to eligible Indian Tribal organizations in a State which has a jointly developed child and family services plan approved and in effect.

(2) Federal funds made available for a direct grant to an eligible ITO shall be paid by the Department, from the title IV-B allotment for the State in which the ITO is located. Should a direct grant be approved, the Department shall promptly notify the State(s) affected.

(3) If an eligible ITO includes population from more than one State, a proportionate amount of the grant will be paid from each State's allotment.

(4) The receipt of title IV-B funds must be in addition to and not a substitute for funds otherwise previously expended by the ITO for child welfare services.

(5) The following fiscal and administrative requirements apply to Indian Tribal grants under this section:

(i) *Enforcement and termination.* In the event of an Indian Tribe's failure to comply with the terms of the grant under title IV-B, subpart 1, the provisions of 45 CFR 75.371 through 75.372 will apply.

(ii) *Matching or cost-sharing.* Federal financial participation is available only if costs are incurred in implementing sections 422, 423, and 425 of the Act in accordance with the grants administration requirements of 45 CFR part 75 with the following conditions—

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(A) The ITO's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(B) The total of Federal funds used for the following purposes under title IV-B, subpart 1 may not exceed an amount equal to the FY 1979 Federal payment under title IV-B:

(1) Child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, plus;

(2) Foster care maintenance payments, plus;

(3) Adoption assistance payments.

(C) Notwithstanding paragraph (d)(5)(ii)(B) of this section, Tribal expenditures required to match the title IV-B, subpart 1 allotment may include foster care maintenance expenditures in any amount.

(iii) *Prohibition against purchase or construction of facilities.* Funds awarded under title IV-B may not be used for the purchase or construction of facilities.

(iv) *Time limit on expenditures.* Funds under title IV-B, subpart 1, must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

(6) In order to determine the amount of Federal funds available for a direct grant to an eligible ITO, the Department shall first divide the State's title IV-B allotment by the number of children in the State, then multiply the resulting amount by a multiplication factor determined by the Secretary, and then multiply that amount by the number of Indian children in the ITO population. The multiplication factor will be set at a level designed to achieve the purposes of the act and revised as appropriate.

[61 FR 58661, Nov. 18, 1996, as amended at 65 FR 4093, Jan. 25, 2000; 81 FR 3023, Jan. 20, 2016]

### § 1357.50 Direct payments to Indian Tribal organizations (title IV-B, subpart 2, family preservation and support services).

(a) *Definitions.*

*Alaska Native Organization* means any organized group of Alaska Natives eligible to operate a Federal program under the Indian Self-Determination

Act (Pub. L. 93-638) or such group's designee as defined in section 482(i)(7)(A) of the Act.

*Indian Tribe* means any Tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and for which a reservation (including Indian reservations, public domain Indian allotments, and former Indian reservations in Oklahoma) exists.

*Tribal organization* means the recognized governing body of the Indian Tribe.

(b) *Eligibility for funds: FY 1994.* (1) Section 432(b)(2) of the Act provides that the Secretary may not approve a plan of an Indian Tribe whose FY 1995 allotment under subpart 2 would be less than \$10,000. Therefore, only those Indian Tribes whose FY 1995 allotment is \$10,000 or more are eligible to receive funds beginning in FY 1994.

(2) ACF will pay any amount to which an Indian Tribe is entitled to the Tribal organization of the Indian Tribe.

(c) *Eligibility for funds: FY 1995.* In order to receive funds under title IV-B, subpart 2, in FY 1995, an Indian Tribe that is eligible for planning funds in FY 1994 must submit a Child and Family Services Plan that meets the applicable requirements in section 1357.15 of this Part.

(d) *Eligibility for funds: FY 1996 through FY 1998.* (1) ACF will make grants to additional Indian Tribes in Fys 1996 through 1998 in the event that there are increased appropriations.

(2) Allotments will be calculated in Fys 1996, 1997, and 1998 as required in section 433 of the Act. Those Indian Tribes in each year whose allotment is at least \$10,000 will be notified of their eligibility to apply.

(3) In order to receive funds, additional Indian Tribes which become eligible for grants in FY 1996, 1997, and 1998 must submit either a five year Child and Family Services Plan (CFSP) that meets the applicable requirements of 45 CFR 1357.15 or an application for planning funds by June 30 of the year in which they first become eligible for grants. Those Indian Tribes which submitted an application for planning

funds in their first year of funding must submit a five year CFSP that meets the applicable requirements of 45 CFR 1357.15 by June 30 of the second year they receive funding. For example, in order to receive funds, an Indian Tribe which becomes eligible to receive funding beginning in FY 1996 must submit either an application for planning funds or a CFSP by June 30, 1996. If the Indian Tribe submitted an application for planning funds in FY 1996, they must submit a CFSP by June 30, 1997.

(4) All Indian Tribes will be Federally reimbursed at 75 percent of allowable expenditures. Federal funds without match are available in the first year of receipt of funds for additional Indian Tribes meeting the following criteria:

(i) Submittal of an application for planning funds, and not a five year CFSP;

(ii) Receipt of an initial award in FY 1996 or 1997 or 1998; and

(iii) A proposal to spend the entire grant in the first year on planning.

(e) *Allotments.* Allotments to Indian Tribes are computed based on section 433 of the Act and are based on a ratio of the number of children in each Indian Tribe with an approved plan compared to the number of children in all Indian Tribes with approved plans, based on the most current and reliable data available.

(f) *Exemptions of requirements.* (1) ACF has exempted Indian Tribes from three statutory requirements:

(i) The limitation on administrative costs to 10 percent of total Federal and Tribal funds—Indian Tribes may use the indirect cost rate agreement in effect for the Tribe;

(ii) The requirement for maintenance of effort that funds under this program may not be used to supplant other Federal and non-Federal funds; and

(iii) The requirement that a significant portion of funds must be used for both family support and family preservation services.

(2) Specific exemptions from other statutory requirements may be requested by the Tribe in the course of its joint planning. Such a request must contain a compelling reason.

(g) *Matching requirement.* (1) Funds used to provide services in FY 1994 and in subsequent years will be federally

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reimbursed at 75 percent of allowable expenditures. (This is the same Federal financial participation rate as title IV-B, subpart 1.) The Indian Tribe's match must be at least 25 percent of the total project costs or one-third of the Federal share. Federal funds, however, will not exceed the amount of the Indian Tribe's allotment.

(2) The Indian Tribe's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

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(3) Indian Tribes, by statute, may use the following three Federal sources of funds as matching funds: Indian Child Welfare Act funds, Indian Self-Determination and Education Assistance Act funds, and Community Development Block Grant funds.

