

construction and major renovation of facilities using Head Start funds should be consistent with procedures for the purchase of facilities and both should be brought together in one Rule. Therefore the Department issued a NPRM on February 9, 1999, which proposed to amend the Final Rule for Purchase of Head Start Facilities by incorporating the provisions governing construction and renovation of facilities.

V. Section-by-Section Discussion of the Comments Received

Seven parties submitted twenty-one comments. Only those sections on which comments were made, or to which changes were made are discussed below. The discussion of the sections follows the order of the table of contents of the Final Rule for the purchase of Head Start facilities and a notation is made wherever the section designations have been changed or deleted in the Final Rule.

Section 1309.1—Purpose and Application

This provision is being changed to make it clear that Early Head Start grantees are eligible to apply for facility funding, that the regulation implements the authority in section 644 (f) and (g), and to add the appropriate statutory citations covering the Early Head Start program. Early Head Start grantees are included as eligible for purchase funding under the definition of “grantee” under the existing regulations.

Section 1309.2—Approval of the Use of Head Start Funds To Continue Purchase of Facilities

The title and wording of this provision are being changed to make it clear that Early Head Start grantees may apply for funding to pay facility purchase costs for facilities purchased after December 31, 1986. This provision is also being changed to emphasize that applications are for the future use of funds for the continuing process of purchasing the facility rather than for approval of an earlier decision by the grantee to purchase the facility. The change is necessary to make the provision applicable to Early Head Start grantees which entered the program after 1994 and to clearly describe the activity for which funds are available. As with the current regulation, the amended regulation authorizes funds to pay facility purchase costs incurred after the responsible HHS official has approved the use of funds. The Head Start program wishes to emphasize that grant funds are available under this provision of the regulations for use in

paying off existing purchase mortgages or new mortgages which are being sought to refinance the existing debt incurred to purchase the facility. Funds are not available for payment of a new mortgage on a facility when the grantee had previously completed the purchase of the facility. The changes to this provision are being made without opportunity for public comment as permitted by 5 U.S.C. 553(b), when such opportunity is unnecessary. In this case, public comment is unnecessary because the individual changes either do not alter the substance of the provision, or are required to ensure the application of section 644(f)(1), authorizing the use of funds for continuing purchases of facilities, to Early Head Start grantees, along with the other provisions of section 644(f) and (g).

Section 1309.3—Definitions—Construction

Comment

We received one comment suggesting that a more precise definition of construction be established in this section. As defined in the NPRM, construction means, “new building and excludes alterations, renovations, additions, or work of any kind to an existing building.” The respondent noted that by this definition, projects which include attaching substantial additions to insignificant structures are classified as renovation projects. The respondent stated that these projects should more reasonably be defined as construction activities. The respondent also noted that projects which include the finishing of partly constructed buildings could reasonably be defined as construction projects rather than as renovation projects.

Response

The Head Start Act at section 644(g)(2) authorizes the Secretary, once a determination has been made that suitable facilities are not otherwise available, to authorize the use of financial assistance for “construction of facilities that are not in existence on the date of that determination.” We believe that the proposed definition of “construction” as “new building” is consistent with the statute and sufficiently clear to allow a responsible HHS official charged with making a determination about the funding of a project to make a common sense determination about the appropriate classification of a proposed project as either construction or major renovation. We are hesitant to adopt a more detailed definition because any such definition may create more uncertainty than the

proposed definition. Accordingly, we have decided not to modify the definition of “construction” in the final regulations.

Grantee

The definition of Grantee is being revised to specifically state that the definition includes agencies receiving funding to conduct Early Head Start programs.

Incidental Alterations and Renovations and Major Renovations

Comment

We received a comment about the distinctions provided in the proposed definitions between “incidental alteration and renovations” and “major renovations.” Incidental alterations are defined in the proposed Rule as alterations costing the lesser of \$150,000 or 25 percent of total direct costs approved for a budget period. The respondent stated that from time to time the costs of incidental alterations can exceed this dollar limit but still not meet the conditions as defined for major renovations in this section, making it difficult to classify the activity. The respondent suggests that the definition be modified to state that renovations are considered incidental if they do not meet the definition of major renovations as defined in the proposal Rule.

Response

By classifying incidental alterations and renovations we meant to differentiate these activities from major renovations so that grantees could move easily and with speed to improve the quality and safety of Head Start child care facilities. Further, our intention was to differentiate incidental renovations from major renovation activities which would ordinarily require greater technical consultation and would require more time and funding to accomplish.

We agree with the respondent that some incidental alteration and renovation projects could exceed the \$150,000 limit presently established in the definition. The \$150,000 limit on costs has been established in grants policy for approximately 10 years. During this time there has been a steady growth of Head Start enrollment, and a corresponding increase in the number and size of centers operated by grantees. We recognize that the costs for carrying out center improvements have increased. We are therefore amending the definition of “incidental alterations and renovations” to read “improvements to a facility which do not meet the definition of major