Dated: January 19, 1999.

JoLynn Traub,

Acting Regional Administrator, Region 5.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart Y—Minnesota

2. Section 52.1220 is amended by adding paragraph (c)(47) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(47) On October 17, 1997, the State of Minnesota submitted amendments to three previously approved Administrative Orders for North Star Steel Company, LaFarge Corporation, and GAF Building Materials, all located in the Minneapolis-St. Paul area.

(i) Incorporation by reference.

(A) Amendments, both dated and effective September 23, 1997, to administrative orders and amendments approved in paragraphs (c)(29) and (c)(41) of this section, respectively, of this section for: LaFarge Corporation (Childs Road facility) and North Star Steel Company.

(B) Amendment Two, dated and effective September 18, 1997, to administrative order and amendment approved in paragraph (c)(30) of this section for GAF Building Materials.

[FR Doc. 99–2787 Filed 2–5–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1309

RIN 0970–AB31

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is issuing this final rule to implement the statutory provision that authorizes Head Start grantees to use grant funds to purchase facilities in which to operate Head Start programs.

EFFECTIVE DATES: March 10, 1999. The information collection requirements of §§ 1309.10, 1309.40 and 1309.41 shall be effective on the day they are approved by the Office of Management and Budget (OMB). The OMB approval numbers and date of approval of the information collection requirements will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013; (202) 205–8572.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services to low-income preschool children, primarily age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. Also, section 645A of the Head Start Act provides authority to fund programs for families with infants and toddlers. Programs receiving funds under the authority of this section are referred to as early Head Start programs.

Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 1997 Head Start served approximately 794,000 children through a network of over 2,000 grantee and delegate agencies.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line, or who receive public assistance, Head Start regulations permit up to ten percent of the children in local programs to be from families who do not meet these low-income criteria. Tribal grantees can exceed this limit under certain conditions. The Act also requires that a minimum of ten percent of the enrollment opportunities in each program be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

II. Purpose of the Rule

The Administration for Children and Families (ACF) is establishing a final rule governing the purchase of facilities by Head Start grantees. The purpose of this Rule is to implement the statutory authority of Head Start grantees to use grant funds to purchase facilities in which to operate Head Start programs. This authority, found in section 644(f) of the Head Start Act (42 U.S.C. 9839), was granted in October 1992. The Act allows grantees to apply for grant funds to purchase facilities to carry out Head Start programs and directs the Secretary to establish uniform procedures for Head Start agencies to request such funds. Additional authority for this Rule is found in section 644(c) of the Head Start Act, which mandates the Secretary to prescribe rules or regulations to supplement section 644(f). In March 1994 Congress added provisions to section 644(f) allowing grantees to apply for approval of facility purchases made after December 31, 1986.

III. Summary of the Major Provisions of the Final Rule

A summary the major provisions of the final rule is as follows. The rule:

- Specifies what information must be included in the written application grantees must submit to request to use grant funds to purchase a facility, including what must be included in the cost comparison which grantees must submit as part of their application;
- Requires certain measures to be taken to protect the Federal interest in facilities purchased in whole or in part with ACF grant funds;
- Requires that grantees which acquire facilities with grant funds obtain specified types of insurance and maintain the property acquired in a manner consistent with the purpose for which funds were provided and in compliance with applicable building codes and standards; and
- Includes within the definition of ''facility'' modular units, and requires grantees which seek funding to purchase a modular unit to comply with these regulations, which include provisions applicable only to the purchase of modular units.

IV. Rulemaking History

On December 1, 1994, the Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (59 FR 61575), proposing to establish a rule to implement the

statutory provision authorizing the use of Head Start grant funds for the purchase of facilities to be used to operate Head Start programs. Copies of the proposed rule were mailed to all Head Start grantees and delegate agencies. Interested persons were given 60 days in which to comment on the proposed rule. During the sixty day comment period the Department received comments from twelve respondents. The respondents included seven Head Start grantees and five public and private agencies interested in Head Start facility matters.

Prior to publication of the NPRM Congress amended the Head Start Act to authorize Head Start grantees to use grant funds to construct and make major renovations to their facilities. This amendment to the Head Start Act, section 644(g), became effective in 1994. Proposed procedures to implement this new authority are set out in a Notice of Proposed Rulemaking published elsewhere today in this **Federal Register**. The procedures on construction and major renovation when made final will amend this final rule so that 45 CFR part 1309 will cover, in one single rule, the use of grant funds to purchase, construct and make major renovations to Head Start facilities.

Section-by-Section Discussion of the Comments Received

Of the twelve parties who submitted comments to the NPRM, three were general expressions of support for the proposed rule. Only those sections for which comments were made or to which technical changes were made are discussed below. The discussion of the sections follow the order of the NPRM table of contents and a notation is made wherever the section designations have been changed or deleted in the final rule.

Section 1309.2—Approval of Previously Purchased Facilities

Comment: We received one comment on the application of these procedures to facilities purchased prior to the enactment of the statute authorizing the use of grant funds to purchase facilities. The respondent states that the wording on previous purchases is confusing and the provision itself unfair and should not be included in the rule because all previous purchases should have met the requirements in place at the time the facilities were purchased.

Response: In March 1994, Congress added to the Head Start Act the provision allowing grantees to apply for facility purchases made after December 31, 1986. This requires that the rule refer to both prospective purchases and purchases already made, which results in wording that is necessarily somewhat awkward in places. To address this we have changed the definition of ''Purchase'' § 1309.3 by adding at the end ''Purchase also refers to an approved purchase of a facility which commenced between December 31, 1986, and October 7, 1992, as permitted by the Head Start Act and § 1309.2 of this part''. This has allowed the deletion of most of the references to previously purchased facilities in the rule. Where clarity of a particular provision of the rule required explicit reference to previously purchased facilities, that phrase was left in the provision in question.

Section 1309.3—Definitions

Comment: One comment to this section, asking for further definition of the phrase ''modular units,'' was received. The comment states that in the past many trailers, mobile classrooms, and modular units have been used by Head Start grantees, and questions have arisen as to when they were to be considered ''equipment'' and when they were considered ''real property subject to the full facility purchase requirements.''

Response: Section 644(f) of the Head Start Act, which this rule implements, states that the ''Secretary shall establish uniform procedures for Head Start agencies to request approval to purchase facilities * * * to be used to carry out Head Start programs.'' The Act makes no distinction between ''equipment'' and ''real property,'' or between temporary and permanent facilities. The policy of this rule, which we believe is consistent with the meaning of the Act, is that the purchase of modular units is subject to the provisions of the rule if they will be used to operate a Head Start program.

The definition of ''useful life'' as defined in the NPRM is vague and has been deleted.