(h) *Time limits on expenditures.* An Indian Tribe must expend all funds by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

[61 FR 58662, Nov. 18, 1996]

## SUBCHAPTER H—FAMILY VIOLENCE PREVENTION AND SERVICES PROGRAMS

### PART 1370—FAMILY VIOLENCE PREVENTION AND SERVICES PROGRAMS

#### Subpart A—General Provisions

Sec.

- 1370.1 What are the purposes of the Family Violence Prevention and Services Act Programs?
- 1370.2 What definitions apply to these programs?
- 1370.3 What Government-wide and HHS-wide regulations apply to these programs?
- 1370.4 What confidentiality requirements apply to these programs?
- 1370.5 What additional non-discrimination requirements apply to these programs?
- 1370.6 What requirements for reports and evaluations apply to these programs?

#### Subpart B—State and Indian Tribal Grants

- 1370.10 What additional requirements apply to State and Indian Tribal grants?

#### Subpart C—State Domestic Violence Coalition Grants

- 1370.20 What additional requirements apply to State Domestic Violence Coalitions?

#### Subpart D—Discretionary Grants and Contracts

- 1370.30 What National Resource Center and Training and Technical Assistance grant programs are available and what additional requirements apply?
- 1370.31 What additional requirements apply to grants for specialized services for abused parents and their children?
- 1370.32 What additional requirements apply to National Domestic Violence Hotline grants?

AUTHORITY: 42 U.S.C. 10401 *et seq.*

SOURCE: 81 FR 76471, Nov. 2, 2016, unless otherwise noted.

#### Subpart A—General Provisions

##### § 1370.1 What are the purposes of the Family Violence Prevention and Services Act Programs?

This part addresses sections 301 through 313 of the Family Violence Prevention and Services Act (FVPSA), as amended, and codified at 42 U.S.C.

10401 *et seq.* FVPSA authorizes the Secretary to implement programs for the purposes of increasing public awareness about and preventing family violence, domestic violence, and dating violence; providing immediate shelter and supportive services for victims of family violence, domestic violence, and dating violence and their dependents; providing for technical assistance and training relating to family violence, domestic violence, and dating violence programs; providing for State Domestic Violence Coalitions; providing specialized services for abused parents and their children; and operating a national *domestic violence* hotline. FVPSA emphasizes both primary, and secondary, prevention of violence.

##### § 1370.2 What definitions apply to these programs?

For the purposes of this part:

*Dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: The length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. This part of the definition reflects the definition also found in Section 40002(a) of VAWA (as amended), 42 U.S.C. 13925(a), as required by FVPSA. Dating violence also includes but is not limited to the physical, sexual, psychological, or emotional violence within a dating relationship, including stalking. It can happen in person or electronically, and may involve financial abuse or other forms of manipulation which may occur between a current or former dating partner regardless of actual or perceived sexual orientation or gender identity.

*Domestic violence* means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a

child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. This definition also reflects the statutory definition of "domestic violence" found in Section 40002(a) of VAWA (as amended), 42 U.S.C. 13925(a). This definition also includes but is not limited to criminal or non-criminal acts constituting intimidation, control, coercion and coercive control, emotional and psychological abuse and behavior, expressive and psychological aggression, financial abuse, harassment, tormenting behavior, disturbing or alarming behavior, and additional acts recognized in other Federal, Tribal State, and local laws as well as acts in other Federal regulatory or sub-regulatory guidance. This definition is not intended to be interpreted more restrictively than FVPSA and VAWA but rather to be inclusive of other, more expansive definitions. The definition applies to individuals and relationships regardless of actual or perceived sexual orientation or gender identity.

*Family violence* means any act or threatened act of violence, including any forceful detention of an individual, that results or threatens to result in physical injury and is committed by a person against another individual, to or with whom such person is related by blood or marriage, or is or was otherwise legally related, or is or was lawfully residing.

*Personally identifying information (PII) or personal information* is individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including, a first and last name; a home or other physical address; contact information (including a postal, email or Internet protocol address, or telephone or facsimile number); a so-

cial security number, driver license number, passport number, or student identification number; and any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual.

*Primary prevention* means strategies, policies, and programs to stop both first-time perpetration and first-time victimization. Primary prevention is stopping domestic and dating violence before they occur. Primary prevention includes, but is not limited to: School-based violence prevention curricula, programs aimed at mitigating the effects on children of witnessing domestic or dating violence, community campaigns designed to alter norms and values conducive to domestic or dating violence, worksite prevention programs, and training and education in parenting skills and self-esteem enhancement.

*Primary-purpose domestic violence service provider*, for the term only as it appears in the definition of State Domestic Violence Coalition, means an entity that operates a project of demonstrated effectiveness carried out by a nonprofit, nongovernmental, private entity, Tribe, or Tribal organization, that has as its project's primary-purpose the operation of shelters and supportive services for victims of domestic violence and their dependents; or has as its project's primary purpose counseling, advocacy, or self-help services to victims of domestic violence. Territorial Domestic Violence Coalitions may include government-operated domestic violence projects as primary-purpose domestic violence service providers for complying with the membership requirement, provided that Territorial Coalitions can document providing training, technical assistance, and capacity-building of community-based and privately operated projects to provide shelter and supportive services to victims of family, domestic, or dating violence, with the intention of recruiting such projects as members once they are sustainable as primary-purpose domestic violence service providers.

*Secondary prevention* is identifying risk factors or problems that may lead to future family, domestic, or dating

violence, and taking the necessary actions to eliminate the risk factors and the potential problem, and may include, but are not limited to, healing services for children and youth who have been exposed to domestic or dating violence, home visiting programs for high-risk families, and screening programs in health care settings.

*Shelter* means the provision of temporary refuge in conjunction with supportive services in compliance with applicable State or Tribal law or regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and supportive services to victims of family violence, domestic violence, or dating violence, and their dependents. State and Tribal law governing the provision of shelter and supportive services on a regular basis is interpreted by ACF to mean, for example, the laws and regulations applicable to zoning, fire safety, and other regular safety, and operational requirements, including State, Tribal, or local regulatory standards for certifying domestic violence advocates who work in shelter. This definition also includes emergency shelter and immediate shelter, which may include housing provision, rental subsidies, temporary refuge, or lodging in properties that could be individual units for families and individuals (such as apartments) in multiple locations around a local jurisdiction, Tribe/reservation, or State; such properties are not required to be owned, operated, or leased by the program. Temporary refuge includes a residential service, including shelter and off-site services such as hotel or motel vouchers or individual dwellings, which is not transitional or permanent housing, but must also provide comprehensive supportive services. The mere act of making a referral to shelter or housing shall not itself be considered provision of shelter. Should other jurisdictional laws conflict with this definition of temporary refuge, the definition which provides more expansive housing accessibility governs.

