

Report to Congress on
The Final Head Start Program
Designation Renewal System

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Administration for Children and Families
U.S. Department of Health and Human Services

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Executive Summary

On December 12, 2007, the Improving Head Start for School Readiness Act of 2007 (Public Law 110-134) amended the Head Start Act (the Act) to direct HHS to recompete certain Head Start grants. The Head Start Act, as amended, establishes that Head Start grantees will be awarded grants for a five-year period and only grantees delivering high-quality services will be given additional five-year grants non-competitively. Section 641(c)(1) of the Act requires the Secretary of HHS to develop and implement a system for designation renewal (e.g., Designation Renewal System or DRS) to determine if a Head Start agency is delivering a high-quality and comprehensive Head Start program that meets the educational, health, nutritional, and social needs of the children and families it serves, and meets program and financial management requirements and standards described in section 641A(a)(1) of the Act. *See* 42 U.S.C. §9836(c)(1). This regulation defines, for purposes of the Designation Renewal System, what comprises a high-quality comprehensive Head Start program. Under the rule, if a program does not meet any of the seven established conditions; they are de facto a high quality program for purposes of the Designation Renewal System.

Section 641(c)(1) of the Act requires that the DRS be developed to determine whether a grantee is providing high-quality services and meets the program and financial management requirements and standards described in section 641A(a)(1), 42 U.S.C. §9836A(a)(1) of the Act, based on:

- (A) Annual budget and fiscal management data;
- (B) Program review conducted under section 641A(c);
- (C) Annual audits required under section 647, 42 U.S.C. §9842;
- (D) Classroom quality as measured under section 641A(c)(2)(F); and
- (E) Program Information Reports.

Section 641(c)(8) of the Act also requires that the system be fair, consistent and transparent and that the Secretary periodically evaluate whether the criteria of the system are being applied in a manner that is transparent, reliable and valid.

The final rule detailing the DRS was published on November 9, 2011 and was developed after consideration of public comments received in response to the Notice of Proposed Rulemaking (NPRM) issued September 22, 2010, in the Federal Register [75 FR 57704]. Under the final rule, any Head Start grantee that meets one or more of the following seven conditions is not considered to be providing high-quality and comprehensive services and, thus, would be required to compete for continued funding:

1. One or more deficiencies identified through reviews other than the one's at the end of a grantee's first year of operation under section 641A(c)(1)(B)
2. Failure to establish and use goals for improving school-readiness of children through reviews other than the one's at the end of a grantee's first year of operation under section 641A(c)(1)(B), starting with the effective date of this rule.

3. Low score on one or more domains of the CLASS assessment tool starting with effective date of this regulation.
 - Any program that scores below the following “floors” or “low-quality thresholds” on any of the three CLASS domains would be required to compete:
 - Instructional Support – below 2
 - Emotional Support – below 4
 - Classroom Organization – below 3
 - Note that the differences in these scores reflect research on the relationship between scores and child outcomes.
 - Any program that scores in the bottom 10% on any of the three CLASS domains would be required to compete for continued funding, except that if a program scores in the bottom decile but the score equals or exceeds the exceptional level of quality threshold, the program would not be required to compete on the basis of this criterion.
4. License to operate revoked by a State or local licensing agency, except if the revocation is overturned or withdrawn before the announcement of the competition. A pending challenge to the license revocation, after correction of the violation, shall not affect application of the provision after the competition for five-year funding is announced. Head Start Agencies must report in writing to the responsible HHS official within 30 working days of December 9, 2011 if the agency has had a revocation of a license to operate a center by a State or local licensing entity during the period between June 12, 2009 and December 9, 2011.
5. Suspension of grant by ACF, except if the suspension has been overturned or withdrawn, or the suspended grantee has appealed the suspension and did not have a chance to show cause as to why the suspension either should be lifted or should not be imposed, in which case the grantee will not be required to compete based on this condition.
6. Debarment by any Federal or State agency; or disqualification from Child Adult Care Food Program (CACFP).
7. Within the 12-month period preceding the decision on whether a grantee must compete for funding, an ACF determination, based on an audit or investigation, that the grantee is at risk of ceasing to be a "going concern."

Data as of June 12, 2009 will be utilized for all of the conditions, with the exception of School Readiness Goals and CLASS for which data will be utilized starting with the effective date of this rule.

The final rule was crafted after consideration of the public comments received in response to the NPRM. While most of the criteria as described in the NPRM remained largely unchanged in the final rule, several changes were made in response to the comments and further analysis by HHS.

This included, but was not limited, to changes related to whether a minimum share of programs would be required to compete and how the CLASS: Pre-K scores would be used:

- **25 percent minimum share of programs:** The NPRM would have required that a minimum of 25 percent of grantees be designated for competition. If the seven criteria identified in the NPRM did not result in that number of programs being required to compete, an additional criterion would be applied to bring the share required to compete to 25 percent. The NPRM sought comment on how that additional criterion should be defined. This was the subject of many comments and most commenters raised concerns with this provision. The final rule does not retain this minimum threshold, but strengthens the criteria related to classroom quality as measured by the CLASS: Pre-K assessment tool. As a result, HHS estimates that about one-third of all programs will be designated for competition.
- **Criterion related to CLASS: Pre-K:** Under the NPRM, a program would be designated for competition if it scored below specific scores in one or more domains: instructional support, emotional support, and classroom organization. In the final rule programs that either score below a minimum threshold or meet a second subpart to the criteria would be designated for competition. The second subpart to the CLASS: Pre-K condition was added to require competition by grantees that have an average score for their classrooms that is in the lowest decile of grantees reviewed in that year in any of the three domains of CLASS: Pre-K, unless the grantee has a score of 6 or higher, which is the “standard of excellence” in the domain. The term “standard of excellence” means “exceptional level of quality” or “exceptional quality” and these terms are used interchangeably in the regulation.

The criterion also indicates that in the unlikely event that a program scores in the bottom decile but the score is above a threshold that indicates high quality, then it would not be required to compete. Congress has been kept informed about the development of this final rule. As required by section 641(c)(10)(B) of the Act, concurrent with publishing the proposed rule, HHS submitted a report to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate that provided a detailed description of the proposed new designation renewal system.

Head Start is the largest federal investment in early childhood education, serving nearly one million of our nation’s most vulnerable young children and their families. It is the federal government’s responsibility to make sure that these children and families get the highest quality services possible. The final rule makes structural changes in Head Start that will drive significant improvements in program quality. Specifically, for the first time in the history of Head Start, individual grantees whose programs fall short of certain standards will be required to compete with other organizations to continue receiving funding. Funds will be awarded to the organization that demonstrates it can best meet the needs of Head Start children and families.

Public Comment on Proposed Designation Renewal System

This section of the report summarizes the public comments received regarding the proposed Designation Renewal System, the Secretary's response to such comments, and changes made in the final rule. A more detailed discussion of the public comments may be found in the preamble of the final rule.

ACF received approximately 16,000 comments on the NPRM from Head Start grantees, parents, teachers and State associations; national organizations; and some academic institutions and legal entities. Most comments focused on: the proposed 25 percent minimum requirement for recompetition; retrospective review criteria; proposed conditions related to licensing, deficiencies, and audits; and, the proposed timing and method for using CLASS: Pre-K. Many respondents submitted comments in support of competition, stating that requiring grantees to compete would ensure that Head Start and Early Head Start children across the country receive high-quality services and that dollars invested are spent well.