For clarification purposes, we have added a definition of ''*Head Start center or a direct support facility for a Head Start program*'' and made minor edits to several definitions. We revised the definition of ''grantee'' to include reference to ''for-profit'' agency in accordance with the Head Act Reauthorization Amendments in the Coats Human Services Amendments of 1998, Pub. L 105–285.

Section 1309.10—Application

Comments—General: Several respondents to this section expressed concern that grantees might lose a facility they propose to purchase because of delays in securing ACF approval of their application. Two suggestions were received for dealing with this concern. One respondent proposes that there be an expedited approval process for facilities which are defined, according to established criteria, as ''at risk of being sold.'' The same respondent suggests that we establish ''parameters'' in making grant awards for facility purchases and allow a replacement property meeting these ''parameters'' to be purchased within 90 days if the original site is no longer available. Another respondent proposes that the application process be divided into two stages. The first stage would involve general approval of a facility purchase for a particular grantee as a policy matter. At this stage, the Department would determine whether the grantee's current space is inadequate and whether a waiver of non-federal share would be approved if requested, but would not be asked to approve the purchase of an actual facility the grantee is proposing to buy. The second stage would be a ''deal-specific'' approval, designed to allow decisions on a proposed purchase to be made relatively quickly and predictably. In this stage, requests for purchase of particular buildings would be reviewed, based on cost comparisons, environmental impact studies, and the condition of the proposed facility.

Response: We do not agree that it would be advisable to apply any special circumstances for the review of an application for a property ''at risk of being sold'' as suggested by one respondent. The decisions made by the responsible HHS approving official should not be hastened by the pressure of another buyer's interest in a property, but should be made based upon the merits of the application.

However, the concern expressed by the respondents that the review of applications for facility purchases be conducted expeditiously is understandable. In response to these concerns, a new § 1309.12 entitled ''Timely decisions'' has been added to the final rule. Section 1309.12 states that ''The responsible HHS official shall promptly review and make final decisions regarding completed applications under this part.''

In order to expedite the application review process, we strongly encourage all grantees considering the purchase of a facility to discuss their facility needs with the responsible HHS official prior to submitting the formal application or beginning negotiation for the purchase of the facility. As part of these discussions, the grantee and HHS approving official would consider whether the grantee's current space is

adequate and whether funds to complete the purchase and meet any ongoing financing commitments are available, or would be available at the time purchase is made. We believe that as a result of these early discussions, the grantee would be in a better position to submit a complete application which could receive prompt review.

Once a formal application is received by ACF, under these final rules, ACF would complete the review of the application within 60 days of receipt of the application. To the extent that the grantee works closely with ACF in this process, the review may be completed in less than 60 days. Applicants may contact their Regional Administrator to request a review of their initial determination.

Grantees are cautioned that they should not take any irrevocable action, such as entering into a purchase contract, until they have received a written confirmation of the Department's final decision that Head Start funds may be used to purchase the facility.

Comment—Section 1309.10(g): We received one comment on paragraph (g) of § 1309.10, which concerns grantees which apply for grant funds to purchase a facility based on the fact that a lack of alternative facilities will prevent the operation of the program. The respondent expresses a concern that this criterion is too strict and should be changed to allow a purchase if the purchase of the facility will improve program operation.

Response: This respondent's suggestion cannot be adopted. Section 644(f)(2)(C) of the Head Start Act mandates that a grantee seeking approval to use grant funds to purchase a facility demonstrate either that the proposed purchase will result in savings when compared to the costs that would be incurred to acquire the use of an alternative facility to carry out the program, or that there are no alternative facilities and the lack of alternative facilities will prevent the operation of the program. These two criteria are specific and we are thus unable to disregard the language of the statute in favor of the much broader criterion suggested in the comment. However, a clarification was added to this paragraph which requires that the statement explaining how it was determined that there is or was a lack of alternative facilities, be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's area.

Comments—Section 1309.10(i): Paragraph (i) of § 1309.10, which requires facility purchase applications to include information on the effect the purchase would have on the grantee's ability to meet the non-Federal share requirement, received one comment, which proposes that the non-Federal share requirement be waived for up to three years for programs which lose non-Federal contributions as a result of buying a facility, and that programs be allowed to use the full amount of non-federal contributions received in one year for a facility toward meeting the requirement for non-Federal share in future years.

Response: Non-Federal contributions, which are required by section 640(b) of the Head Start Act, are provided on a budget period basis. The commentor is suggesting that grantees who are relying heavily on accruing non-Federal share by occupying a building free of cost or at below market cost would lose this non-Federal share when purchasing a facility and may require several years to establish their required non-Federal match. However, there is no provision for providing blanket waiver requests across budget periods. Waiver requests must be submitted annually and are considered on a case-by-case basis against the statutory criteria.

Comment—Section 1309.10(j): A comment on paragraph (j) of § 1309.10 asks that we allow the requirement of certification by a licensed engineer to be fulfilled by the state official who reviews the plans and inspects child care facilities for licensing. The respondent states that in rural areas it is sometimes difficult to obtain professional services such as those of an engineer.

Response: The requirement of this paragraph is not that a private engineer make the certification, but that a person qualified to do so certifies that the building is structurally sound. With this in mind we have made a change in the language of this section to allow, in addition to licensed engineers, licensed architects to make the certification. While this change does not specifically address the suggestion made in the comment, it does broaden the categories of professionals who may make the certification, which should alleviate the difficulty some grantees might have experienced in obtaining this service. And, we reiterate that any engineer or architect qualified to judge the structural soundness of buildings of this type may make the certification. This in no way restricts grantees to using engineers or architects from the private sector.

Comment—Section 1309.10(k): The provision in paragraph (k) of § 1309.10 on one-time fees and expenses which are not subject to the limit on administrative costs received two comments. One respondent suggests that the words ''loan fees and related expenses'' be added to the illustrative list of one-time expenses in this paragraph. The other respondent states that expenses related to ownership, such as mortgage payments and maintenance costs, should be considered program costs not subject to the administrative costs limitation. If this cannot be done, the respondent states, the Department should recognize that waivers of the administrative cost limitation will have to be granted in these cases.

Response: We have adopted the first respondent's suggestion to add the words ''loan fees and related expenses'' to the illustrative list of one-time expenses in this paragraph. The suggestion of the second respondent has not been adopted. Grantees must analyze and categorize their costs as either development and administrative or program, depending on the nature and function of the expense, but may categorize costs as dual benefit costs if they are both administrative and programmatic in nature (see 45 CFR 1301.32). Space and related costs are frequently dual benefit costs, but categorization of costs must be done by each grantee based on the circumstances involved. The granting of waivers of the limitation on administrative costs is governed by 45 CFR 1301.32(g), which limits the granting of such waivers to situations in which development and administrative costs are being incurred but the provision of program services has not begun or has been suspended.