*State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and, except as otherwise provided in statute, Guam, American Samoa, the United States Virgin Islands, and the

Commonwealth of the Northern Mariana Islands.

*State Domestic Violence Coalition* means a Statewide, nongovernmental, nonprofit 501(c)(3) organization whose membership includes a majority of the primary-purpose domestic violence service providers in the State; whose board membership is representative of these primary-purpose domestic violence service providers and which may include representatives of the communities in which the services are being provided in the State; that has as its purpose to provide education, support, and technical assistance to such service providers to enable the providers to establish and maintain supportive services and to provide shelter to victims of domestic violence and their children; and that serves as an information clearinghouse, primary point of contact, and resource center on domestic violence for the State and supports the development of policies, protocols and procedures to enhance domestic violence intervention and prevention in the State/Territory.

*Supportive services* means services for adult and youth victims of family violence, domestic violence, or dating violence, and their dependents that are designed to meet the needs of such victims and their dependents for short-term, transitional, or long-term safety and recovery. Supportive services include, but are not limited to: Direct and/or referral-based advocacy on behalf of victims and their dependents, counseling, case management, employment services, referrals, transportation services, legal advocacy or assistance, child care services, health, behavioral health and preventive health services, culturally and linguistically appropriate services, and other services that assist victims or their dependents in recovering from the effects of the violence. To the extent not already described in this definition, supportive services also include but are not limited to other services identified in FVPSA at 42 U.S.C. 10408(b)(1)(A)–(H). Supportive services may be directly provided by grantees and/or by providing advocacy or referrals to assist victims in accessing such services.

*Underserved populations* means populations who face barriers in accessing



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and using victim services, and includes populations underserved because of geographic location, religion, sexual orientation, gender identity, underserved racial and ethnic populations, and populations underserved because of special needs including language barriers, disabilities, immigration status, and age. Individuals with criminal histories due to victimization and individuals with substance use disorders and mental health issues are also included in this definition. The reference to racial and ethnic populations is primarily directed toward racial and ethnic minority groups (as defined in section 1707(g) of the Public Health Service Act (42 U.S.C. 300(u-6)(g)), which means American Indians (including Alaska Natives, Eskimos, and Aleuts); Asian American; Native Hawaiians and other Pacific Islanders; Blacks and Hispanics. The term “Hispanic” or “Latino” means individuals whose origin is Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish-speaking country. This underserved populations’ definition also includes other population categories determined by the Secretary or the Secretary’s designee to be underserved.

#### **§ 1370.3 What Government-wide and HHS-wide regulations apply to these programs?**

(a) A number of government-wide and HHS regulations apply or potentially apply to all grantees. These include but are not limited to:

- (1) 2 CFR part 182—Government-wide Requirements for Drug Free Workplaces;
- (2) 2 CFR part 376—Nonprocurement Debarment and Suspension;
- (3) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board;
- (4) 45 CFR part 30—Claims Collection;
- (5) 45 CFR part 46—Protection of Human Subjects;
- (6) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles and Audit Requirements for HHS Awards
- (7) 45 CFR part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964;

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(8) 45 CFR part 81—Practice and Procedure for Hearings under part 80;

(9) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance;

(10) 45 CFR part 86—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;

(11) 45 CFR part 87—Equal Treatment for Faith-Based Organizations;

(12) 45 CFR part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance for HHS;

(13) 45 CFR part 92—Nondiscrimination in Health Programs and Activities; and

(14) 45 CFR part 93—New Restrictions on Lobbying.

(b) A number of government-wide and HHS regulations apply to all contractors. These include but are not limited to:

(15) 48 CFR Chapter 1—Federal Acquisition Regulations; and

(16) 48 CFR Chapter 3—Federal Acquisition Regulations—Department of Health and Human Services.

#### **§ 1370.4 What confidentiality requirements apply to these programs?**

(a) In order to ensure the safety of adult, youth, and child victims of family violence, domestic violence, or dating violence, and their families, grantees and subgrantees under FVPSA shall protect the confidentiality and privacy of such victims and their families. Subject to paragraphs (c), (d), and (e) of this section, grantees and subgrantees shall not—

(1) Disclose any personally identifying information (as defined in § 1370.2) collected in connection with services requested (including services utilized or denied) through grantees’ and subgrantees’ programs;

(2) Reveal any personally identifying information without informed, written, reasonably time-limited consent by the person about whom information is sought, whether for this program or any other Federal, Tribal or State

grant program, including but not limited to whether to comply with Federal, Tribal, or State reporting, evaluation, or data collection requirements; or

(3) Require an adult, youth, or child victim of family violence, domestic violence, and dating violence to provide a consent to release his or her personally identifying information as a condition of eligibility for the services provided by the grantee or subgrantee.

(b) Consent shall be given by the person, except in the case of an unemancipated minor it shall be given by both the minor and the minor's parent or guardian; or in the case of an individual with a guardian it shall be given by the individual's guardian. A parent or guardian may not give consent if: he or she is the abuser or suspected abuser of the minor or individual with a guardian; or, the abuser or suspected abuser of the other parent of the minor. If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may release information without additional consent. Reasonable accommodations shall also be made for those who may be unable, due to disability or other functional limitation, to provide consent in writing.

(c) If the release of information described in paragraphs (a) and (b) of this section is compelled by statutory or court mandate:

(1) Grantees and sub-grantees shall make reasonable attempts to provide notice to victims affected by the release of the information; and

(2) Grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

(d) Grantees and subgrantees may share:

(1) Non-personally identifying information, in the aggregate, regarding services to their clients and demographic non-personally identifying information in order to comply with Federal, State, or Tribal reporting, evaluation, or data collection requirements;

(2) Court-generated information and law enforcement-generated information contained in secure, governmental

registries for protective order enforcement purposes; and

(3) Law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes.

(4) Personally identifying information may be shared with a health care provider or payer, but only with the informed, written, reasonably time-limited consent of the person about whom such information is sought.

(e) Nothing in this section prohibits a grantee or subgrantee, where mandated or expressly permitted by the State or Indian Tribe, from reporting abuse and neglect, as those terms are defined by law, or from reporting imminent risk of serious bodily injury or death of the victim or another person.

(f) Nothing in this section shall be construed to supersede any provision of any Federal, State, Tribal, or local law that provides greater protection than this section for victims of family violence, domestic violence, or dating violence.

(g) The address or location of any shelter facility assisted that maintains a confidential location shall, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public.

(1) Shelters which choose to remain confidential pursuant to this rule must develop and maintain systems and protocols to remain secure, which must include policies to respond to disruptive or dangerous contact from abusers, and

(2) Tribal governments, while exercising due diligence to comply with statutory provisions and this rule, may determine how best to maintain the safety and confidentiality of shelter locations.