Significant Regulatory Changes

Following is a summary of the most significant regulatory changes included in the final rule resulting from public comment. The Section-by-Section Discussion in the final regulation provides a detailed listing of the comments and responses. We considered each comment and made amendments in the final rule where appropriate. Revisions include:

- In §1307.3 of the NPRM, ACF proposed that a minimum of 25 percent of grantees reviewed in each cycle would be required to compete and proposed adding an eighth condition to achieve this. In response to comments, this threshold is replaced in the final rule.
- The seven criteria for recompetition in section 1307.3 are maintained with some modifications. A second sub-part to the CLASS: Pre-K condition is added.
- In addition to requiring grantees to compete based on CLASS: Pre-K scores below minimum quality thresholds, a relative threshold is added. Grantees that have an average score for their classrooms that is in the lowest decile of grantees reviewed in that year in any of the three domains of CLASS: Pre-K will be required to compete unless the grantees has a score of 6 or higher in the domain.
- Several definitions in response to comments including: "school readiness goals", "child-level assessment data", "aggregate child-level assessment data." Definitions of "designated ACF official" and "material weakness" have been removed for clarity.
- Data related to the school readiness goals condition will now be considered only after the effective date of the rule.
- Any center that has had a license revoked since June 12, 2009 will be required to report this revocation to ACF within 30 business days of the regulation becoming final.

- The audit finding of “material weakness” was removed from the audit condition.

Taken together, these changes ensure rigorous competition in the Head Start program and provide an approach that is transparent and based on the most valid and reliable indicators of performance currently available to ACF. Current data from Head Start monitoring and CLASS reviews suggest that roughly a third of grantees would be designated for competition based on the revised criteria. While there are limitations on the precision of estimates with current data, it is clear that this approach will hold grantees to high standards and lead to rigorous competition.

Discussion of General Comments

This section provides an abridged version of the preamble in the final rule that was published November 9, 2011 discussing general comments on the regulation and is followed by significant section-specific comments. The preamble of the published regulation at [76 FR 70010] provides additional detail regarding public comments.

Concerns over Competition

Comment: Many respondents endorsed the principle that grantees not conducting high quality programs should be required to compete for further funding. However, others opposed competition among Head Start and Early Head Start grantees for a variety of reasons, including costs vs. benefits; hardship and stress for staff resulting from the loss of jobs and loss or disruption of employee benefits; disruption of services; and the possibility that grantees required to compete will be stigmatized. Some respondents stated that to avoid potential stigma it would be better to compete all programs. Additionally, commenters expressed concerns that recompetition could be a disincentive for organizations to collaborate with Head Start because of the potential instability of the funding.

Response: We appreciate the concerns expressed by commenters and the suggestions provided to utilize alternative means of holding grantees accountable. However, the 2007 reauthorization of the Head Start Act required the establishment of five-year grants and a Designation Renewal System by which grantees would compete for renewed funding if they were not determined to be providing high-quality and comprehensive services. We can assure commenters that we intend to make every effort to ensure continuity of services to children and families, although we acknowledge that it is possible that some short-term disruption of services might occur if and when service providers change.

We think it is important to note that requiring a Head Start or Early Head Start grantee to compete for continued funding is not the same as taking a grant away or defunding a grantee. Requiring a grantee to compete means that if a grantee wants to continue to provide Head Start or Early Head Start services to the community, it must apply, along with any other entities that choose to do so, for on-going funding and demonstrate that it is the most capable entity to do so.

Use of Retroactive Data

Comment: We received many comments regarding the provision that most of the DRS conditions would be based on data regarding grantee performance starting on June 12, 2009.

Respondents claimed that by considering pre-regulation events, ACF was imposing the DRS retroactively and in a manner inconsistent with Congressional intent, that ACF's delay in proposing the regulation should disqualify ACF from imposing retroactive requirements, and that the statute did not require ACF to consider events between June 12, 2009, and the effective date of the regulation. Some commenters objected to the consideration of performance beginning on June 12, 2009 for only certain conditions, such as the establishment of school readiness goals.

Response: In the NPRM we proposed, with one exception, application of data collected starting on June 12, 2009, because that is the date specified in the Act before which the system for designation renewal cannot apply. We have maintained in the final rule that data collected beginning on June 12, 2009, may be considered for all of the conditions, with the exception of the conditions related to school readiness goals, and the CLASS: Pre-K which was proposed in the NPRM to apply after the effective date of the rule. The five conditions for which data collected prior to the effective date of the regulation will be considered are based on Head Start requirements that pre-date this regulation, and were known to grantees as requirements for which they would be held accountable.

Failure to comply with these requirements, even before this regulation was effective, could lead to adverse consequences, such as termination or suspension. Specifically with respect to licensing, Section 641A(a)(D)(i) requires that "facilities used by Head Start agencies for regularly scheduled ...classroom activities shall meet or exceed State and local requirements concerning licensing for such facilities." These requirements to meet state and local licensing standards are echoed in Head Start regulations 1306.30(c). Clearly the revocation of a license to operate – a licensing entity actually shutting down a center -- is clear and direct evidence that a program is not meeting or exceeding state and local licensing requirements. With respect to disqualification from USDA to participate in the CACFP, Head Start regulations at 1304.23(b)(i) require that all programs "must use funds from the USDA Food and Consumer Services Child Nutrition Programs as the primary source of payment for meal services." A program disqualified from CACFP would be unable to comply with this long standing requirement. With respect to audit findings potentially jeopardizing a Head Start grant pre-dating this regulation, the Act and existing Head Start regulations at §1301.12 require an annual audit of all programs to ensure that statements are accurate, that they are complying with the terms and conditions of the grant and that financial and administrative procedures and controls have been installed and are operating effectively.

On the "one deficiency" condition, the concept of a "deficiency" and the process for correcting a deficiency have been part of the Head Start Act (Section 641A(e)) and the Head Start Performance Standards (45 CFR 1304.60) for many years. Deficiency was defined in Section 637 of the Act and a process for identifying and correcting deficiencies clarified and revised in Section 641A. Therefore, grantees reasonably had notice that a deficiency finding was important and could jeopardize their grant. Grantees also had notice before the adoption of the Designation Renewal System regulation that both debarment and suspension were evidence of programming that was not high quality because debarment is defined in section 637(2) of the Head Start Act as a deficiency and suspension was associated with violations of Head Start requirements under 45 CFR 1303.10(a). We also believe that the Act gave grantees clear and sufficient notification of the potential consequences of failing to deliver a high quality and comprehensive Head Start program and that their performance beginning on June 12, 2009, could be considered under the

DRS to determine whether a grantee must re-compete for a five-year grant. We believe that not considering important performance data as soon as allowable by the Act would delay this important mechanism for ensuring grantee accountability and could result in re-awarding grants non-competitively to entities that are not the best equipped to provide high-quality services in that community.

Designation Renewal System Final Decision

Comments: A number of commenters suggested that grantees should have the ability to appeal the determination that they must compete for renewed funding. Other respondents suggested that each condition should be appealable or correctable. Some stated that the requirement to compete could injure grantees reputation which could result in a loss of funding from other sources and therefore due process rights should be afforded.

Response: Congress did not require that grantees designated to compete for further funding be given an opportunity to appeal. Congress did require appeals for grantees that are terminated or suspended for more than 30 days and for delegate agencies that are terminated or who have their applications rejected. Because Congress did not require appeal rights for grantees required to compete for further funding, apparently Congress did not believe that the requirement that a grantee compete for further funding was on a par with termination or other actions for which Congress did require appeals.

Additionally, all eligible entities that have not been terminated from providing Head Start or Early Head Start services in the preceding five years – including the grantees designated for competition -- are able and encouraged to apply through that competition. Unlike a grant termination, a requirement to compete provides a mechanism for a current grantee to demonstrate its capacity to provide a high quality program while providing ACF the ability to shift funding to more capable entities if such entities exist in the community. Further, a grantee that competed and lost a competition would remain eligible for future competitions. So, the grantee that must compete for further funding is one whose level of compliance is sufficient to justify continuance in the Head Start program, provided that no other organization in the same community establishes, via a competitive process, that it is better able to provide a high quality and comprehensive program. Thus the decision to require competition cannot reasonably be expected to damage the grantees reputation in such a way as to deprive it of funding from another source.

In response to the suggestions for training and technical assistance for those grantees that meet one of the seven DRS conditions, we note that all grantees already receive training and technical assistance on a variety of related topics and grantees also may request special assistance as needed.