Comments—Section 1309.10(n): We received two comments on paragraph (n) of § 1309.10, which requires the application to include an assessment of the impact of the proposed acquisition on the human environment pursuant to the National Environmental Policy Act (NEPA) if the acquisition involves significant renovation or a significant change in land use. One respondent requested that we define more clearly ''significant change in land use'' and ''human environment,'' and a second respondent asked that we define as clearly as possible when the NEPA applies.

Response: We recognize that Head Start grantees may have little or no experience with the NEPA and that more information and guidance is needed to help provide an understanding of the law and its implementing regulations. This guidance will be furnished to grantees and will include a discussion of such terms as ''significant change in land use'' and ''human environment.''

Since publication of the NPRM a draft report of the Office of Inspector General of the Department of Health and Human Services on Head Start facility purchases has pointed out that ACF needs to have, as part of the information submitted by a grantee seeking approval of the use of grant funds to purchase a facility, information concerning possible environmental hazards present in the facility and land. The draft report states that ''The presence of environmental hazards can result in facilities that are unusable because the facilities cannot be licensed as safe for children'' and ''cleanup of hazards may be too costly and cause delays in using the Head Start facility.'' We agree with these statements and have added the phrase ''and a report showing the results of tests for environmental hazards present in the facility, ground water and soil, (or justification why such testing is not necessary)'' to paragraph (n) of § 1309.10 of the final rule.

Clarifying language was added to paragraph (h) in order to require the disclosure of information about ''balloon'' or other unconventional mortgage arrangements to ensure that future mortgage obligations can be met.

Section 1309.11—Cost Comparison

Comment—General: A comment was received which proposes that grantees which purchase facilities be required to take training in facilities management and preventive maintenance, and establish a funded reserve of up to five to ten percent of project cost for major repairs, with the unexpended balance of the fund from each year carried over to the next year.

Response: We will encourage grantees which purchase facilities to use their training and technical assistance funds to purchase needed training. The use of grant funds to establish or pay into a reserve or contingency fund is prohibited by the Office of Management and Budget Circular A–122.

Comment—Section 1309.11(c): A comment was received proposing to add a provision to paragraph (c) of § 1309.11 to increase the operating budgets of programs that have spent little or nothing on their current facilities. The same respondent suggests that, to increase the funds available to pay for facilities, a predictable federal source of funds be established to provide equity grants in the range of 20 to 25 percent of total project costs.

Response: Congress, when it amended the Head Start Act to authorize the purchase of facilities with Head Start grant funds, did not separately appropriate or earmark funds for this purpose. The legislative history of this section indicates that it was not the intent of Congress to fund facility purchases at the expense of enrollment or the provision of services to Head Start children and families.

Comment—Section 1309.11(d): One respondent expressed a concern that the cost comparison section does not include any discussion of the capitalization of mortgage payments for a facility.

Response: Paragraph (d)(2) of § 1309.11 specifies mortgage payments as an ongoing cost which must be separately delineated in the application. Nothing in the cost comparison section or any other part of the final rule is meant to discourage grantees from obtaining bank or other financing and from using grant funds to pay mortgages (both principal and interest). In fact, grantees are encouraged to obtain loans to finance facility purchases, since in most cases ACF will be unable to provide more than a part of the funds needed to purchase a facility unless the debt is amortized.

Comment—Section 1309.11(e): The ten year period for the cost comparison in the case of the proposed purchase of modular units drew a comment from one respondent, who states that it is arbitrary to allow a twenty year comparison for other-than-modular buildings and only a ten year comparison for modular units.

Response: ACF believes it is reasonable to impose a shorter comparison period for the purchase of modular units because they are on average less durable than traditional buildings. As was said in the preamble to the NPRM, the time periods for the comparison were chosen to achieve simplicity and consistency in the preparation and review of the applications, taking into account several factors, including the expected useful life of the facility and the period of the loan which may be needed to make the purchase.

Comment—Section 1309.11(f): There was one comment to paragraph (f) of § 1309.11 which states that if the facility is to be used for purposes in addition to the operation of the Head Start program, charges for use of the facility must be made by the grantee. The Preamble to the NPRM states that this paragraph prohibits shared ownership of facilities purchased with Head Start grant funds, and the respondent expresses the view that shared ownership should be allowed where costs are shared proportionately between the Head Start program and other entities.

Response: As a result of the comments in response to the NPRM, we have reconsidered our previous statement that we would not consider requests for funding which involved co-ownership of a facility. We will consider such proposals under the following circumstances where: the federal interest in the property can be fully protected; co-ownership will not impair the use of the property for Head Start purposes either now or in the future; and co-ownership does not create a prospect that the Federal government will be called on to undertake extensive or burdensome action to protect its interest in the property. One way to meet the first test is for a grantee to propose to purchase ownership of a unit in a project organized as condominium. Commercial as well as residential facilities can be organized as condominiums. The Head Start grantee would own a separate interest in the portion of the facility it uses to conduct its program, and a share in the undivided interest in the common elements of the project. The separation of the grantee's interest in the space which is used for its programs from that of other co-owners will limit the difficulties raised by the entanglement of the Federal interest with those of the facility's non-grantee owner.

While we continue to have these concerns about co-ownership, here in the final rule we are taking a more flexible approach to this question and will allow co-ownership, subject to approval of the responsible HHS official. This approval may be withheld if the official has reason to question the financial capability of the proposed co-owner to meet debt obligations it assumes to pay for the purchase.

Section 1309.21—Recording of Federal Interest and Other Protection of Federal Interest

Two comments were received on § 1309.21 of the NPRM. This section of the NPRM has been redesignated as §§1309.21 and 1309.22 in the final rule to separate and clarify the provisions dealing with protection of the Federal interest (§ 1309.21 of the final rule) and those concerning the rights and responsibilities of various parties in the case of a grantee's default on a mortgage (§ 1309.22 of the final rule). Section 1309.22 of the NPRM has been renumbered § 1309.23 of the final rule.

Comment—Section 1309.21(a): There was one comment on paragraph (a) of § 1309.21 of the NPRM (redesignated as paragraph (d) in the final rule), which concerns the protection of the Federal interest in facilities purchased with grant funds. The respondent states that the exact nature of the federal interest should be specified in the final rule.

Presumably, the respondent states, the interest will take the form of a restrictive covenant running with the land, which would generally not affect the lien priority of a lender's acquisition loan, as opposed to a lien instrument which could affect the lien priority of a lender's loan.

One respondent states that the final rule should, to the extent possible, standardize and describe the procedures ACF will use to authorize facility purchases which involve mortgages, provide a projected time frame for approval by ACF, and identify the criteria (i.e., loan structure and terms) ACF will employ in approving a mortgage. The respondent also suggests that the final rule expressly state that any lien priorities of HHS are subordinate to those of a lender providing an acquisition loan.

