

The new wording of § 1309.11(c)(3) does not require that Head Start grantees seeking funding to make major renovation to a leased facility compare the cost of constructing a facility of comparable size. We have decided to adopt this approach because it seems likely that a grantee for which construction is the cheaper alternative will apply for construction funding rather than for funding to make major renovations to a leased facility. However, a responsible HHS official will have the authority to require comparison with the costs of constructing an equivalent facility under 45 CFR 1309.10(q) when the official questions whether the proposed project is the lowest cost alternative for providing the Head Start program with a suitable facility. Section 1309.21(d)(2) is being revised to make it consistent with the revised wording of section 1309.2.

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

We are revising paragraph (d) of 45 CFR 1309.21 to protect the federal interest in facilities not owned by the grantee that will be undergoing major renovations paid for with Head Start funds and facilities acquired by grantees that are or will be sited on land not owned by the grantee, and to address the issue of when the Notice of Federal Interest must be filed under various circumstances. Our decision to include these provisions in the final regulations is based on the experience of the Head Start program in funding facility projects. The new wording in paragraph (d)(1) makes it clear that all facilities not owned by the grantee receiving a major renovation paid for with Head Start funds must be leased by the grantee. The lease must protect the right of the grantee, or some other organization designated by ACF in the event of the grantee's termination or withdrawal from the Head Start program, to occupy the facility for the term of the lease. The new wording of paragraph (d)(1) also imposes these requirements on projects involving the acquisition of a facility on land not owned by the grantee. We are also adding language to the same provision 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 the grant supported improvements.

The final wording of paragraph (d)(2) now provides new requirements

concerning when the Notice of Federal Interest is filed. The changes are being made to cover the different circumstances under which a facility or land on which a facility is to be constructed is purchased with grants funds. The revised wording of paragraph (d)(2) also provides that in the case of a leased facility undergoing major renovations, the Notice of Federal Interest shall be a copy of the executed lease and all amendments or an affidavit describing the terms of the lease. The revised paragraph (d)(2) also establishes new requirements for facilities now sited or to be constructed on land not owned by a grantee. In such cases, the Notice of Federal Interest shall be the land lease or other document protecting the Federal interest and ensuring the right of the grantee to have undisturbed use and possession of the facility. New wording in paragraph (d)(4) establishes requirements for the contents of leases, affidavits, and other documents serving as the Notice of Federal Interest for leased facilities undergoing major renovations and facilities sited on property not owned by the grantee.

In addition to including the provision on required terms of the lease in the final regulations, we will be issuing guidance to responsible HHS officials on additional terms which are desirable to include in leases of facilities receiving major renovations and facilities sited on land not owned by the grantee.

*Section 1309.22—Rights and Responsibilities in the Event of Grantee's Default on Mortgage, or Withdrawal or Termination*

*Section 1309.22(a)*

This section describes actions, which may be taken by ACF and lenders in the event a grantee defaults on the mortgage, or is terminated or withdraws from the Head Start program.

*Comment*

Some states use an instrument called a trust deed, which is a form of mortgage. A lender commented that the words "trust deeds" should be included along with the words "mortgage" and "chattel mortgages" in this section to make it clear that this is an acceptable instrument in states where it is used.

*Response*

In using the word "mortgage" ACF intends to mean also "trust deed" if that term is recognized by the state in question as a substitute for the word "mortgage." The wording of this provision is also being changed to encompass 45 CFR 1309.2, Approval of

the Use of Head Start Funds to Continue Purchase of Facilities.

*Sections 1309.23—Insurance, Bonding and Maintenance, 1309.30—General, 1309.31—Site Description, and § 1309.33—Inspection*

We are making a change in each of these provisions to make their wording consistent with the changes in the wording of 45 CFR 1309.2.

*Section 1309.44—Independent Analysis*

This provision is being amended by the final regulation to establish that a responsible HHS official may also direct the grantee to obtain an independent analysis of its cost comparison for a construction or major renovation project and that the cost of such analysis will be an allowable expense. The responsible HHS official will have the authority to require an independent analysis under the amended regulations. The extension of coverage of this provision to construction and major renovation projects makes explicit the responsible HHS official's authority under the amended § 1309.10(q), to require such information as part of the application process for construction and major renovation projects.

*Section 1309.49—Eligibility—Construction*

*Section 1309.50—Eligibility—Major Renovation*

These sections in the proposed regulations contained conditions grantees must meet in order to be eligible to receive funding to construct or conduct major renovations of a facility.

*Comment*

One respondent commented that the rules should be better organized. The respondent suggested that since an applicant must first establish that it is eligible to receive funding for construction or renovation of a facility, the criteria to establish eligibility for funding of these activities would logically precede all other provision of the Rule.

*Response*

We agree with this suggestion and § 1309.49 is re-designated as § 1309.4 and § 1309.50 is re-designated as § 1309.5.

*Section 1309.50—Eligibility—Major Renovations*

*Paragraph (b)*

This paragraph states that when a grantee requests funds to conduct major renovations of a leased facility the lease