Large Grantees and Delegate Agencies

Comments: A number of commenters raised concerns about designation renewal as it relates to supergrantees (e.g., grantees that serve over 5,000 children or administer grants that cover a large geographic region) or large grantees that have a great number of programs or agencies that provide Head Start services on behalf of the grantee. Concerns were raised that large grantees

are more likely to be required to compete because they have more classrooms and provide services to a greater number of families. Several commented that ACF should limit competition to only the service area found to have met one of the seven conditions, rather than requiring the grantee to re compete for its entire service area. A number of respondents raised concerns that the problems of a single delegate agency would cause an entire grantee to compete.

Response: All grantees are responsible for ensuring that all children and families participating in the program receive high-quality services, regardless of how many children are served, where the children are served or by whom the children are directly served. Section 1304.51(i)(2), a longstanding regulation, requires grantees to establish and implement procedures for the on-going monitoring of their programs, regardless of the size or structure of that grantee. A grantee's failure to ensure high quality services are being provided to children that are served in any of their locations indicates that the grantee has failed to maintain a high-quality Head Start program through their on-going monitoring. Thus, we have made no changes in response to these comments.

Specifically with the respect to deficiencies identified through Head Start monitoring, a deficiency reflects a very serious program violation. In a large grantee, a deficiency would not be cited for an isolated incident unless it is very severe or was not corrected when identified as a non-compliance. Since the statutory definition includes that a deficiency is a "systemic or substantial material failure," it accounts for differences in the size of grantees in that an issue that might be material or systemic in a very small grantee may not meet the thresholds of material or systemic in a very large grantee. For example, ten child health records being incomplete in a program serving 20 children could indicate substantial material and systemic problems; however, ten child health records being incomplete in a program serving 10,000 children would not indicate substantial material and systemic problems.

Migrant and Seasonal Head Start Programs

Comments: A number of comments mentioned that the NPRM was silent on Migrant and Seasonal Head Start (MSHS) programs and questioned whether the rule applied to MSHS. Some thought that MSHS programs should be subject to competition under the same rules in place for non-MSHS programs while others requested special considerations for MSHS programs because of the unique challenges MSHS programs face delivering services to children of migrant and seasonal farm workers.

Some respondents expressed concern with the reliability and clarity of the seven conditions proposed in the NPRM for MSHS programs specifically asking whether the CLASS: Pre-K conditions are culturally and linguistically appropriate for MSHS programs or other dual language learner children.

Response: The statute is clear that the length of all grants awarded under the Act is five years and that all Head Start grants should be subject to the DRS to determine if they are required to compete for their grants. Congress did not include an exception for MSHS programs. As a result, this entire rule applies to MSHS programs and we have not established separate conditions or a different standard for any program type. However, under §1307.3(b)(2)(i), we allow programs operating less than 90 days, as many MSHS programs do, to aggregate and

analyze their child-level assessment data at least two times within their operating program period, rather than at least three times per year as is required for other Head Start programs. ACF encourages programs facing difficulties with requirements where waivers are authorized under statute or current regulations to submit a request for a waiver.

Alternatives to the Proposed DRS

Comment: Some commenters offered alternative methods to determine which grantees should be required to compete. For example, several recommended an external review process similar to that used to review hospitals and healthcare organizations by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Others recommended alternative systems such as 1) alternate criteria and an alternate timeline over the five-year grant period, 2) using a tiered system to rate grantees, 3) considering additional information such as national accreditation and 4) randomly assigning some grantees to competition.

Response: We appreciate the alternatives suggested by commenters. However, ACF does not believe that any of the systems proposed could be implemented in a fair, consistent and reliable manner within the parameters of the Act. We continue to believe the system for designation renewal proposed in the NPRM, with the adaptations made in the final rule, provides a fair, transparent and evidence-based approach for determining whether Head Start and Early Head Start agencies are delivering high-quality and comprehensive programs that meet the educational, health, nutritional, and social needs of the children and families they serve and meet program and financial management requirements and standards.

Section-by-Section Discussion of Comments and Final Rule

Proposed §1307.1 – Purpose and Scope

Comment: Some commenters questioned the authority to apply the Designation Renewal System to Early Head Start grantees.

Response: HHS has the authority to establish requirements for the design and operation of Early Head Start programs under section 645A(b)(12), 42 U.S.C. §9840A(b)(12) of the Act and to establish requirements for the time, manner, and content of applications under section 645A(d) of the Act. ACF believes that requiring Early Head Start grantees that are not providing high-quality, comprehensive services to compete for further funding is necessary to assure that all children receive high-quality services under the program.

Proposed §1307.2 – Definitions

Comments: A number of comments were received on definitions proposed in the NPRM. Commenters requested modification of the proposed definitions of “agency” and “material weakness.” Others requested that we add new definitions including: “aggregate child assessment data,” “child-level assessment data,” “Migrant and Seasonal Head Start,” “redesignation assessment,” and “school readiness goals.” Commenters suggested that, for the sake of consistency, ACF use the term “responsible HHS official,” which is used in other Head Start regulations, instead of “designated ACF official.” Commenters suggested adopting the

definition of “material weakness” in the Governmental Accountability Office “Government Auditing Standards,” in place of the definition proposed in the NPRM.

Response: Based on the comments received, we have added definitions of the following terms to the rule: “aggregate child-level assessment data,” “child-level assessment data,” and “school readiness goals.” For the reasons explained below, we also have removed the proposed terms: “designated ACF official” and “material weakness.” We also made a minor technical change to the definition of “transition period” to conform to other changes in the final rule.

As suggested, ACF has changed the term used throughout the final rule to “responsible HHS official” to be consistent with other regulations. As such, we also have deleted the definition of “designated ACF official” proposed in the NPRM. In the final rule, we are deleting the proposed definition of material weakness since, as discussed below, we are modifying §1307.3(g) to remove a finding of material weakness as a condition for recompetition, as had been proposed in the NPRM. We have not included a definition of designation review, but have modified §1307.7 to clarify what the designation review entails, i.e., that it is a review by ACF of grantee data to determine if one or more of the conditions specified under §1307.3 were met by the agency’s program during the relevant time periods also described in that section.

We have added a definition to the rule to specify that “school readiness goals” mean the expectations of children’s status and progress across domains of learning and literacy development, cognition and general knowledge, approaches to learning, physical well-being and motor development, and social and emotional development that will improve their readiness for kindergarten. This definition is consistent with guidance from the Office of Head Start, section 641A(g) of the Act, and draws from comments.

The definition added in the final rule clarifies that “child-level assessment data” means “the data collected by an agency on an individual child from one or more valid and reliable assessments of a child’s status and progress, including but not limited to direct assessment, structured observations, checklists, staff- or parent-report measures, and portfolio records or work samples.” This definition is intended to make it clear that we are not imposing a new requirement to use only direct standardized assessment data; rather, agencies may use any one of a number of different methods to gather child-level assessment data (including but not limited to the methods identified in the definition). This is consistent with long standing Head Start regulations at §1304.20(b), (d) and (e) related to on-going assessment of children.

Also in response to comments, we have added a definition of “aggregate child-level assessment data” to mean “the data collected by an agency on the status and progress of the children it serves that have been combined to provide summary information about groups of children enrolled in specific classrooms, centers, home-based or other options, groups, or setting, or other groups of children such as dual language learners or to provide summary information by specific domains of development.” This definition will help programs understand how to utilize this data to understand the status and progress of children in their program and implement appropriate program improvements. It is consistent with best practices in the early childhood education field. Finally, the term “Migrant or Seasonal Head Start Program” is defined in section 637(17) of the Act and therefore we do not have the authority to change the definition of this term through regulation.

Proposed §1307.3 – Basis for determining whether a Head Start agency will be subject to an open competition. (Note that proposed §1307.3(a) and (c) have been removed in the final rule. As a result, proposed §1307.3(b)(1) to (7) have been redesignated as final §1307.3(a) to (g).)

Proposed §1307.3(a) – Minimum of 25 percent (removed in final rule)

Comments: The vast majority of comments received on the NPRM pertained to the proposed criterion to ensure that a minimum of 25 percent of grantees are required to compete each year. Respondents stated that the 25 percent requirement is arbitrary, capricious, and unfair. Many of these respondents claimed the minimum percent results in an unfair quota system. Some expressed concern that the quota itself rather than the quality of programs would drive decisions.