Response: In response to the first comment existing regulations and case law establish that the Federal Government has a beneficial ownership interest in all funds on hand with the grantee and property purchased with grant funds. The Federal Government's beneficial ownership interest can affect the lender's priority unless the Federal Government subordinates its interest. There has been a practice in other grant programs to allow banks to take a first lien position on property acquired by a grantee using a blend of grant and mortgage funds where necessary to obtain mortgage financing. If ACF and the mortgagee or creditor agree to subordinate ACF's Federal interest to the mortgagee's or creditor's interest in the property, that agreement must be set forth in a written subordination agreement that is signed by the responsible HHS official and that complies with 45 CFR 1309.21 and any other applicable Federal law.

A new paragraph (a) in § 1309.21 allows for a subordination of interest subject to several qualifications. Paragraph (b) of this section imposes restrictions on the use and disposition of the property and paragraph (c) prohibits the use of the facility for other than the purpose for which the facility was funded without the written approval of the responsible HHS official. The provisions contained in paragraphs (b) and (c) of section 1309.21 are based on the provisions found in 45 CFR parts 74 and 92 and respond to the comment suggesting that ACF explain the requirements for mortgage loan agreements. The new § 1309.22 was added to state the requirements for loan agreements in assigning rights and responsibilities in the event of grantee's default on mortgage, withdrawal or termination.

In § 1309.21, a new paragraph (f) describes certain provisions that must be included in subordination agreements in which the interest of the Federal Government in the subject facility has been subordinated. (A ''subordination agreement'' is an agreement by which one party agrees that its interest in real property should have a lower priority than the interest of another party.) The regulations provide that, in the event of a default under a mortgage in which the Federal Government has subordinated its interest, the lender must notify the Department as provided in the regulation, and that the notification must include a statement prominently displayed at the top of its first page that ''The Federal Interest in certain real property or equipment used for the Head Start program may be at risk, immediately give this notice to the appropriate government official.'' This notification is necessary to ensure that the Federal Government will receive adequate notice that the Federal interest in the property is at risk.

Comment—Section 1309.21(d)—(Section 1309.31(b) and (c) of the final rule): One comment was received on this paragraph, which concerns protection of the Federal interest in modular units which are purchased with grant funds and which are not permanently affixed to the land, or which are affixed to land which is not owned by the grantee. The respondent states that the final rule should more clearly define ''not permanently affixed to the land,'' and should clarify what approvals would be needed in the event the modular unit must be moved to another location.

Response: Paragraph (d) of § 1309.21 of the NPRM has been redesignated paragraph (b) of § 1309.31 of the final rule with the paragraph that comprised § 1309.31 in the NPRM designated as paragraph (a). This rule is not the appropriate place to try to precisely state when modular units are or are not ''permanently affixed to the land.'' For our purposes, the plain meaning of these words will suffice. The respondent's second point, concerning the moving of modular units to another location, raises a valid question and has been addressed by the addition of the sentence ''A modular unit which has been approved for installation in one location may not be moved to another location without the written permission of the responsible HHS official'' to new paragraph (c) in this section.

Comment—Section 1309.21(e)—(Section 1309.22 in final rule): One respondent states that the final rule should, to the extent possible, standardize and describe the procedures ACF will use to authorize facility purchases which involve mortgages, provide a projected time frame for approval by ACF, and identify the criteria (i.e., loan structure and terms) ACF will employ in approving a mortgage.

Response: Section 1309.21(e) of the NPRM has been substantially revised. This section of the final rule reflects suggestions made in the comment and our experience dealing with lenders who have loaned money to Head Start grantees to finance the purchase of facilities. Section 1309.22(a) of the final rule contains provisions required in a mortgage agreement, signed by a grantee which is borrowing money to finance the purchase of a facility, regarding circumstances in which the grantee defaults on the loan or ceases to be the designated Head Start agency. The purpose of this section is to make sure that Head Start facilities continue to be available to provide services to children and families in the community and are not lost to Head Start because of the failure of a grantee to meet its mortgage commitments, or because the grantee leaves the program. In carrying out this purpose we have sought to be reasonable and fair to all parties involved, including the lender, while protecting HHS's interest in the property.

The final rule includes a description of the terms which must be included in the mortgage agreement for a facility purchased with Head Start grant funds. These are agreements which must be followed if the grantee defaults or the grantee agency ceases to be the designated Head Start agency. While no attempt is made to specify all the terms which such agreements must contain, § 1309.22(a) does establish certain required provisions of these agreements. For example, such agreements must provide that in the case of a default by the grantee ACF has the right to ensure the default is cured by the grantee or another agency designated by ACF. The successor grantee would assume obligations and rights under the loan and mortgage agreements with the lender. The assumption of obligations under the loan is subject to the approval of the mortgagee or creditor, which may not be unreasonably withheld. ACF is requiring that the agreement provides ACF 60 days upon notification by the grantee of default to ensure the default is cured. The 60 day period is an increase over the 30 day period required in the NPRM. ACF is lengthening the required period before foreclosure because it is likely that the agency will need the full 60 days in some instances

to intervene. The Head Start program's response will require determining why the grantee did not fulfill its obligations under the mortgage, whether it has the capacity to resolve the problem without the intervention of the Head Start program, whether additional assistance is needed, and whether the grantee's failure is grounds for summary suspension. If the grantee is suspended, an interim grantee will have to be identified which will continue to operate the Head Start program.

ACF has revised the language in paragraph (c) to provide that the mortgagee or creditor shall pay ACF that percentage of the proceeds from the foreclosure sale of the property attributable to the Federal share in the value of the property. The new language more clearly states the requirement for calculating the amount of the sale proceeds due the Federal Government. The Federal share of a facility purchased with Head Start grant funds and sold after foreclosure by a lender is calculated based on the amount of the Federal contribution to the cost of acquiring the facility. For a facility purchased through use of a mortgage the amount of the Federal contribution includes grant funds used for the down payment on the facility, payments on the principal and interest on the mortgage and the cost of any renovations.

Section 1309.22—Insurance, Bonding and Maintenance (§ 1309.23 of Final Rule)

Comments: One comment to § 1309.22(a)(i) of the NPRM (now § 1309.23 of the final rule) states that it is assumed that this provision is not intended to prevent lenders from obtaining standard mortgagee title insurance coverage to safeguard their interests in the facility. A second respondent suggests that, in addition to title insurance and physical destruction insurance, other insurance, such as general liability and builder's risk insurance, will be needed to reflect ownership and contractual obligations. This comment states that physical destruction insurance should cover the ''replacement value'' rather than the ''full appraised value of the facility,'' since an appraisal may not reflect the actual cost of the facility and its contents.