#### **§ 1370.5 What additional non-discrimination requirements apply to these programs?**

(a) No person shall on the ground of actual or perceived sex, including gender identity, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part through FVPSA.

(1) FVPSA grantees and subgrantees must provide comparable services to

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victims regardless of actual or perceived sex, including gender identity. This includes not only providing access to services for all victims, including male victims, of family, domestic, and dating violence regardless of actual or perceived sex, including gender identity, but also making sure not to limit services for victims with adolescent children (under the age of 18) on the basis of the actual or perceived sex, including gender identity, of the children. Victims and their minor children must be sheltered or housed together, regardless of actual or perceived sex, including gender identity, unless requested otherwise or unless the factors or considerations identified in §1370.5(a)(2) require an exception to this general rule.

(2) No such program or activity is required to include an individual in such program or activity without taking into consideration that individual's sex in those certain instances where sex is a bona fide occupational qualification or a programmatic factor reasonably necessary to the essential operation of that particular program or activity. If sex segregation or sex-specific programming is essential to the normal or safe operation of the program, nothing in this paragraph shall prevent any such program or activity from consideration of an individual's sex. In such circumstances, grantees and subgrantees may meet the requirements of this paragraph by providing comparable services to individuals who cannot be provided with the sex-segregated or sex-specific programming, including access to a comparable length of stay, supportive services, and transportation as needed to access services. If a grantee or subgrantee determines that sex-segregated or sex-specific programming is essential for the normal or safe operation of the program, it must support its justification with an assessment of the facts and circumstances surrounding the specific program, including an analysis of factors discussed in paragraph (a)(3) of this section, and take into account established field-based best practices and research findings, as applicable. The justification cannot rely on unsupported assumptions or overly-broad sex-based generalizations. An indi-

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vidual must be treated consistent with their gender identity in accordance with this section.

(3) Factors that may be relevant to a grantee's or subgrantee's evaluation of whether sex-segregated or sex-specific programming is essential to the normal or safe operations of the program include, but are not limited, to the following: The nature of the service, the anticipated positive and negative consequences to all eligible beneficiaries of not providing the program in a sex-segregated or sex-specific manner, the literature on the efficacy of the service being sex-segregated or sex-specific, and whether similarly-situated grantees and subgrantees providing the same services have been successful in providing services effectively in a manner that is not sex-segregated or sex-specific. A grantee or subgrantee may not provide sex-segregated or sex-specific services for reasons that are trivial or based on the grantee's or subgrantee's convenience.

(4) As with all individuals served, transgender and gender nonconforming individuals must have equal access to FVPSA-funded shelter and nonresidential programs. Programmatic accessibility for transgender and gender nonconforming survivors and minor children must be afforded to meet individual needs consistent with the individual's gender identity. ACF requires that a FVPSA grantee or subgrantee that makes decisions about eligibility for or placement into single-sex emergency shelters or other facilities offer every individual an assignment consistent with their gender identity. For the purpose of assigning a service beneficiary to sex-segregated or sex-specific services, the grantee/subgrantee may ask a beneficiary which group or services the beneficiary wishes to join. The grantee/subgrantee may not, however, ask questions about the beneficiary's anatomy or medical history or make demands for identity documents or other documentation of gender. A victim's/beneficiary's or potential victim's/beneficiary's request for an alternative or additional accommodation for purposes of personal health, privacy, or safety must be given serious consideration in making the placement. For instance, if the potential

victim/beneficiary requests to be placed based on his or her sex assigned at birth, ACF requires that the provider will place the individual in accordance with that request, consistent with health, safety, and privacy concerns of the individual. ACF also requires that a provider will not make an assignment or re-assignment of the transgender or gender nonconforming individual based on complaints of another person when the sole stated basis of the complaint is a victim/client or potential victim/client's non-conformance with gender stereotypes or sex, including gender identity.

(b) An organization that participates in programs funded through the FVPFA shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(1) Dietary practices dictated by particular religious beliefs may require reasonable accommodation in cooking or feeding arrangements for particular beneficiaries as practicable. Additionally, other forms of religious practice may require reasonable accommodation including, but not limited to, shelters that have cleaning schedules may need to account for a survivor's religion which prohibits him/her from working on religious holidays.

(c) No person shall on the ground of actual or perceived sexual orientation be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part through FVPFA.

(1) All programs must take into account participants' needs and be inclusive and not stigmatize participants based on actual or perceived sexual orientation.

(d) All FVPFA-funded services must be provided without requiring documentation of immigration status because HHS has determined that FVPFA-funded services do not fall within the definition of federal public benefit that would require verification of immigration status.

(e) Grantees and subgrantees should create a plan to ensure effective com-

munication and equal access, including:

(1) How to identify and communicate with individuals with Limited English Proficiency, and how to identify and properly use qualified interpretation and translation services, and taglines; and

(2) How to take appropriate steps to ensure that communications with applicants, participants, beneficiaries, members of the public, and companions with disabilities are as effective as communications with others; and furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, beneficiaries, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity. Auxiliary aids and services include qualified interpreters and large print materials.

(f) Nothing in this section shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals under other applicable law.

(g) The Secretary shall enforce the provisions of paragraphs (a) and (b) of this section in accordance with section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1). Section 603 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2) shall apply with respect to any action taken by the Secretary to enforce this section.

#### **§ 1370.6 What requirements for reports and evaluations apply to these programs?**

Each entity receiving a grant or contract under these programs shall submit a performance report to the Secretary at such time as required by the Secretary. Such performance report shall describe the activities that have been carried out, contain an evaluation of the effectiveness of such activities, and provide such additional information as the Secretary may require. Territorial governments which consolidate FVPFA funds with other HHS funds in a Consolidated Block Grant pursuant to 45 CFR part 97 are not required to submit annual FVPFA performance

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progress reports and programmatic assurances if FVPSA funds are not designated in the consolidation application for FVPSA purposes. If a territorial government either does not consolidate FVPSA funds with other HHS funds or does consolidate but indicates that FVPSA funds will be used for FVPSA purposes, the territorial government must submit an annual FVPSA performance progress report and programmatic assurances to FYSB.