Respondents also stated that the approach is not transparent because it fails to articulate a specific standard of quality that programs can aim to meet.

Commenters noted that Congress specifically required the development of a merit-based system, and that competing 25 percent of all grantees reviewed in a given year regardless of the quality of those programs does not meet the statutory requirement for a program-by-program determination of whether “a Head Start grantee is successfully delivering a high-quality and comprehensive Head Start program.” The most frequently expressed consequence of the 25 percent minimum is that it could cause high-quality programs to be required to compete for continued funding.

Some respondents requested more clarification on this provision. Others offered alternatives to the minimum 25 percent provision. Some recommended ACF use standard, objective, absolute measures only. Commenters also offered suggestions if the 25 percent minimum remains in the final rule; such as recommending that high performers be exempt from competition and that the remaining 25 percent of grantees be chosen by lottery. Others suggested creating a tiered system of quality, which would identify programs along a quality spectrum rather than drawing a single line between high- and low-quality programs. There were also a number of comments in favor of the 25 percent minimum noting it would ensure robust levels of competition and drive all programs to strive for excellence. A few respondents suggested a higher percentage requirement.

Response: ACF carefully considered all the comments received and we have replaced the 25 percent minimum provision in the final rule with a revised CLASS: Pre-K condition. The revised two-part condition will ensure robust competition and guard against potential score inflation, using this valid, evidence based classroom evaluation tool. In addition to those programs that score below a minimum threshold, programs that score in the bottom ten percent in any of the three domains of classroom quality measured by CLASS: Pre-K will be required to compete for further funding. This will ensure that standards remain high, but that grantees are held to objective, meaningful standards. Furthermore, to respond to comments received that the 25 percent provision could result in high-performing programs being required to compete, the CLASS-based criteria further stipulates that in the unlikely event that a program that scores in the bottom decile in a domain but whose score in the domain meets the “standards of excellence” will not be required to compete.

Taken together, the revised CLASS-based criteria and the other six conditions meet the same goal of ensuring high standards and driving continuous quality improvement, which was specified in the NPRM. Namely, these criteria ensure robust competition and, based on currently available data, will result in roughly a third of all programs being designated for competition. Additionally, these criteria are transparent and guard against potential score inflation while addressing legitimate concerns raised by commenters.

Proposed §1307.3(b)(1) – Deficiency (§1307.3(a) in the final rule)

Comment: A significant number of comments received related to the proposed condition that an agency that has been determined by ACF to have one or more deficiencies on a single review conducted under section 641A(c)(1)(A), (C), or (D) of the Act would be required to compete. Some commenters shared support for the proposal, while other respondents stated that there is insufficient data on monitoring findings available to evaluate the merits of this condition. Many respondents stated that the definition of deficiency is unclear.

Other commenters noted that there are inconsistencies in the OHS monitoring review system and process for determining deficiencies. As a result, they believe the criteria for determining a deficiency finding is subjective and varies among on-site monitoring teams or the ACF official. ACF received nearly 5,000 comments related to monitoring reviews. A number of Tribes noted that many reviewers do not understand the concept of Tribal sovereignty. Other responses objected to the standard of one deficiency triggering competition and stated that ACF has not articulated clearly its rationale for using a single deficiency condition.

Some respondents stated that different deficiencies do not represent problems of equal severity; some are more serious or systemic issues than others. Many comments stated that grantees should have the opportunity to appeal deficiencies before a grantee is required to compete. Some recommended that a weighting system be applied for findings from unannounced visits versus those found during announced monitoring reviews. A number of respondents recommended that ACF revise the condition to focus on a pattern of deficiencies, deficiencies based on their severity, deficiencies that directly impact services to children and families, or multiple deficiencies in a single review.

Response: In response to concerns that there is insufficient data on monitoring findings available and suggestions that ACF should publish a list of deficiencies on an annual basis, we note that we publish an annual report that provides a description of the monitoring review process, a summary of findings of the monitoring reviews conducted in each fiscal year (including a list showing the number of noncompliances and deficiencies by Head Start requirement). This annual report to Congress also includes the outcomes of follow-up actions on grantees with required corrective actions, and any recent steps taken regarding monitoring and program integrity. The annual report on Head Start monitoring can be found at the following link: <http://eclkc.ohs.acf.hhs.gov/hslc/>.

ACF stands behind the integrity of the monitoring review process used for all Head Start and Early Head Start grantees. Consistent with section 641A(c)(2)(G) of the Act, OHS regularly reviews and revises its monitoring process and protocol. Each year, OHS makes some changes to its monitoring protocol and trains all reviewers on the changes. In order to ensure interrater

reliability, OHS annually trains reviewers before the monitoring year begins. The determination that a finding constitutes a deficiency is not made on-site by monitoring review teams, but rather is made after OHS and ACF experts and senior staff conduct a deliberative and rigorous review of the evidence. The results of the monitoring process are tested when grantees that have been terminated based on a failure to correct deficiencies appeal their terminations. In the overwhelming majority of these appeals, ACF's judgment that a deficiency existed, and that the grantee had failed to correct the deficiency, have been upheld by the Departmental Appeals Board. These rulings have often been made without the necessity of conducting a hearing because the grantee has not challenged ACF's factual findings. When a program is cited for a deficiency, it is an indication of a significant failure to meet program requirements. We believe that when a program fails to meet these standards, it is entirely appropriate to require them to compete for funding to determine if children would be better served by a different entity.

As stated in the preamble to the NPRM, ACF firmly believes that a grantee determined to have one or more deficiencies in a single review has demonstrated that it does not meet the requirement of being a high-quality program. ACF believes it is a reasonable standard that programs identified as having a deficiency, which, in summary, is defined as a systemic or material failure to meet program performance standards, a systemic or material failure of the governing body of an agency to fully exercise its legal and fiduciary responsibilities, or an unresolved area of noncompliance, should be required to compete for funding to determine if they are the most capable entity to provide Head Start or Early Head Start services to that community. This condition also is grounded in the Secretary's Advisory Committee's recommendations related to "Key Quality Indicators." It is important to note that, as stated in the NPRM, ACF will consider data from triennial reviews, follow-up reviews, and other reviews—and not first-year reviews.

It is ACF's position that grantees should have systems in place to avoid the types of failures that constitute deficiencies as defined in the Act, including the ability to resolve a noncompliance in the specified corrective action timeframe before it is considered a deficiency. While it is true that deficiencies can reflect problems of varying levels of severity, all deficiencies represent a significant failure to provide services consistent with Head Start Program Performance Standards and therefore it is appropriate to require a competition to determine if the current grantee or another entity is the most qualified provider in that community.

The Act does not provide for an appeal of deficiency findings, unlike terminations and suspensions lasting more than 30 days. Grantees currently have the opportunity to discuss the progress of the monitoring review while the review team is on site. Although the final determination is not made during the on-site review, grantees consistently are informed of the opportunity to provide additional input when concerns are identified while the team is on-site.

In 2007, Congress specifically added authority in section 641A(c)(1)(D) of the Act for ACF to conduct unannounced site inspections and consistent with this the number of unannounced reviews has increased as an added quality assurance measure. Programs should always be following Program Performance Standards and be ready for a review at any time. Grantees are always required to follow requirements of the Act and regulations and can be cited for not complying with regulations at any time during the year.

While we appreciate the comments received on this provision, the final rule maintains the provision as proposed. As stated above, a deficiency is by definition a “substantial or systemic material failure.” ACF firmly stands behind the integrity of the monitoring and review process through which deficiencies are established and this has been consistently validated by rulings supporting ACF findings in the appeals process. ACF strongly believes that a grantee found to have a deficiency should compete to determine if it or another entity is the strongest provider in the community.

Proposed §1307.3(b)(2) – School Readiness Goals (changed to §1307.3(b) in the final rule.)