Response: The assumption of the first respondent is correct. With respect to the second comment, we have changed § 1309.22(a) of the NPRM (§ 1309.23(a) of the final rule) to require grantees to provide the same insurance coverage as they provide to other property owned by them, but not less than the coverage delineated in this rule, and physical destruction insurance for the full replacement value of the facility. General liability insurance is covered by 45 CFR 1301.11(a), which requires private Head Start grantees and delegate agencies to carry reasonable amounts of student accident insurance, liability insurance for accidents on their premises, and transportation liability insurance.

Section 1309.33—Inspection

Comment: This section, which concerns the inspection of modular unit installations, received one comment, which suggests that we allow state officials to do these inspections. The reason is the same as the reason for the comment made to § 1309.10(j), above, that in rural areas it may be difficult to obtain engineers to do the inspections.

Response: Our response here is the same as it for the similar comment to § 1309.10(j): We have changed the language of the NPRM to allow architects as well as engineers to make the inspections, but have not otherwise altered the NPRM. As with § 1309.10(j), we wish to make it clear that any engineer or architect qualified to judge the soundness of the modular unit and its installation—whether working in the private or public sector—may make the certification.

Section 1309.41—Record Retention

Comment: A comment was received stating that it should be explicitly stated that the record-keeping requirements of this section are not meant to apply to lenders.

Response: The NPRM states that all records pertinent to the purchase must be maintained *by the grantee* for the period stated. Since this is clear by itself, we state here only that this requirement applies to Head Start grantees only and has no application to lenders.

Section 1309.42—Audit of Mortgage; Five Year Appraisal—(Reference to Five Year Appraisal Has Been Deleted From the Final Rule)

Comment: A comment on this section, which requires an appraisal of the value of a facility purchased with grant funds at least once every five years, states that the appraisal will be unnecessary and a poor use of program money.

Response: Upon reconsideration, we agree with the respondent that the requirement of an appraisal of the property at least once every five years is unnecessary and not the best use of scarce grant funds. We have deleted this requirement.

Section 1309.43—Use of Grant Funds to Pay Fees

We received no comments on this section and made no technical changes.

Section 1309.44—Program Income (Deleted From the Final Rule)

Comments: Two comments on this section disagree with the mandate of this section that program income, other than income from the sale of equipment or real property purchased with grant funds, be deducted from the total allowable costs of the budget period in which the income was produced.

Response: Generally, grantees are authorized to use program income under the additional costs alternative (which allows the use of the income to further eligible program objectives) unless there are persuasive reasons not to allow this alternative. The NPRM, however, limits the use of income derived from a facility purchased with grant funds to the deductive alternative, which requires the income to be deducted from the grantee's total costs for the budget period. Upon reflection, we are no longer convinced that there are persuasive reasons to limit grantees' flexibility on the use of this program income as a general rule, and this section has been deleted to reflect this change. Questions regarding program income from the sale or rental of real property purchased with grant funds will be answered by reference to the applicable provisions of 45 CFR part 74 or part 92. We wish to encourage grantees to collocate services with other service providers in the community and to use the facility, and program income generated from it, to further the goals and objectives of the program.

Section 1309.45—Independent Analysis (Redesignated § 1309.44 in This Final Rule)

Comment: One comment to this section was received, which proposed that this analysis should be conducted within 45 days to avoid the risk of grantees losing lenders and facilities.

Response: We appreciate that the independent analysis should not unduly delay a decision on the application. On the other hand if there were an unusually complicated transaction presented it would not be advisable to abandon the analysis because the 45 day period had expired. We therefore view this 45 day period as a goal which we expect to achieve in the future except under unusual circumstances.

This section has been redesignated § 1309.44 as a result of the deletion of the NPRM section on program income.

V. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This Final Rule implements the statutory authority for Head Start grantees to apply to use grant funds to purchase facilities. Congress made no additional appropriation to fund this new authority, however, and so any money spent toward the purchase of facilities for Head Start programs is money that would have been spent otherwise by the program or other programs from the same appropriation amount.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. CH. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities'' an analysis must be prepared describing the rule's impact on small entities.

Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While these regulations would affect small entities, they would not affect a substantial number. Furthermore, the cost of the application process and other activities undertaken as a result of these regulations will not have a significant economic impact because the Head Start program covers 80% of the allowable costs of grantees under the program. The remaining costs associated with compliance are part of the share of costs grantees agree to meet from their own resources when they enter the Head Start program. For these reasons, the Secretary certifies that this rule will not have a significant impact on substantial numbers of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. This final rule contains information collection and record-keeping requirements in §§ 1309.10 (application), 1309.40 (copies of documents), and 1309.41 (record retention) which have been submitted to OMB for review and approval in accordance with the Paperwork Reduction Act.

The respondents to the information collection requirements in the rule are Head Start grantees who may be State or local non-profit agencies or organizations. The Department needs to require this collection of information in order to assure that grantees who apply for approval to purchase a facility with Head Start funds have followed certain necessary legal and administrative procedures. Also these collection of information requirements are necessary for monitoring purposes.

The grantees who will be affected by these requirements will be those who request approval and are approved to purchase facilities for the purpose of operating a Head Start program. Based on the average number of grantees who have requested approval from the Department since the statutory authority became effective, October 7, 1992, the estimated annual number of grantees that will be affected is 200.

The actual submittal of an application (§ 1309.10) from a grantee to purchase a facility is a one time activity which is preceded by a number of preparatory activities. We estimate the time it will take to prepare the application in accordance with the requirements of this rule is 40 hours per grantee, calculated over a period of time. On an annual basis, the total hours estimated for submittal of applications from grantees are 8,000.

For copies of documents (§ 1309.40) and record retention (§ 1309.41) activities, we estimate the number of hours to be 1 hour per grantee and the total annual hours for all grantees who submit applications to be 200.

The Administration for Children and Families (ACF) will consider comments by the public on these proposed collections of information in:

- Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collections of information;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond.

OMB is required to make a decision concerning the collection of information contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Wendy Taylor.

List of Subjects in 45 CFR Part 1309

Acquisition, Facilities Purchase, Head Start, Real Property, Modular Units.

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

Dated: August 3, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: October 28, 1998.

Donna E. Shalala,

Secretary.

For the reasons set forth in the Preamble, 45 CFR Chapter XIII is amended by adding Part 1309 as follows:

PART 1309—HEAD START FACILITIES PURCHASE

Subpart A—General

Subpart B—Application Procedures

Subpart C—Protection of Federal Interest

Subpart D—Modular Units

Subpart E—Other Administrative Provisions

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

Subpart A—General

§ 1309.1 Purpose and application.

This part prescribes regulations implementing sections 644(c) and 644(f)

of the Head Start Act, 42 U.S.C. 9801 *et seq.*, as it applies to grantees operating Head Start programs under the Act. It describes the procedures for applying for Head Start grant funds to purchase facilities in which to operate Head Start programs, and the conditions under which grant funds may be awarded to purchase facilities. It also specifies the measures which must be taken to protect the Federal interest in facilities purchased with Head Start grant funds.