### **Subpart B—State and Indian Tribal Grants**

#### **§ 1370.10 What additional requirements apply to State and Indian Tribal grants?**

(a) These grants assist States and Tribes to support the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence, domestic violence, and dating violence; to provide immediate shelter, supportive services, and access to community-based programs for victims of family violence, domestic violence, or dating violence, and their dependents; and to provide specialized services for children exposed to family violence, domestic violence, or dating violence, including victims who are members of underserved populations. States must consult with and provide for the participation of State Domestic Violence Coalitions and Tribal Coalitions in the planning and monitoring of the distribution and administration of subgrant programs and projects. At a minimum to further FVPSA requirements, States and State Domestic Violence Coalitions will work together to determine grant priorities based upon jointly identified needs; to identify strategies to address needs; to define mutual expectations regarding programmatic performance and monitoring; and to implement an annual collaboration plan that incorporates concrete steps for accomplishing these tasks. If States also fund State Domestic Violence Coalitions to provide training, technical assistance, or other programming, nothing in this rule is intended to conflict with State contracting requirements regarding conflicts of interest but rather that

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this rule's requirements should be interpreted to complement States' contracting and procurement laws and regulations. States must involve community-based organizations that primarily serve underserved populations, including culturally- and linguistically-specific populations, to determine how such populations can assist the States in serving the unmet needs of underserved populations and culturally- and linguistically-specific populations. Tribes should be involved in these processes where appropriate, but this rule is not intended to encroach upon Tribal sovereignty. States also must consult with and provide for the participation of State Domestic Violence Coalitions and Tribal Coalitions in State planning and coordinate such planning with needs assessments to identify service gaps or problems and develop appropriate responsive plans and programs. Similar coordination and collaboration processes for Tribes and State Domestic Violence Coalitions are expected when feasible and appropriate with deference to Tribal sovereignty as previously indicated.

(b) A State application must be submitted by the Chief Executive of the State and signed by the Chief Executive Officer or the Chief Program Official designated as responsible for the administration of FVPSA. Each application must contain the following information or documentation:

(1) The name of the State agency, the name and contact information for the Chief Program Official designated as responsible for the administration of funds under FVPSA and coordination of related programs within the State, and the name and contact information for a contact person if different from the Chief Program Official;

(2) A plan describing in detail how the needs of underserved populations will be met, including:

(i) Identification of which populations in the State are underserved, a description of those that are being targeted for outreach and services, and a brief explanation of why those populations were selected to receive outreach and services, including how often the State revisits the identification and selection of the populations to be served with FVPSA funding. States

must review their State demographics and other relevant metrics at least every three years or explain why this process is unnecessary;

(ii) A description of the outreach plan, including the domestic violence training to be provided, the means for providing technical assistance and support, and the leadership role played by those representing and serving the underserved populations in question;

(iii) A description of the specific services to be provided or enhanced, such as new shelters or services, improved access to shelters or services, or new services for underserved populations; and

(iv) A description of the public information component of the State's outreach program, including the elements of the program that are used to explain domestic violence, the most effective and safe ways to seek help, and tools to identify available resources; and

(v) A description of the means by which the program will provide meaningful access for limited English proficient individuals and effective communication for individuals with disabilities.

(3) A description of the process and procedures used to involve the State Domestic Violence Coalition and Tribal Coalition where one exists, knowledgeable individuals, and interested organizations, including those serving or representing underserved populations in the State planning process;

(4) Documentation of planning, consultation with and participation of the State Domestic Violence Coalition and Tribal Coalition where one exists, in the administration and distribution of FVPSA programs, projects, and grant funds awarded to the State;

(5) A description of the procedures used to assure an equitable distribution of grants and grant funds within the State and between urban and rural areas. States may use one of the Census definitions of rural or non-metro areas or another State-determined definition. A State-determined definition must be supported by data and be available for public input prior to its adoption. The State must show that the definition selected achieves an equitable distribution of funds within the State and between urban and rural

areas. The plan should describe how funding processes and allocations will address the needs of underserved populations as defined in §1370.2, including Tribal populations, with an emphasis on funding organizations that can meet unique needs including culturally- and linguistically-specific populations. Other Federal, State, local, and private funds may be considered in determining compliance;

(6) A description of:

(i) how the State plans to use the grant funds including a State plan developed in consultation with State and Tribal Domestic Violence Coalitions and representatives of underserved populations;

(ii) the target populations;

(iii) the number of shelters and programs providing shelter to be funded;

(iv) the number of non-residential programs to be funded; the services the State will provide; and

(v) the expected results from the use of the grant funds. To fulfill these requirements, it is critically important that States work with State Domestic Violence Coalitions and Tribes to solicit their feedback on program effectiveness which may include recommendations such as establishing program standards and participating in program monitoring;

(7) An assurance that the State has a law or procedure to bar an abuser from a shared household or a household of the abused person, which may include eviction laws or procedures, where appropriate;

(8) An assurance that not less than 70 percent of the funds distributed by a State to sub-recipients shall be distributed to entities for the primary purpose of providing immediate shelter and supportive services to adult and youth victims of family violence, domestic violence, or dating violence, and their dependents, and that not less than 25 percent of the funds distributed by a State to subgrantees/recipients shall be distributed to entities for the purpose of providing supportive services and prevention services (these percentages may overlap with respect to supportive services but are not included in the 5 percent cap applicable to State administrative costs). In the distribution of funds, States will give

special emphasis to the support of community-based projects of demonstrated effectiveness that are carried out by primary-purpose domestic violence providers. No grant shall be made under this section to an entity other than a State unless the entity agrees that, with respect to the costs to be incurred by the entity in carrying out the program or project for which the grant is awarded, the entity will make available (directly or through donations from public or private entities) non-Federal contributions in an amount that is not less than \$1 for every \$5 of Federal funds provided under the grant. The non-Federal contributions required under this paragraph may be in cash or in kind;

(9) Documentation of policies, procedures and protocols that ensure individual identifiers of client records will not be used when providing statistical data on program activities and program services or in the course of grant monitoring, that the confidentiality of records pertaining to any individual provided family violence, domestic violence, or dating violence prevention or intervention services by any program or entity supported under the FVPSA will be strictly maintained, and the address or location of any shelter supported under the FVPSA will not be made public without the written authorization of the person or persons responsible for the operation of such shelter;

(10) Such additional agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe. Moreover, additional agreements, assurances, and information required by the Funding Opportunity Announcement and other program guidance will include that no requirement for participating in supportive services offered by FVPSA-funded programs may be imposed by grantees or subgrantees for the receipt of emergency shelter and receipt of all supportive services shall be voluntary. Similarly, the receipt of shelter cannot be conditioned on participation in other services, such as, but not limited to counseling, parenting classes, mental health or substance use disorders treat-

ment, pursuit of specific legal remedies, or life skill classes. Additionally, programs cannot impose conditions for admission to shelter by applying inappropriate screening mechanisms, such as criminal background checks, sobriety requirements, requirements to obtain specific legal remedies, or mental health or substance use disorder screenings. An individual's or family's stay in shelter cannot be conditioned upon accepting or participating in services. Based upon the capacity of a FVPSA-funded service provider, victims and their dependents do not need to reside in shelter to receive supportive services. Nothing in these requirements prohibits a shelter operator from adopting reasonable policies and procedures reflecting field-based best practices, to ensure that persons receiving services are not currently engaging in illegal drug use, if that drug use presents a danger to the safety of others, creates an undue hardship for the shelter operator, or causes a fundamental alteration to the operator's services. In the case of an apparent conflict with State, Federal, or Tribal laws, case-by-case determinations will be made by ACF if they are not resolved at the State or Tribal level. In general, when two or more laws apply, a grantee/subgrantee must meet the highest standard for providing programmatic accessibility to victims and their dependents. These provisions are not intended to deny a shelter the ability to manage its services and secure the safety of all shelter residents should, for example, a client become violent or abusive to other clients.