Comments: Many comments were received related to the establishment of goals and utilization of data on children’s school readiness. While the majority of respondents expressed support for this requirement, numerous commenters raised concerns about how the condition will be implemented. For example, nearly all of the comments received on this condition requested that ACF issue guidance to clarify the requirements and explain how grantees’ adherence to those requirements will be measured. Many also recommended that ACF not implement the condition until after such guidance has been issued and training and technical assistance has been provided to grantees. Numerous commenters requested that ACF issue guidance on the implementation of the requirement to establish and take steps to achieve school readiness goals. Many of these comments requested clarification on the definition of “school readiness goals,” what they should look like, how to determine what they should look like, and how to measure children’s progress against them and whether the goals for improving the school readiness of children were meant to be individual plans for each child or global goals for all children in a program.

Additional respondents requested guidance on the process for aligning school readiness goals with the Head Start Child Outcomes Framework (Framework). Others had concerns about using the Early Head Start Performance Measures Framework in determining children’s status on the child competencies. Some commenters misinterpreted the language in the NPRM as requiring grantees to conduct a formal assessment of children three times per year (or two times per year for programs operating less than 90 days), rather than requiring them to aggregate and examine child-level assessment data regardless of the method of assessment three times each year. Specifically, commenters requested guidance on what information needs to be documented and maintained to demonstrate compliance; how programs can self-assess; and what criteria ACF will use to evaluate compliance.

Response: ACF has revised the date of implementation of the condition to be after the effective date of the final rule. Therefore, in evaluating whether a grantee has met this condition, we will not rely on data beginning on June 12, 2009, as had been proposed in the NPRM, but rather beginning on the effective date of the final rule. Since the publication of the NPRM in September 2010, there has been steady communication with Head Start grantees about school readiness goals through webcasts, two national institutes in February and October of 2011, training and technical assistance materials (including The Guide to Resources for Developing School Readiness Goals) and other material created by the National Center for Quality Teaching and Learning (<http://eckkc.ohs.acf.hhs.gov/hslc/tta-system/teaching>). We also will continue to provide technical assistance and other supports for implementation of this condition.

Compliance with the requirements and determinations about whether grantees meet the school readiness goals condition of the DRS will only be measured by evidence collected in reviews conducted under section 641A(c) of the Head Start Act. Evidence in these reviews is collected by monitoring teams, including regional staff, but determinations regarding evidence collected in any reviews are made only by the responsible HHS official.

In response to these comments on the need for a definition, we have added a definition of “school readiness goals” to the final rule. This definition is consistent with section 641A(g) of the Act and guidance provided by the Office of Head Start and draws on comments received. With respect to comments on national goals, in section 641A(g)(2)(A) the Act requires that school readiness goals be “agency-determined.”

Also in response to comments on program or individual child goals, we have clarified in the final rule that the School Readiness Goals are for improving the school readiness of children in their program and are global or program goals for all of their children. We also reorganized the provision in the final rule to make it clearer that individual child-level data is critical in how programs take steps to help each individual child to make progress and to achieve overall program school readiness goals. Specifically for individual children, programs must analyze individual child-level data in order to determine each child’s status and progress on those goals in order to individualize instruction for those children and to inform parents and families. Furthermore, we clarify in the final rule that aggregated child-level assessment data must be used to inform curriculum, instruction, professional development, program design, and other program decisions.

ACF has published the revised framework (now called the Head Start Child Development and Early Learning Framework (available at http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/teaching/eecd/Assessment/Child%20Outcomes/HS_Revised_Child_Outcomes_Framework.pdf). We also have addressed these concerns in the OHS training and technical assistance, which discusses grantees’ responsibilities and processes for ensuring alignment between agency-established school readiness goals and the revised framework. The final rule clarifies that children’s progress on the five essential domains is what should be measured by both Head Start and Early Head Start grantees. While the Framework is comprehensive and includes many elements, it is organized so that all the elements fit under the five essential domains of child development. Programs will continue to be instructed on using the essential domains as a framework for their goals and assessment of meeting the goals.

ACF has added a definition of “child-level assessment data” to the final regulation. We also have addressed these comments in the training and technical assistance ACF provides by including information about the methods and types of assessment, assessment instruments, and other strategies for understanding children’s development and learning that grantees should utilize in meeting the requirements to establish and take steps to achieve school readiness goals. Training and technical assistance also included a clear distinction between the process of child assessment and the process for collecting, aggregating, and analyzing child-level assessment data.

Proposed §1307.3(b)(3) – Classroom Assessment Scoring System (CLASS): Pre-K (§1307.3(c) in the final rule)

Section 641A(c)(2)(F) of the Act requires the Secretary to include as part of the Head Start monitoring review process “a valid and reliable research based observational instrument, implemented by qualified individuals with demonstrated reliability, that assesses classroom quality, including assessing multiple dimensions of teacher-child interactions that are linked to positive child development and later achievement.” Section 641(c)(1)(D) requires that such an instrument be used as part of the system for designation renewal. CLASS: Pre-K, a system that uses observation to rate the interactions between adults and children in the classroom as high-, middle- or low-quality, meets the statutory requirements for “a valid and reliable research-based observational instrument.”

Before selecting an instrument to fulfill this requirement, ACF consulted with leading early childhood assessment experts who all advised that the CLASS: Pre-K was the instrument that best met the statutory requirement. The Conference Report accompanying the Act also suggested that ACF consider using the CLASS: Pre-K (H.R. Conference Report No. 220-439 at 111 (2007), as reprinted in 2007 U.S.C.C.A.N. 442, 462). Ultimately, ACF selected the CLASS: Pre-K instrument because, as discussed in the “CLASS Implementation Guide: Measuring and Improving Classroom Interactions in Early Childhood Settings” CLASS: Pre-K has been validated by over ten years of research in educational settings.

Comments: ACF received a large number of comments related to CLASS: Pre-K. While there was general support for the tool, some respondents raised a range of concerns related to using CLASS: Pre-K for program accountability purposes. A number of respondents requested that ACF delay the inclusion of CLASS: Pre-K in the Designation Renewal System. Respondents stated that CLASS: Pre-K has not been in use long enough with Head Start grantees to elevate scores to such high importance and that the science has not provided a basis yet for selecting the threshold for competition. A number of commenters raised concerns with the use and reliability of CLASS: Pre-K with culturally and linguistically diverse classrooms.

Some respondents raised other concerns with the CLASS: Pre-K instrument itself, aside from culture or language. A number of respondents had questions about whether or how the CLASS Pre-K would be implemented in Early Head Start programs and/or in the Home-based program option.

ACF specifically requested comments on alternative methods to the CLASS: Pre-K condition, including the use of an absolute threshold versus a relative threshold that compares each grantee’s score to the scores of other grantees reviewed in the same year, or the use of different absolute thresholds for each domain. A smaller subset of respondents commented on these issues. Those in support of absolute thresholds emphasized that identifying low-performing grantees is achieved best by defining a minimum level of quality all grantees must meet. Those recommending a relative threshold indicated that comparing grantees to their peers is the most appropriate approach, particularly absent clear research indicating what an absolute threshold should be. Several respondents proposed using national averages to determine scores to trigger competition or focusing on significant variances from the national averages.

Response: CLASS: Pre-K is a research-based observational instrument that assesses classroom quality focused on the types of teacher-child interaction that are linked to positive child

development and later achievement. Section 641A(c)(2)(F) of the Act requires the Secretary to include as part of the Head Start monitoring review process “a valid and reliable research based observational instrument, implemented by qualified individuals with demonstrated reliability, that assesses classroom quality, including assessing multiple dimensions of teacher-child interactions that are linked to positive child development and later achievement.” Section 641(c)(1)(D) requires that such an instrument be used as part of the system for designation renewal. CLASS: Pre-K, a system that uses observation to rate the interactions between adults and children in the classroom as high-, middle- or low-quality, meets the statutory requirements for “a valid and reliable research-based observational instrument.” Before selecting an instrument to fulfill this requirement, ACF consulted with leading early childhood assessment experts who all advised that the CLASS: Pre-K was the instrument that best met the statutory requirement. ACF recognizes that while CLASS: Pre-K was developed for a range of purposes, it has been used primarily for research and professional development purposes. It is also being used in some state accountability and quality improvement efforts in Quality Rating and Improvement Systems, in which CLASS scores are used as a measure in rating the quality of an early childhood program. ACF is working closely with the developers to ensure CLASS: Pre-K is used in ways that inform programs and accurately reflect classroom quality.