§ 1309.2 Approval of previously purchased facilities.

Head Start grantees which purchased facilities after December 31, 1986, and before October 7, 1992, may request retroactive approval of the purchase by submitting an application which conforms to the requirements of this Part and the Act. Grant funds may be used to pay facility purchase costs incurred only after the responsible HHS official approves an application for a previously purchased facility.

§ 1309.3 Definitions.

As used in this part,

ACF means the Administration for Children and Families in the Department of Health and Human Services, and includes the Regional Offices.

Acquire means to purchase in whole or in part with Head Start grant funds through payments made in satisfaction of a mortgage agreement (both principal and interest), as a down payment, for professional fees, for closing costs, and for any other costs associated with the purchase of the property that are usual and customary for the locality.

Act means the Head Start Act, 42 U.S.C. section 9801, *et seq.*

ACYF means the Administration on Children, Youth and Families, a component of the Administration for Children and Families in the Department of Health and Human Services.

Facility means a structure such as a building or modular unit appropriate for use by a Head Start grantee to carry out a Head Start program.

Grant funds means Federal financial assistance received by a grantee from ACF to administer a Head Start program pursuant to the Head Start Act.

Grantee means the local public, private non-profit or for-profit agency designated to operate a program pursuant to 42 U.S.C. 9836 or 42 U.S.C. 9840a.

Head Start center or a direct support facility for a Head Start program means a facility used primarily to provide Head Start services to children and their families, or for administrative or other activities necessary to the conduct of the Head Start program.

Modular unit means a portable prefabricated structure made at another location and moved to a site for use by a Head Start grantee to carry out a Head Start program.

Purchase means to buy an existing facility, either outright or through a mortgage. Purchase also refers to an approved purchase of a facility, commenced between December 31, 1986 and October 7, 1992, as permitted by the Head Start Act, and by § 1309.2 of this part.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Responsible HHS official means the official who is authorized to make the grant of financial assistance to operate a Head Start program, or such official's designee.

Subpart B—Application Procedures

§ 1309.10 Application.

A grantee which proposes to use grant funds to purchase a facility must submit a written application to the responsible HHS official. The application must include the following information:

(a) A legal description of the site of the facility, and an explanation of the appropriateness of the location to the grantee's service area, including a statement of the effect that purchase of the facility has had or will have on the transportation of children to the program, on the grantee's ability to collaborate with other child care, social services and health providers, and on all other program activities and services.

(b) Plans and specifications of the facility, including information on the size and type of structure, the number and a description of the rooms and the lot on which the building is located (including the space available for a playground and for parking).

(c) The cost comparison described in § 1309.11 of this part.

(d) If minor renovations are necessary to make the facility suitable to carry out the Head Start program, a description of the renovations, and the plans and specifications required by paragraph (b) of this section for the facility as it will be after renovations are complete.

(e) The intended uses of the facility, including information demonstrating that the facility will be used principally as a Head Start center or a direct support facility for a Head Start program. If the facility is to be used for purposes in addition to the operation of the Head Start program, the grantee must state what portion of the facility is to be used for such other purposes.

(f) Assurance that the facility complies (or will comply after completion of the renovations described in paragraph (d) of this section) with local licensing and code requirements, the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973. The grantee also will assure that it has met the requirements of the Flood Disaster Protection Act of 1973, if applicable.

(g) If the grantee is claiming that the lack of alternative facilities will prevent or would have prevented operation of the program, a statement of how it was determined that there is or was a lack of alternative facilities. This statement must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area. If a grantee requesting approval of the previous purchase of a facility is unable to provide such statements based on circumstances which existed at the time of the purchase, the grantee and the licensed real estate professional may use present conditions as a basis for making the determination.

(h) The terms of any proposed or existing loan(s) related to the purchase of the facility and the repayment plans (detailing balloon payments or other unconventional terms, if any) and information on all other sources of funding of the purchase, including any restrictions or conditions imposed by other funding sources.

(i) A statement of the effect that the purchase of the facility would have on the grantee's meeting of the non-Federal share requirement of section 640(b) of the Head Start Act, including whether the grantee is seeking a waiver of its non-Federal share obligation under that section of the Act.

(j) Certification by a licensed engineer or architect that the building is structurally sound and safe for use as a Head Start facility. If minor renovations are necessary to make the facility suitable for use to carry out a Head Start program, the application must include a certification by a licensed engineer or architect as to the cost and technical appropriateness of the proposed renovations.

(k) A statement of the effect that the purchase of a facility would have on the grantee's ability to meet the limitation on development and administrative costs in section 644(b) of the Head Start Act. One-time fees and expenses necessary to the purchase, such as the down payment, the cost of necessary minor renovations, loan fees and related

expenses, and fees paid to attorneys, engineers, and appraisers, are not considered to be administrative costs.

(l) A proposed schedule for acquisition, renovation and occupancy of the facility.

(m) Reasonable assurances that the applicant will obtain, or in the case of a previously purchased facility, has obtained a fee simple or such other estate or interest in the site sufficient to assure undisturbed use and possession for the purpose of operating the Head Start program. If the grantee proposes to purchase a facility without also purchasing the land on which the facility is situated, the application must describe the easement, right of way or land rental it will obtain or has obtained to allow it sufficient access to the facility.

(n) An assessment of the impact of the proposed acquisition on the human environment if it involves significant renovation or a significant change in land use, including substantial increases in traffic in the surrounding area due to the provision of Head Start transportation services, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and its implementing regulations (40 CFR parts 1500–1508), and a report showing the results of tests for environmental hazards present in the facility, ground water, and soil (or justification why such testing is not necessary). In addition, such information as may be necessary to comply with the National Historic Preservation Act of 1966 (16 U.S.C. 470f) must be included.

(o) Assurance that the grantee will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.* and 49 CFR part 24), and information about the costs that may be incurred due to compliance with this Act.

(p) A statement of the share of the cost of purchase that will be paid with grant funds.

(q) For a grantee seeking approval of a previous purchase, a statement of the extent to which it has attempted to comply and will be able to comply with the provisions of § 1309.22(a) of this part.

(r) Such additional information as the responsible HHS official may require.

§ 1309.11 Cost comparison.

(a) A grantee proposing to purchase a facility with grant funds must submit a detailed estimate of the cost of the proposed purchase, including the cost of any necessary minor renovations, and must compare the cost of purchasing the proposed facility to the cost of renting an alternative facility.

(b) All costs of purchase and ownership must be identified, including, but not limited to, professional fees, minor renovation costs, moving expenses, additional transportation costs, maintenance, taxes, insurance, and easements, rights of way or land rentals. An independent appraisal of the current value of the facility proposed to be purchased or previously purchased, made by a professional appraiser, must be included.