(c) An application from a Tribe or Tribal Organization must include documentation demonstrating that the governing body of the organization on whose behalf the application is submitted approves the application's submission to ACF for the current FVPSA grant period. Each application must contain the following information or documentation:

(1) Written Tribal resolutions, meeting minutes from the governing body, and/or letters from the authorizing official reflecting approval of the application's submittal, depending on what

is appropriate for the applicant's governance structure. Such documentation must reflect the applicant's authority to submit the application on behalf of members of the Tribes and administer programs and activities pursuant to FVPSA;

(2) The resolution or equivalent documentation must specify the name(s) of the Tribe(s) on whose behalf the application is submitted and the service areas for the intended grant services;

(3) Applications from consortia must provide letters of commitment, memoranda of understanding, or their equivalent identifying the primary applicant that is responsible for administering the grant, documenting commitments made by partnering eligible applicants, and describing their roles and responsibilities as partners in the consortia or collaboration;

(4) A description of the procedures designed to involve knowledgeable individuals and interested organizations in providing services under the FVPSA. For example, knowledgeable individuals and interested organizations may include Tribal officials or social services staff involved in child abuse or family violence prevention, Tribal law enforcement officials, representatives of Tribal or State Domestic Violence Coalitions, and operators of domestic violence shelters and service programs;

(5) A description of the applicant's operation of and/or capacity to carry out a family violence prevention and services program. This might be demonstrated in ways such as:

(i) The current operation of a shelter, safe house, or domestic violence prevention program;

(ii) The establishment of joint or collaborative service agreements with a local public agency or a private, non-profit agency for the operation of family violence prevention and intervention activities or services; or

(iii) The operation of social services programs as evidenced by receipt of grants or contracts awarded under Indian Child Welfare grants from the Bureau of Indian Affairs; Child Welfare Services grants under Title IV-B of the Social Security Act; or Family Preservation and Family Support grants under Title IV-B of the Social Security Act.

(6) A description of the services to be provided, how the applicant organization plans to use the grant funds to provide the direct services, to whom the services will be provided, and the expected results of the services;

(7) An assurance that the Indian Tribe has a law or procedure to bar an abuser from a shared household or a household of the abused person, which may include eviction laws or procedures, where appropriate;

(8) Documentation of the policies and procedures developed and implemented, including copies of the policies and procedures, to ensure that individual identifiers of client records will not be used when providing statistical data on program activities and program services or in the course of grant monitoring and that the confidentiality of records pertaining to any individual provided domestic violence prevention or intervention services by any FVPSA-supported program will be strictly maintained; and

(9) Such agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

(d) Given the unique needs of victims of trafficking, FVPSA-funded programs are strongly encouraged to safely screen for and identify victims of human trafficking who are also victims or survivors of domestic violence or dating violence and provide services that support their unique needs.

### **Subpart C—State Domestic Violence Coalition Grants**

#### **§ 1370.20 What additional requirements apply to State Domestic Violence Coalitions?**

(a) State Domestic Violence Coalitions reflect a Federal commitment to reducing domestic violence; to urge States, localities, cities, and the private sector to improve the responses to and the prevention of domestic violence and encourage stakeholders and service providers to plan toward an integrated service delivery approach that meets the needs of all victims, including those in underserved communities; to provide for technical assistance and training relating to domestic violence



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programs; and to increase public awareness about and prevention of domestic violence and increase the quality and availability of shelter and supportive services for victims of domestic violence and their dependents.

(b) To be eligible to receive a grant under this section, an organization shall be a Statewide, non-governmental, non-profit 501(c)(3) domestic violence coalition, designated as such by the Department. To obtain this designation the organization must meet the following criteria:

(1) The membership must include representatives from a majority of the primary-purpose domestic violence service providers operating within the State (a Coalition also may include representatives of Indian Tribes and Tribal organizations as defined in the Indian Self-Determination and Education Assistance Act);

(2) The Board membership of the Coalition must be representative of such programs, and may include representatives of communities in which the services are being provided in the State;

(3) Financial sustainability of State Domestic Violence Coalitions, as independent, autonomous non-profit organizations, also must be supported by their membership, including those member representatives on the Coalitions' Boards of Directors;

(4) The purpose of a State Domestic Violence Coalition is to provide education, support, and technical assistance to such service providers to enable the providers to establish and maintain shelter and supportive services for victims of domestic violence and their dependents; and to serve as an information clearinghouse, primary point of contact, and resource center on domestic violence for the State; and support the development of policies, protocols, and procedures to enhance domestic violence intervention and prevention in the State.

(c) To apply for a grant under this section, an organization shall submit an annual application that:

(1) Includes a complete description of the applicant's plan for the operation of a State Domestic Violence Coalition, including documentation that the Coalition's work will demonstrate the capacity to support state-wide efforts

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to improve system responses to domestic and dating violence as outlined in (c)(1)(i) through (vii) of this section. Coalitions must also have documented experience in administering Federal grants to conduct the activities of a Coalition or a documented history of active participation in:

(i) Working with local family violence, domestic violence, and dating violence service programs and providers of direct services to encourage appropriate and comprehensive responses to family violence, domestic violence, and dating violence against adults or youth within the State involved, including providing training and technical assistance and conducting State needs assessments and participate in planning and monitoring of the distribution of subgrants within the States and in the administration of grant programs and projects;

(ii) In conducting needs assessments, Coalitions and States must work in partnership on the statutorily required FVPSA State planning process to involve representatives from underserved populations and culturally- and linguistically-specific populations to plan, assess and voice the needs of the communities they represent. Coalitions will assist States in identifying underserved populations and culturally- and linguistically- specific community based organizations in State planning and to work with States to unify planning and needs assessment efforts so that comprehensive and culturally-specific services are provided. The inclusion of the populations targeted will emphasize building the capacity of culturally- and linguistically-specific services and programs.