ACF has decided not to delay the inclusion of CLASS: Pre-K as a condition for designation renewal due to the critical importance of classroom quality. As in the NPRM, the CLASS: Pre-K condition will be implemented in the second year of the transition period using data from observations conducted after the effective date of the final rule. However, no grantees will be awarded non-competitive extensions without being evaluated against the two-part CLASS criterion. We based the decision to utilize CLASS in the Designation Renewal System on the following: (1) research has shown that teacher-child interaction is critical for children’s social and academic development, (2) a measure of classroom quality is critical to ensuring that children are in high quality programs, and (3) there is an extensive research base for CLASS: Pre-K. ACF notified grantees in August 2008 that CLASS: Pre-K would begin to be used in Head Start monitoring reviews (see ACF-IM-HS-08-11).

In addition, ACF has provided all grantees the opportunity to be trained on the protocol and grantees have been monitored on CLASS: Pre-K instrument for two years. Moreover, ACF-IM-HS-08-21 provided further information regarding the importance of child-teacher interaction. ACF also provides training resources to each Head Start grantee as part of its annual funding, consistent with requirements in the Act. Finally, ACF’s inclusion of a relative threshold, as well as a minimum threshold of quality and a standard of excellence, are responsive to comments about the current state of the science.

While the CLASS: Pre-K was not designed to measure specific practices in multi-lingual classrooms, the tool has been used in classrooms with diverse populations. For example, findings from the National Center for Early Development and Learning (NCEDL)’s research conducted in nearly 700 pre-kindergarten classrooms and 700 kindergarten classrooms, including linguistically diverse classrooms, suggest that CLASS: Pre-K functions well as an assessment of the quality of teacher-child interactions in classrooms with language diversity, and that CLASS: Pre-K predicts gains in dual language learners children’s school readiness skills (Downer, 2011). ACF will continue to examine concerns regarding the use of CLASS: Pre-K in culturally and linguistically diverse classes. ACF is providing additional cross-cultural training to CLASS:

Pre-K reviewers to ensure reviewers are familiar with the culture of the families served and that they are fluent in the predominant teaching language used in the class where they conduct observations.

ACF is confident of the reliability and appropriateness of the CLASS: Pre-K tool for use in Head Start classrooms based on the extensive and growing use of the instrument to assess a wide range of early childhood programs (e.g., in numerous research studies as well as State Quality Rating and Improvement Systems) and ACF's experience using the instrument over the last 2 years. With respect to the norming sample used for the development of CLASS: Pre-K, we note that the developers included Head Start programs among the sample of programs they tested.

ACF has revised the proposed CLASS: Pre-K condition from being solely an absolute threshold of scores below a 3 on any of the three CLASS: Pre-K domains (Emotional Support, Instructional Support, and Classroom Organization) during the two most recent CLASS: Pre-K observations to a two-part criterion, that consists of both a relative and an absolute threshold based on the most recent CLASS: Pre-K observation for all three domains of CLASS: Pre-K.

Specifically, ACF will require grantees whose average scores across classrooms fall in the lowest 10 percent on any of the three CLASS: Pre-K domains in that year to compete. ACF will determine the lowest deciles by comparing the scores in each of the three CLASS: Pre-K domains of all grantees reviewed in the same year under section 641A(c)(1)(A), (C), and (D). If a program scores in the bottom 10 percent of all Head Start programs, this indicates that the vast majority of organizations operating Head Start are providing a higher quality program for children. For a program with an average score in the lowest ten percent in the domain of Emotional Support, it means that ninety percent of Head Start programs assessed were shown to be doing a better job helping children develop positive relationships, enjoyment of learning, and appropriate levels of independence. For a program with an average score in the lowest ten percent in Classroom Organization it means that ninety percent of Head Start programs assessed were rated higher on how well teachers manage classrooms to maximize learning and keep children engaged. And for a program with an average score in the lowest ten percent in the domain of Instructional Support, it means that ninety percent of Head Start programs were assessed to be doing a better job promoting children's thinking and problem solving, using feedback to deepen understanding and helping children develop more complex language skills. If ninety percent of Head Start programs are doing better in these areas, it is certainly reasonable to require that these programs compete to determine if there is another provider in that community that can provide children a higher quality experience.

In addition, the final rule establishes a minimum quality threshold, or "floor," for each of the three domains under §1307.3(c)(1). Grantees will be required to compete if, in the most recent CLASS: Pre-K observation, the average score across all classrooms observed by ACF in any CLASS: Pre-K domain falls below the minimum quality threshold for that domain established in the regulations, even if it does not fall into the lowest 10 percent of grantees assessed on that domain. For reasons described below, for the Emotional Support domain, the minimum quality threshold is an average score across all classrooms of a 4. For the Instructional Support domain, the minimum quality threshold is an average score across all classrooms of a 2. For the Classroom Organization domain, the minimum quality threshold is an average score across all classrooms of a 3.

ACF sets a clear minimum quality threshold grantees must achieve, consistent with research that demonstrates the lack of improvement in child outcomes when the quality of child-teacher interactions measured by the CLASS fell below certain levels in the different CLASS domains. There is a growing body of research showing that at least moderate quality is necessary in Instructional Support for improving children’s outcomes (i.e., there is no evidence demonstrating a link between CLASS Instructional Support scores and children’s outcomes when CLASS Instructional Support scores fall below a 2). Conversely, research suggests moderate to high-quality is necessary in Emotional Support for improving children’s outcomes. (See, for example, Burchinal, M., Vandergrift, N., Pianta, R., & Mashburn, A. (2010). Threshold analysis of association between child care quality and child outcomes for low-income children in pre-kindergarten programs. *Early Childhood Research Quarterly*, 25(2), 166–176.) Based on this research, as well as comments received on the NPRM, we consulted the CLASS manual to identify the CLASS scores that most closely correspond to “at least moderate quality” for the Instructional Support domain and “moderate to high quality” for Emotional Support domain. As a result, we revised the minimum thresholds for Instructional Support and Emotional Support proposed in the NPRM (i.e., 2 for Instructional Support and 4 for Emotional Support). The minimum threshold for Classroom Organization stays at 3, the same as the NPRM.

Finally, ACF is establishing an exceptional level of quality to ensure that the relative threshold does not result in exceptionally high quality programs being required to compete. In the unlikely event that a grantee’s score in a domain falls in the lowest 10 percent but the score equals or exceeds the exceptional level of quality, then the grantee will not be required to compete on the basis of its score on that domain. The exceptional level of -quality threshold or standard of excellence for each three CLASS: Pre-K domains is an average score across all classrooms of 6 or above. ACF selected this particular threshold because the developers of the CLASS: Pre-K established these scores on the instrument’s seven point scale expressly to identify those grantees functioning at the highest levels of quality (with scores of 1 to two being in the low range; three to five in the mid-range; and six to seven in the high range of quality). The following is an example of how the absolute thresholds would work in conjunction with the relative threshold in Emotional Support. The lowest 10 percent of grantees as well as all grantees that have an average score below a 4 will be required to re compete based on their Emotional Support average score. If more than 10 percent of grantees had an average score in that domain below a 4, all of those grantees would have to compete. If a grantee in the lowest 10 percent in that domain had an average score of 6 or above, they would not be required to compete on the basis of the Emotional Support score because they have achieved the exceptional quality threshold in that domain. Grantees with an average score between a 4 and a 6 on Emotional Support but that are not in the lowest 10 percent would not be required to compete on the basis of their Emotional Support score.