(c) The comparison described in paragraph (a) of this section must compare the cost of the proposed facility to the cost of the facility currently used by the grantee, unless the grantee has no current facility, will lose the use of its current facility, intends to continue to use its current facility after it purchases the new facility, or has shown to the satisfaction of the responsible HHS official that its existing facility is inadequate. Where the grantee's current facility is not used as the alternate facility, the grantee must use for comparison a facility (or facilities) available for lease in the grantee's service area and which are usable as a Head Start facility (meaning a facility large enough to meet the foreseeable needs of the Head Start grantee, and which complies with local licensing and code requirements and the access requirements of the Americans With Disabilities Act, if applicable, and section 504 of the Rehabilitation Act of 1973) or which can be made useable through minor renovation, the cost of which shall be included in the cost comparison. In the case of an application for approval of the previous purchase of a facility, the cost of the present facility must be compared to the cost of the facility used by the grantee before purchase of its current facility. If the facility used by the grantee before the purchase of its present facility was deemed inadequate by the responsible HHS official, the grantee had no previous facility, or if the grantee continued to use its previous facility after the current facility was purchased the alternative facility shall be an available, appropriate facility (or facilities) of comparable size that was available for rent in the grantee's service area at the time of its purchase of the current facility.

(d) The grantee must separately delineate the following expenses in the application:

(1) One-time costs, including, but not limited to, the down payment, professional fees, moving expenses, the cost of site preparation and installation of a modular unit, and the costs of necessary minor renovations; and

(2) Ongoing costs, including, but not limited to, mortgage payments, insurance premiums, maintenance costs, and property taxes. If the grantee is exempt from the payment of property taxes, this fact must be stated.

(e) The period of comparison is twenty years, except that for the purchase of a modular unit the period of comparison is ten years. For a proposed purchase the period of comparison begins on the date on which the proposal is made. For approvals of previous purchases, the period of comparison begins on the date the purchase of the facility took place.

(f) If the facility is to be used for purposes in addition to the operation of the Head Start program, the cost of use of that part of the facility used for such other purposes must be allocated in accordance with applicable Office of Management and Budget cost principles.

§ 1309.12 Timely decisions.

The responsible HHS official shall promptly review and make final decisions regarding completed applications under this part.

Subpart C—Protection of Federal Interest

§ 1309.20 Title.

Title to facilities acquired with grant funds vests with the grantee upon acquisition, subject to the provisions of this part.

§ 1309.21 Recording of Federal interest and other protection of Federal interest.

(a) The Federal Government has an interest in all real property and equipment purchased with grant funds for use as a Head Start facility. The responsible HHS official may agree to subordinate the Federal interest in such property to that of a lender which finances the purchase of the property subject to the conditions set forth in paragraph (f) of this section.

(b) Facilities acquired with grant funds may not be mortgaged or used as collateral, or sold or otherwise transferred to another party, without the written permission of the responsible HHS official.

(c) Use of the facility for other than the purpose for which the facility was funded, without the express written approval of the responsible HHS official, is prohibited.

(d) Immediately upon purchasing a facility with grant funds, or receiving permission to use funds for a previously purchased facility, the grantee shall

record a Notice of Federal Interest in the appropriate official records for the jurisdiction in which the facility is located. The Notice shall include the following information:

(1) The date of the award of grant funds for the purchase of the property to be used as a Head Start facility, and the address and legal description of the property to be purchased;

(2) That the grant incorporated conditions which include restriction on the use of the property and provide for a Federal interest in the property;

(3) That the property may not be used for any purpose inconsistent with that authorized by the Head Start Act and applicable regulations;

(4) That the property may not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the written permission of the responsible HHS official;

(5) That these grant conditions and requirements cannot be altered or nullified through a transfer of ownership; and

(6) The name (including signature) and title of the person who completed the Notice for the grantee agency, and the date of the Notice.

(e) Grantees must meet all of the requirements in 45 CFR parts 74 or 92 pertaining to the purchase and disposition of real property, or the use and disposal of equipment, as appropriate.

(f) In subordinating its interest in a facility purchased with grant funds, the responsible HHS official does not waive application of paragraph (d) of this section and § 1309.22. A written agreement by the responsible HHS official to subordinate the Federal interest must provide:

(1)(i) The lender shall notify the Office of the Regional Administrator, Administration for Children and Families, the Office of the Commissioner, Administration on Children, Youth and Families, Washington, D.C., and the Office of the General Counsel, Department of Health and Human Services, Washington, DC, or their successor agencies, immediately, both telephonically and in writing of any default by the Head Start grantee;

(ii) Written notice of default must be sent by registered mail return receipt requested; and,

(iii) The lender will not foreclose on the property until at least 60 days after the required notice by the lender has been sent.

(2) Such notice will include:

(i) The full names, addresses, and telephone numbers of the lender and the Head Start grantee;

(ii) The following statement prominently displayed at the top of the first page of the notice: ''The Federal Interest in certain real property or equipment used for the Head Start Program may be at risk. Immediately give this notice to the appropriate government official'';

(iii) The date and nature of the default and the manner in which the default may be cured; and

(iv) In the event that the lender will be exercising its remedy of foreclosure or other remedies, the date or expected date of the foreclosure or other remedies.

(3) Head Start grantees which purchase facilities with respect to which the responsible HHS official has subordinated the Federal Interest to that of the lender must keep the lender informed of the current addresses and telephone numbers of the agencies to which the lender is obligated under paragraph (b) of this section to give notice in the event of a default.

§ 1309.22 Rights and responsibilities in the event of grantee's default on mortgage, or withdrawal or termination.

(a) The mortgage agreement, or security agreement in the case of a modular unit which is proposed to be purchased under a chattel mortgage, shall provide in the case of default by the grantee or the withdrawal or termination of the grantee from the Head Start program that ACF may intervene. In the case of a default, the mortgage agreement or security agreement must provide that ACF may intervene to ensure that the default is cured by the grantee or another agency designated by ACF and that the lender shall accept the payment of money or performance of any other obligation by ACF's designee, for the grantee, as if such payment of money or performance had been made by the grantee. The agreement shall also provide that ACF will have a period of 60 days after notification by the grantee of default in which to intervene to attempt to cure the default. The agreement shall further provide that in the event of a default, or the withdrawal or termination of the grantee the mortgage may be assumed by an organization designated by ACF. The mortgagee or creditor will have the right to approve the organization designated to assume the mortgage, but such approval will not be withheld except for good reason. The provisions required for inclusion in mortgages must be included in the mortgages of previously purchased facilities unless a convincing justification for not doing so is shown by the Head Start grantee.

(b) The grantee must immediately provide the responsible HHS official with both telephonic and written notification of a default of any description on the part of the grantee under a real property or chattel mortgage.