(iii) Working in collaboration with service providers and community-based organizations to address the needs of family violence, domestic violence, and dating violence victims, and their dependents, who are members of underserved populations and culturally- and linguistically-specific populations;

(iv) Collaborating with and providing information to entities in such fields as housing, health care, mental health, social welfare, or business to support the development and implementation

of effective policies, protocols, and programs that address the safety and support needs of adult and youth victims of family violence, domestic violence, or dating violence;

(v) Encouraging appropriate responses to cases of family violence, domestic violence, or dating violence against adults or youth, including by working with judicial and law enforcement agencies;

(vi) Working with family law judges, criminal court judges, child protective service agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in cases of child exposure to family violence, domestic violence, or dating violence and in cases in which family violence is present and child abuse is present;

(vii) Providing information to the public about prevention of family violence, domestic violence, and dating violence, including information targeted to underserved populations, including limited English proficient individuals; and

(viii) Collaborating with Indian Tribes and Tribal organizations (and corresponding Native Hawaiian groups or communities) to address the needs of Indian (including Alaska Native) and Native Hawaiian victims of family violence, domestic violence, or dating violence, as applicable in the State;

(2) Contains such agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

(d) Nothing in this section limits the ability of a Coalition to use non-Federal or other Federal funding sources to conduct required functions, provided that if the Coalition uses funds received under section 2001(c)(1) of the Omnibus Crime Control and Safe Streets Act of 1968 to perform the functions described in FVPSA at 42 U.S.C. 10411(e) in lieu of funds provided under the FVPSA, it shall provide an annual assurance to the Secretary that it is using such funds, and that it is coordinating the activities conducted under this section with those of the State's activities under Part T of title I of the

Omnibus Crime Control and Safe Streets Act of 1968.

(e) In cases in which two or more organizations seek designation, the designation of each State's individual Coalition is within the exclusive discretion of HHS. HHS will determine which applicant best fits statutory criteria, with particular attention paid to the applicant's documented history of effective work, support of primary-purpose domestic violence service providers and programs that serve underserved populations, coordination and collaboration with the State government, and capacity to accomplish the FVPSA-mandated role of a Coalition.

(f) Regarding FVPSA funding, in cases where a Coalition financially or otherwise dissolves, is newly formed, or merges with another entity, the designation of a new Coalition is within the exclusive discretion of HHS. HHS will seek individual feedback from domestic violence service providers, community stakeholders, State leaders, and representatives of underserved populations and culturally- and linguistically-specific populations to identify an existing organization that can serve as the Coalition or to develop a new organization. The new Coalition must re-apply for designation and funding following steps determined by the Secretary. HHS will determine whether the applicant fits the statutory criteria, with particular attention paid to the applicant's documented history of effective work, support of primary-purpose domestic violence programs and programs that serve underserved populations, coordination and collaboration with the State government, and capacity to accomplish the FVPSA mandated role of a Coalition.

#### **Subpart D—Discretionary Grants and Contracts**

##### **§ 1370.30 What National Resource Center and Training and Technical Assistance grant programs are available and what additional requirements apply?**

(a) These grants are to provide resource information, training, and technical assistance to improve the capacity of individuals, organizations, governmental entities, and communities

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to prevent family violence, domestic violence, and dating violence and to provide effective intervention services. They fund national, special issue, and culturally-specific resource centers addressing key areas of domestic violence intervention and prevention, and may include State resource centers to reduce disparities in domestic violence in States with high proportions of Native American (including Alaska Native or Native Hawaiian) populations and to support training and technical assistance that address emerging issues related to family violence, domestic violence, or dating violence, to entities demonstrating expertise in these areas. Grants may be made for:

(1) A National Resource Center on Domestic Violence which will conduct the following activities:

(i) offer a comprehensive array of technical assistance and training resources to Federal, State, and local governmental agencies, domestic violence service providers, community-based organizations, and other professionals and interested parties, related to domestic violence service programs and research, including programs and research related to victims and their children who are exposed to domestic violence; and

(ii) Maintain a central resource library in order to collect, prepare, analyze, and disseminate information and statistics related to the incidence and prevention of family violence and domestic violence; and the provision of shelter, supportive services, and prevention services to adult and youth victims of domestic violence (including services to prevent repeated incidents of violence).

(2) A National Indian Resource Center Addressing Domestic Violence and Safety for Indian Women which will conduct the following activities:

(i) Offer a comprehensive array of technical assistance and training resources to Indian Tribes and Tribal organizations, specifically designed to enhance the capacity of the Tribes and Tribal organizations to respond to domestic violence and increase the safety of Indian women; and

(ii) Enhance the intervention and prevention efforts of Indian Tribes and Tribal organizations to respond to do-

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mestic violence and increase the safety of Indian women, and

(iii) To coordinate activities with other Federal agencies, offices, and grantees that address the needs of Indians (including Alaska Natives) and Native Hawaiians that experience domestic violence.

(3) Special issue resource centers to provide national information, training, and technical assistance to State and local domestic violence service providers. Each special issue resource center shall focus on enhancing domestic violence intervention and prevention efforts in at least one of the following areas:

(i) Response of the criminal and civil justice systems to domestic violence victims, which may include the response to the use of the self-defense plea by domestic violence victims and the issuance and use of protective orders;

(ii) Response of child protective service agencies to victims of domestic violence and their dependents and child custody issues in domestic violence cases;

(iii) Response of the interdisciplinary health care system to victims of domestic violence and access to health care resources for victims of domestic violence; and

(iv) Response of mental health systems, domestic violence service programs, and other related systems and programs to victims of domestic violence and to their children who are exposed to domestic violence.

(4) Culturally-Specific Special Issue Resource Centers enhance domestic violence intervention and prevention efforts for victims of domestic violence who are members of racial and ethnic minority groups, to enhance the cultural and linguistic relevancy of service delivery, resource utilization, policy, research, technical assistance, community education, and prevention initiatives.

(5) State resource centers to provide Statewide information, training, and technical assistance to Indian Tribes, Tribal organizations, and local domestic violence service organizations serving Native Americans (including Alaska Natives and Native Hawaiians) in a

culturally sensitive and relevant manner. These centers shall:

(i) Offer a comprehensive array of technical assistance and training resources to Indian Tribes, Tribal organizations, and providers of services to Native Americans (including Alaska Natives and Native Hawaiians) specifically designed to enhance the capacity of the Tribes, organizations, and providers to respond to domestic violence, including offering the resources in States in which the population of Indians (including Alaska Natives) or Native Hawaiians exceeds 2.5 percent of the total population of the State;

(ii) Coordinate all projects and activities with the National Indian Resource Center Addressing Domestic Violence and Safety for Indian Women, including projects and activities that involve working with State and local governments to enhance their capacity to understand the unique needs of Native Americans (including Alaska Natives and Native Hawaiians); and

(iii) Provide comprehensive community education and domestic violence prevention initiatives in a culturally sensitive and relevant manner; and

(iv) Otherwise meet certain eligibility requirements for state resource centers to reduce tribal disparities, pursuant to 42 U.S.C. 10410(c)(4).