In summary, this revised CLASS condition combines the merits of both the relative and absolute threshold concepts. It includes a relative threshold, which is responsive to comments that research has not yet identified the specific threshold of quality that is needed to impact positive outcomes, while recognizing research showing that there is no “good enough” level of quality (i.e., higher levels of quality are related to better outcomes for children) (Burchinal, M., Xue, Y., Tien, H., Auger, A., & Mashburn, A. (March, 2011)). It also guards against score inflation, which, if it occurred, would result in less rigorous standards over time if there were no relative threshold. The rule also sets a minimum quality threshold based on research findings that show a

minimum level of quality must be achieved before positive changes can be made in children's outcomes and it establishes a high-quality standard above which grantees would be exempt from competition. In setting the minimum quality thresholds and exceptionally high-quality standards ACF compared CLASS: Pre-K scores for Head Start programs to national data and to data on other early childhood programs, examined the CLASS: Pre-K user manual, considered the Office of Head Start's expectations for what should be taking place in early childhood classrooms, and embraced the latest research findings.

ACF is also implementing a significantly improved approach to each grantees' CLASS assessment including even more rigorous training and reliability assurance, a more rigorous random sampling of each grantee's classes to determine which to observe, and more consistent protocols for implementation. For these reasons, determinations for designation renewal will be made based on the most recent CLASS: Pre-K observations, rather than the two most recent CLASS: Pre-K observations as was proposed in the NPRM. CLASS: Pre-K will not be used in Early Head Start programs or in programs that operate the Home-based option only. ACF will consider incorporating a valid and reliable measure of teacher-child interaction in Early Head Start and in the Home-based program option when such a tool becomes available. ACF would incorporate such a tool only after soliciting public input through an NPRM.

Proposed §1307.3(b)(4) – License Revocation (§1307.3(d) in the final rule.)

Comments: ACF received a significant number of comments in response to the proposed licensing condition described at §1307.3(b)(4). A number of commenters expressed support for licensing revocation as a trigger for competition. Others raised concerns about the trigger and what constitutes a license revocation as discussed in §1307.3(b)(4).

Most comments on this condition stated that variations among State licensing requirements would make it impossible to implement it in an equitable manner across Head Start and Early Head Start grantees. Many remarked that ACF should set a standard for all Head Start programs rather than relying on separate State standards. A number of comments that mentioned that the fate of an entire grantee and all of its delegates would be in jeopardy when one delegate agency loses its license. Many respondents noted that the condition is duplicative since OHS already would learn about a licensing revocation during an on-site monitoring review. Finally, a common theme was a concern that the licensing condition in particular could create challenges to collaborations because of concerns over potential loss of funding due to loss of individual center licenses.

Response: We have clarified in the preamble, that it is the revocation of a license, not the suspension of a license, that will require a grantee to compete. Revocation is a process that varies by State and local standards. However, despite these variations, in all jurisdictions removing a licensing or forbidding a center to continue operating is the final step in a series of corrective actions for an agency. The revocation of a license to operate is a serious indication of an agency's inability to operate a high-quality program.

Section 641A(a)(1)(D)(i) of the Act and Head Start regulations implemented at 45 CFR 1306.30(c) require that “the facilities used by Early Head Start and Head Start grantees and delegate agencies for regularly scheduled center-based and combination program option classroom activities or home-based group socialization activities must comply with State and local requirements concerning licensing. In cases where these licensing standards are less comprehensive or less stringent than the Head Start regulations, or where no State or local licensing standards are applicable, grantee and delegate agencies are required to assure that their facilities are in compliance with the Head Start Program Performance Standards related to health and safety as found in 45 CFR 1304.53(a).” ACF would be remiss if it did not require a grantee whose license had been revoked to demonstrate its fitness to continue to receive Head Start funding following such a determination by State or local authorities. Given the serious nature of revocation and given that the consequence for the grantee is not termination from the program or even suspension, but only a requirement to compete for further funding, it should not be necessary to require exhaustion of appeal opportunities before ACF requires the grantee to compete to prove through a competition they are the most qualified entity in the community.

ACF will maintain this condition as laid out in the NPRM, regardless of appeal status with one exception. It merits repeating here that requiring a grantee to compete for continued funding is not equivalent to terminating the grant. In the final rule ACF is allowing for a longer period to resolve appeals than was proposed. The final rule would allow a grantee that has had its license revoked to continue to receive further funding without competing if the revocation was overturned or withdrawn any time “before the announcement of the competition in which the grantee would be required to compete for renewed funding.” If a decision on appeal is not made by that point then ACF is justified in requiring the grantee to compete since competitions have to be held within certain time periods to ensure that either the existing grantee or a new grantee has been selected by the time the existing grant expires. It does not make sense to delay a competition based on the possibility that a revocation of a license may be overturned or withdrawn sometime in the indefinite future.

If the license of any center where a grantees is serving Head Start or Early Head Start children is revoked, the grantee would be required to compete. As mentioned previously, each grantee is responsible for ensuring that every child it serves, no matter where or by whom, receives high-quality early childhood services. Delegate agencies are required to follow licensing regulations, and grantees should be aware of issues that may jeopardize a delegate agency’s license before that license is revoked.

Proposed §1307.3(b)(5) – Suspended by ACF (§1307.3(e) in the final rule.)

Comments: Many commenters agreed that agencies that have been suspended by ACF should have to compete for renewed funding. Others stated that the condition only should apply after an agency has exercised all of its due process rights afforded under the appeals process and after final decisions have been made in that appeal process. A few respondents raised the concern that smaller entities may not have adequate resources to appeal a suspension. One commenter suggested that suspension should not be counted as meeting the condition if a grantee was reinstated. One commenter stated that ACF should ensure that the reason for the suspension was related to the Head Start program. Another stated that suspension was already a tool ACF could use in finding a grantee unsuited for maintaining Federal funding.

Response: Under 45 CFR 1303.12(a), a grantee can be subject to summary suspension if it is at “[a] serious risk of: (1) Substantial injury to property or loss of project funds; or (2) Violation of a Federal, State or local criminal statute; or (3) If staff or participants’ health and safety are at risk.” Suspension under 45 CFR 1303.11 only can be based on “circumstances related to a particular grant, such as ineffective or improper use of Federal funds or for failure to comply with applicable laws, regulations, policies, instructions, assurances, terms and conditions or, in accordance with Part 1302 of this chapter, upon loss by the grantee of legal status or financial viability.” Regulations implemented at 45 CFR 1303.10(a) specify that a suspension of either type involves a finding by ACF that a grantee has either failed to live up to one or more standards applicable to Head Start grantees or is at risk for misusing Head Start funds, violating a criminal statute, or harming its staff or program participants. The grounds for suspension and summary suspension are also grounds for finding that the grantee is not conducting a high quality program and should be required to compete for funding.

ACF considered all the comments submitted related to suspension and is making one change in the final rule. We have modified the rule so that if there is a pending appeal and the agency did not have an opportunity to show cause as to why the suspension should not have been imposed or why the suspension should have been lifted if it had already been imposed under 45 CFR Part 1303, the agency will not be required to compete based on this condition. If an agency has received an opportunity to show cause, the condition will be implemented regardless of appeal status, since the performance issues that would lead ACF to suspend a grantee are so serious – and are exercised with such infrequency – that to delay a competition in that service area would not be in the best interest of the children and families in that community.

Proposed §1307.3(b)(6) – Debarred from receiving Federal funds or Disqualified from CACFP (§1307.3(f) in the final rule.)

Comment: In §1307.3(b)(6) of the NPRM, ACF proposed that a grantee be required to compete that “has been debarred from receiving Federal or State funds from any Federal or State department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP) any time during the period covered by the designated ACF official’s review under §1307.7 but has not yet been terminated or denied refunding by ACF.” A majority of respondents were supportive of this condition. Some respondents raised questions about aspects of debarment and disqualification and implementation of this condition such as noting that the debarment condition is duplicative because an agency that has been debarred from receiving Federal funds already would have lost its Head Start grant. One commenter suggested that programs disqualified from CACFP due to errors should not have to re compete.

A number of respondents raised concerns that only a final debarment or disqualification decision should be considered, allowing the grantee to go through the entire appeal process and exercise all due process rights. Several commenters recommended that if a delegate agency is debarred, the grantees should terminate the delegate and the grantee should not be required to compete.