(c) In the event that a default is not cured and foreclosure takes place, the mortgagee or creditor shall pay ACF that percentage of the proceeds from the foreclosure sale of the property attributable to the Federal share as defined in 45 CFR 74.2, or, if part 92 is applicable, to ACF's share as defined in 45 CFR 92.3. If ACF and the mortgagee or creditor have agreed that ACF's Federal interest will be subordinated to the mortgagee's or creditor's interest in the property, that agreement must be set forth in a written subordination agreement that is signed by the responsible HHS official and that complies with § 1309.21 and any other applicable Federal law.

§ 1309.23 Insurance, bonding and maintenance.

(a) At the time of acquiring a facility or receiving approval for the previous purchase of a facility, the grantee shall obtain insurance coverage for the facility which is of the same type as the coverage it has obtained for other real property it owns, which includes student liability insurance and which at least meets the requirements of the coverage specified in paragraphs (a)(1) and (2) of this section as follows:

(1) A title insurance policy which insures the fee interest in the facility for an amount not less than the full appraised value as approved by ACF, or the amount of the purchase price, whichever is greater, and which contains an endorsement identifying ACF as a loss payee to be reimbursed if the title fails. If no endorsement naming ACF as loss payee is made, the grantee is required to pay ACF the title insurance proceeds it receives in the event of title failure; and

(2) A physical destruction insurance policy, including flood insurance where appropriate, which insures the full replacement value of the facility from risk of partial and total physical destruction. The insurance policy is to be maintained for the period of time the facility is owned by the grantee.

(b) The grantee shall submit copies of such insurance policies to ACF within five days of acquiring the facility or receiving approval for the previous purchase of a facility. If the grantee has not received the policies in time to submit copies within this period, it shall submit evidence that it has obtained the appropriate insurance

policies within five days of acquiring the facility or receiving approval for the previous purchase of a facility, and it shall submit copies of the policies within five days of its receipt of them.

(c) The grantee must maintain facilities acquired with grant funds in a manner consistent with the purposes for which the funds were provided and in compliance with State and local government property standards and building codes.

Subpart D—Modular Units

§ 1309.30 General.

In addition to the special requirements of §§ 1309.31-1309.34 of this part, the proposed purchase or request for approval of a previous purchase of a modular unit is subject to all of the requirements of this part with the following exceptions:

(a) Section 1309.10(j) of this part, which requires a certification by a licensed engineer or architect of the structural soundness of a facility prior to approval of an application for grant funds, is replaced by § 1309.33; and

(b) Section 1309.21(d) of this part does not apply to the proposed purchase of modular units if the land on which the unit is installed is not owned by the grantee.

§ 1309.31 Site description.

(a) An application for the purchase or approval of a previous purchase of a modular unit must state specifically where the modular unit will be installed, and whether the land on which the modular unit will be installed will be purchased by the grantee. If the grantee does not propose to purchase land on which to install the modular unit or if the previously purchased modular unit is located on land not owned by the grantee, the application must state who owns the land on which the modular unit is or will be situated and describe the easement, right-of-way or land rental it will obtain or has obtained to allow it sufficient access to the modular unit.

(b) Modular units which are purchased with grant funds and which are not permanently affixed to land, or which are affixed to land which is not owned by the grantee, must have posted in a conspicuous place the following notice: ''On (date), the Department of Health and Human Services (DHHS) awarded (grant number) to (Name of grantee). The grant provided Federal funds for conduct of a Head Start program, including purchase of this modular unit. The grant incorporated conditions which included restrictions on the use and disposition of this property, and provided for a continuing Federal interest in the property. Specifically, the property may not be used for any purpose other than the purpose for which the facility was funded, without the express written approval of the responsible DHHS official, or sold or transferred to another party without the written permission of the responsible DHHS official. These conditions are in accordance with the statutory provisions set forth in 42 U.S.C. 9839; the regulatory provisions set forth in 45 CFR part 1309, 45 CFR part 74 and 45 CFR part 92; and Administration for Children and Families' grants policy.''

(c) A modular unit which has been approved for purchase and installation in one location may not be moved to another location without the written permission of the responsible HHS official.

§ 1309.32 Statement of procurement procedure for modular units.

(a) An application for the purchase of a modular unit must include a statement describing the procedures which will be used by the grantee to purchase the modular unit.

(b) This statement must include a copy of the specifications for the unit which is proposed to be purchased and assurance that the grantee will comply with procurement procedures in 45 CFR parts 74 and 92, including assurance that all transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. A grantee requesting approval of a previous purchase of a modular unit also must include a copy of the specifications for its unit.

§ 1309.33 Inspection.

A grantee which purchases a modular unit with grant funds or receives approval of a previous purchase must have the modular unit inspected by a licensed engineer or architect within 15 calendar days of its installation or approval of a previous purchase, and must submit to the responsible HHS official the engineer's or architect's inspection report within 30 calendar days of the inspection.

§ 1309.34 Costs of installation of modular unit.

Consistent with the cost principles referred to in 45 CFR part 74 and 45 CFR part 92, all reasonable costs necessary to the installation of a modular unit the purchase of which has been approved by the responsible HHS official are payable with grant funds. Such costs include, but are not limited to, payments for public utility hook-ups, site surveys and soil investigations.

Subpart E—Other Administrative Provisions

§ 1309.40 Copies of documents.

Certified copies of the deed, loan instrument, mortgage, and any other legal documents related to the purchase of the facility or to the discharge of any debt secured by the facility must be submitted to the responsible HHS official within ten days of their execution.

§ 1309.41 Record retention.

All records pertinent to the purchase of a facility must be retained by the grantee for a period equal to the period of the grantee's ownership of the facility plus three years.

§ 1309.42 Audit of mortgage.

Any audit of a grantee which has purchased a facility with grant funds shall include an audit of any mortgage or encumbrance on the facility. Reasonable and necessary fees for this audit are payable with grant funds.

§ 1309.43 Use of grant funds to pay fees.

Consistent with the cost principles referred to in 45 CFR part 74 and 45 CFR part 92, reasonable fees and costs associated with and necessary to the purchase of a facility (including reasonable and necessary fees and costs incurred prior to the submission of an application under § 1309.10 of this part or prior to the purchase of the facility) are payable with grant funds, but require prior, written approval of the responsible HHS official.

§ 1309.44 Independent analysis.

(a) The responsible HHS official may direct the grantee applying for funds to purchase a facility to obtain an independent analysis of the cost comparison submitted by the grantee pursuant to § 1309.11 of this part, or the statement under § 1309.10(g) of this part, or both, if, in the judgment of the official, such an analysis is necessary to adequately review a proposal submitted under this part.

(b) The analysis shall be in writing and shall be made by a qualified, disinterested real estate professional in the community in which the property proposed to be purchased is situated.

(c) Section 1309.43 of this part applies to payment of the cost of the analysis.

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