(6) Other discretionary purposes to support training and technical assistance that address emerging issues related to family violence, domestic violence, or dating violence, to entities demonstrating related experience.

(b) To receive a grant under any part of this section, an entity shall submit an application that shall meet such eligibility standards as are prescribed in the FVPSA and contains such agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

**§ 1370.31 What additional requirements apply to grants for specialized services for abused parents and their children?**

(a) These grants serve to expand the capacity of family violence, domestic violence, and dating violence service programs and community-based pro-

grams to prevent future domestic violence by addressing, in an appropriate manner, the needs of children exposed to family violence, domestic violence, or dating violence. To be eligible an entity must be a local agency, a non-profit private organization (including faith-based and charitable organizations, community-based organizations, and voluntary associations), or a Tribal organization, with a demonstrated record of serving victims of family violence, domestic violence, or dating violence and their children.

(b) To be eligible to receive a grant under this section, an entity shall submit an application that:

(1) Includes a complete description of the applicant's plan for providing specialized services for abused parents and their children, including descriptions of:

(i) How the entity will prioritize the safety of, and confidentiality of, information about victims of family violence, victims of domestic violence, and victims of dating violence and their children, and will comply with the confidentiality requirements of FVPSA, 42 U.S.C. 10406(c)(5) and this rule at § 1370.4;

(ii) How the entity will provide developmentally appropriate and age-appropriate services, and culturally and linguistically appropriate services, to the victims and children;

(iii) How the entity will ensure that professionals working with the children receive the training and technical assistance appropriate and relevant to the unique needs of children exposed to family violence, domestic violence, or dating violence; and

(iv) How, in the case of victims who choose to or by virtue of their circumstances must remain in contact with an abusive partner/parent, the entity will: consider the victim's decision-making for keeping children safe within the continuum of domestic violence (see the definition of domestic violence in the regulatory text at § 1370.2 which describes the potential range of behaviors constituting domestic violence); not place burdens or demands on the non-abusive parent that the parent cannot comply with due to the coercive control of the offender; and take

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precautions to avoid actions that discourage victims from help-seeking, such as making unnecessary referrals to child protective services when survivors go to community-based organizations for assistance in safety planning to protect children.

(2) Demonstrates that the applicant has the ability to effectively provide, or partner with an organization that provides, direct counseling, appropriate services, and advocacy on behalf of victims of family violence, domestic violence, or dating violence, and their children, including coordination with services provided by the child welfare system, schools, health care providers, home visitors, family court systems, and any other child or youth serving system;

(3) Demonstrates that the applicant can effectively provide services for non-abusing parents to support those parents' roles as caregivers and their roles in responding to the social, emotional, and developmental needs of their children; and

(4) Contains such agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

(c) Eligible applicants may use funds under a grant pursuant to this section:

(1) To provide early childhood development and mental health services;

(2) To coordinate activities with and provide technical assistance to community-based organizations serving victims of family violence, domestic violence, or dating violence or children exposed to family violence, domestic violence, or dating violence; and

(3) To provide additional services and referrals to services for children, including child care, transportation, educational support, respite care, supervised visitation, or other necessary services.

(d) If Congressional appropriations in any fiscal year for the entirety of programs covered in this part (exclusive of the National Domestic Violence Hotline which receives a separate appropriation) exceed \$130 million, not less than 25 percent of such excess funds shall be made available to carry out this grant program. If appropriations

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reach this threshold, HHS will specify funding levels in future Funding Opportunity Announcements.

### **§ 1370.32 What additional requirements apply to National Domestic Violence Hotline grants?**

(a) These grants are for one or more private entities to provide for the ongoing operation of a 24-hour, national, toll-free telephone hotline to provide information and assistance to adult and youth victims of family violence, domestic violence, or dating violence, family and household members of such victims, and persons affected by the victimization.

(b) Telephone is defined as a communications device that permits two or more callers or users to engage in transmitted analog, digital, short message service (SMS), cellular/wireless, laser, cable/broadband, internet, voice-over internet protocol (IP), video, or other communications, including telephone, smartphone, chat, text, voice recognition, or other technological means which connects callers or users together.

(c) To be eligible to receive a grant under this section, an entity shall submit an application that:

(1) Includes a complete description of the applicant's plan for the operation of a national domestic violence telephone hotline, including descriptions of:

(i) The training program for hotline personnel, including technology training to ensure that all persons affiliated with the hotline are able to effectively operate any technological systems used by the hotline, and are familiar with effective communication and equal access requirements, to ensure access for all, including people who are Limited English Proficient and people with disabilities;

(ii) The hiring criteria and qualifications for hotline personnel;

(iii) The methods for the creation, maintenance, and updating of a resource database;

(iv) A plan for publicizing the availability of the hotline;

(v) A plan for providing service such as advocacy and supportive services to

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Limited English Proficient callers, including service through hotline personnel who are qualified to interpret in non-English languages;

(vi) A plan for facilitating access to the hotline by persons with disabilities, including persons who are deaf or have hearing impairments; and

(vii) A plan for providing assistance and referrals to youth victims of domestic violence and for victims of dating violence who are minors, which may be carried out through a national teen dating violence hotline.

(2) Demonstrates that the applicant has recognized expertise in the area of family violence, domestic violence, or dating violence and a record of high quality service to victims of family violence, domestic violence, or dating violence, including a demonstration of support from advocacy groups and State Domestic violence Coalitions;

(3) Demonstrates that the applicant has the capacity and the expertise to maintain a domestic violence hotline and a comprehensive database of service providers;

(4) Demonstrates the ability to provide information and referrals for callers, directly connect callers to service providers, and employ crisis interven-

tions meeting the standards of family violence, domestic violence, and dating violence providers;

(5) Demonstrates that the applicant has a commitment to diversity and to the provision of services to underserved populations, including to ethnic, racial, and Limited English Proficient individuals, in addition to older individuals and individuals with disabilities;

(6) Demonstrates that the applicant follows comprehensive quality assurance practices; and

(7) Contains such agreements, information, and assurances, including non-disclosure of confidential or private information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

(d) The entity receiving a grant under this section shall submit a performance report to the Secretary at such time as reasonably required by the Secretary that shall describe the activities that have been carried out with grant funds, contain an evaluation of the effectiveness of such activities, and provide additional information as the Secretary may reasonably require.

**SUBCHAPTER I—THE ADMINISTRATION ON INTELLECTUAL  
AND DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DIS-  
ABILITIES PROGRAM**

**PARTS 1385–1399 [RESERVED]**

**SUBCHAPTERS J–K [RESERVED]**