

and to avoid any question of the landlord's rights having been violated by the grantee's performing the major renovation. It is necessary for the responsible HHS official to see the lease to ensure that it includes the provisions required by 45 CFR 1309.21(d)(4) and any other terms the official considers necessary. Under 45 CFR 1309.21(d), the lease on a facility to receive major renovations must be long enough to permit the Head Start program to receive the full value of the grant-supported improvements.

We are changing 45 CFR 1309.10(l) to address situations where grantees propose using grant funds to acquire a facility that is or will be sited on land not owned by the grantee. A grantee proposing to acquire a facility without also purchasing the land on which the facility is or will be situated must include in its application a copy of the existing or proposed land lease or other document ensuring the grantee's right to occupy the facility. The lease or other document, which protects the Federal interest in the facility, must ensure undisturbed use and possession of the facility by the grantee for the purpose of operating a Head Start program or other program designated by ACF. We are also adding language to 45 CFR 1309.10(l) to ensure that the term of the land lease or other similar interest in the underlying land, which is owned by a party other than the grantee and upon which the facility to be acquired or renovated is located, is long enough to allow the Head Start program to receive the full value of that improvement.

We have also included in § 1309.10(l) a requirement that a grantee seeking funding for acquisition or major renovation of a facility sited on land not owned by the grantee must establish that there is no feasible alternative to the proposed project. A feasible alternative may exist whenever there is an opportunity for the grantee to purchase or construct an appropriate facility on land available for purchase in the grantee's service area. (A grantee applying for major renovation funding for a leased facility will be providing information on facilities available for purchase in its service area under §§ 1309.4 and 1309.11.) Where such an alternative site exists, the responsible HHS official should have the grantee provide information on the cost of purchasing or constructing a facility at the alternative site as part of the cost comparison under § 1309.11. Where the cost of the alternative project is less than the proposed project and will result in the purchase or construction of a suitable facility appropriate to the

needs of the grantee, the alternative project will be considered feasible.

The intent of the new wording is that the responsible HHS official shall not approve funding for acquisition of a facility which will be sited on property not owned by a grantee unless the land lease or other document ensures the Federal interest in the facility and the undisturbed use and possession of the facility by the grantee for ACF approved purposes. This goal can be accomplished, depending on the circumstances, by including appropriate terms in the lease or other document. The necessary terms will vary from one situation to another. The term of the lease or other arrangement should in most cases be for a period of years that is at least equal to the estimated useful life of the facility. The responsible HHS official should also consider whether it is necessary for the lease or other document to provide for the lessor's compensation of the grantee for any residual value of the facility at the time the grantee ceases to occupy the facility. Such a provision would be appropriate where the lease or other document provides that the grantee's occupancy would end before the term of the facility's projected useful life. In most cases, ACF should also have the right to intervene within a period of sixty days after default under the lease to have the grantee or some other organization cure the default and prevent termination of the lease. The Head Start program will be providing responsible HHS officials with additional guidance on the terms that should be considered for inclusion in the lease or other document in order to fully protect the Federal interest and the grantee's use and occupancy of the facility. It is also the intent of HHS to ensure that the purchase, construction, and major renovation of facilities sited on land not owned by the grantee only be undertaken when there is no feasible alternative available for providing a suitable facility for conduct of the program.

We have decided to change the wording of paragraph (m) of 45 CFR 1309.10 to indicate that all requests for funding to acquire or make major renovation to a facility must be accompanied by an assessment of the environmental impact of the proposed project. The current regulation makes this requirement applicable to certain facilities proposed for purchase. The change is necessary to ensure that all projects, which may result in significant environmental impacts, are identified in the application process. The responsible HHS official already has the authority to make requests for additional information about proposed facility

purchases. The existing regulations at 45 CFR 1309.10(r) (and the amended regulations at 45 CFR 1309.10(q)) require the grantee applying for facility funding to provide "[s]uch additional information as the responsible HHS official may require." This provision authorizes the official to request the grantee to provide any additional information on the proposed facility purchase including information regarding environmental impacts of the facility proposed for purchase. In most cases, we expect that the assessment requirement can be met through completion of a questionnaire on the project.

Paragraph (f) and (i) of § 1309.10 have been revised to refer to continuing purchases rather than previous purchases to make them consistent with the revised wording of § 1309.2.

Section 1309.11—Cost Comparison

We are adding wording to § 1309.11(a) to make it clear that the responsible HHS official has authority to require a grantee to provide additional cost information, such as when the grantee is proposing to acquire or make major renovations to a facility sited on land not owned by the grantee.

We have changed the wording in § 1309.11(c)(2) to require that the grantee compare the costs of the proposed construction project to the costs of purchasing a suitable alternate facility or owning, purchasing or leasing an alternate facility which can be made suitable for use through incidental alterations and renovations or major renovations. The change is being made to make the regulations consistent with the requirements of section 644(g)(1) regarding cost comparisons for construction projects.

We have also changed the wording in § 1309.11(c)(3). That provision will read in the final regulations "A grantee proposing to undertake a major renovation of a facility must compare the cost of the proposed renovation (including the cost of purchasing the facility to be renovated if the grantee is proposing to purchase the facility) to the cost of constructing a facility of comparable size. In place of the cost comparison required in the preceding sentence, a grantee proposing to make renovations to a leased facility must show that the monthly or annual occupancy costs for the term of the lease, including the cost of the renovation, is less than, or comparable to, the cost of purchasing or leasing any other facility in the grantee's service area which can be made suitable through major renovations, if such a facility is available."