Response: ACF considered the comments received and has not changed the policy in the final rule. Debarment is grounds for a deficiency finding under the statutory definition of that term, and indicates an agency’s failure to administer a high-quality program. Head Start grantees are eligible to receive funding under the Department of Agriculture’s (USDA) Child and Adult Care

Food Program (CACFP) for the food served to children at the meals provided by the Head Start program. If a grantee were disqualified from the USDA program, the grantee would not receive funding for the food served to children in the program. Under 45 CFR 1304.23(b)(1)(i), all grantees are required to use CACFP funds as the first source of funding for program meals under the regulations; therefore, disqualification would mean that the grantee had lost a major funding source for the meals and snacks served in the programs. In addition to requiring grantees to report on this condition, ACF will work with USDA's Food and Nutrition Services (FNS) to receive information about grantees that have been disqualified and will check that information against grantee reporting.

Proposed §1307.3(b)(7) – Audit Findings (§1307.3(g) in the final rule.)

1. Comment: Commenters raised concerns about the performance of the audits. A large number of respondents focused on the issue of using A-133 audit findings or State agency audit, review or investigation findings to trigger recompetition automatically. Many stated that ACF would be delegating its statutory duties to third parties. Other commenters stated that by accepting the findings of outside sources, ACF would be denying the grantee's due process. Although many agreed with the intent of this condition, they recommended that qualified fiscal officers or Certified Public Accountants within the Office of Head Start be tasked with reviewing the outside audit results.

A small number of respondents expressed concerns that auditors could lose some of their independence if they realized that their findings could cause grantees to face competition.

Others supported the need to have strong, financially sound grantees. Some commenters were concerned with the idea of allowing only one material weakness, which might be a minor problem, to lead to a recompetition. They stated that ACF should instead look for a pattern of problems indicating a grantee's financial weakness that could place Federal funds at risk.

Response: ACF had removed the material weakness component from the proposed condition. ACF has concluded that while in many instances a single finding of material weakness represents a serious issue, that there are instances where a material weakness finding would not be adequate as a singular indicator of program quality that would trigger competition.

Nevertheless, ACF takes audit findings seriously and for any year in which an entity's audit as required by OMB Circular A-133 classifies Head Start as a major program and the report to the Federal Audit Clearinghouse (FAC) shows other than an unqualified ("clean") opinion (e.g., qualified opinion, adverse opinion, or disclaimer of opinion) for the Head Start program, ACF will consider this as a "red flag" that will trigger additional fiscal oversight through on-going monitoring and additional targeted review, including unannounced on-site monitoring reviews, to make a determination (concurrent with program officials and senior ACF management) as to whether the issue identified raises to the level of a deficiency as defined in the Act. Failure to complete the required audit under OMB Circular A-133 and submit the results to the FAC will be considered a "red flag" in the same manner. If the fiscal issue identified does lead to a deficiency in Head Start monitoring, that deficiency finding would lead to competition under §1307.3(a).

Since inability to continue to operate as a going concern is a more serious problem, ACF is maintaining this part of the proposed condition with the same definition and the same time frame as proposed in the NPRM.

Aside from that modification, this condition remains unchanged. In response to concerns commenters raised that ACF is impermissibly delegating its responsibility to non-federal auditors, note that the final regulation still requires that ACF review the auditor's findings before making the final decision to require the grantee to compete based upon an auditor's findings.

Proposed §1307.3(c) – Possible Eighth Condition (deleted from final rule)

ACF received a significant number of comments related to possible additional criteria (an eighth condition) that would be utilized if the seven conditions outlined in proposed §1307.3(b)(1)-(7) of the NPRM did not result in 25 percent of grantees competing in a given review cycle. Nearly all of the comments opposed the inclusion of additional criteria for the purpose of reaching a minimum percent of grantees competing because of concerns about setting a 25 percent quota for redesignation. These comments stated that a 25 percent quota does not reflect Congressional intent.

As explained above in the discussion regarding proposed §1307.3(a), we replaced the 25 percent minimum requirement with the two-part CLASS criteria and have made a conforming change to §1307.3(c). A discussion of comments received on the proposed additional criteria that were open for public comment and our responses to these comments can be found in the preamble of the final rule; however, neither of these criteria was incorporated into the final rule.

In the preamble text of the NPRM, ACF requested comments on two possible approaches to defining additional criteria to be met if needed to satisfy the 25 percent minimum standard. We appreciate the comments and recommendations respondents offered regarding the additional criteria to reaching a 25 percent minimum of grantees competing.

Proposed §1307.4 – Grantee reporting requirements concerning certain conditions.

Comment: In the NPRM, we proposed that Head Start agencies must report in writing to the designated ACF official within 10 working days of the occurrence any of the following events: (1) the agency has had a revocation of a license to operate a center by a State or local licensing entity; (2) the agency has filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement; (3) the agency has been debarred from receiving Federal or State funds from any Federal or State department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP); and (4) the agency has received an audit, audit review, investigation or inspection report from the agency's auditor, a State agency, or the cognizant Federal audit agency containing a determination that the agency is at risk for ceasing to be a going concern. Commenters raised concern that it is an undue burden on programs to provide this information and that ACF should be able to collect this information. In addition, some commenters agreed that reporting this information was necessary but that the 10-day time frame was not feasible.

Response: We are not making any changes to the requirement for grantees to report to ACF on these four conditions. We believe that each of these conditions indicates a serious problem and that ACF should know about them as soon as possible so that appropriate action can be taken. The most efficient method for ACF to learn of these conditions is to require grantees to report them directly.

However, in response to comments, we have made a couple of changes to the final reporting requirements. First, based on comments that license revocation is a serious and problematic occurrence, we have modified the reporting requirements for certain events based on whether they occurred before or after the effective date of the Part. Specifically, for licensing revocations, we require that Head Start agencies must report in writing to the responsible HHS official within 30 working days of the effective date of this Part if the agency has had a revocation of a license to operate a center by a State or local licensing entity during the period between June 12, 2009, and the effective date of this Part. This modification to the NPRM was made since there is not a source of information for ACF to check to determine whether a grantee had its license revoked.

Regarding reporting of debarment and disqualification from CACFP, many commenters suggested that HHS use existing sources of information rather than having grantees report. As proposed in the NPRM, ACF still will require grantees to report on these conditions. We also will check the information grantees provide against the national List of Excluded Parties and ACF will work with USDA (administering agency for CACFP) to acquire disqualification information as well.

We have retained the 10 day requirement due to the very serious nature of these events. HHS believes that each of these conditions is so serious that we should be notified as soon as possible and believes that it does not put an undue burden on programs to report within 10 working days.

Proposed §1307.5 – Requirements to be considered for designation for a five-year period when the existing entity in a community is not determined to be delivering a high-quality and comprehensive Head Start program and is not automatically renewed.

Comments: A few comments were received on the application process described in this section for cases where the existing grantee in a community is not determined to be delivering a high-quality program and so there will be a competition in that community. Those comments expressed confusion about the provision and asked for clarification in the final rule. The commenters on this provision expressed strong concern in all cases when there is a transition between grantees. Commenters also asked whether grantees that voluntarily relinquished their grant would be considered a terminated grantee and therefore prohibited from applying from competition.

Response: This language is taken directly from the description of DRS in the Act at section 641(d) but we have added additional language for clarification. We also clarify that the criteria at section 641(d) of the Act apply to Early Head Start.

As proposed in the NPRM, terminated grantees will be excluded from competing for funding for the next five years. This provision applies beginning with the effective date of the regulation and

that exclusion is for a five-year period beginning with the former grantee's termination by ACF. We have clarified that this only applies to grantees terminated for cause. ACF has made one modification to 1307.5, to add that a Head Start or Early Head Start agency that has had a "denial of refunding," defined in 45 CFR 1303.2, is also excluded from competing for the next five years. ACF has added the reference to denials of refunding because denials of refunding are made on the same grounds as terminations and have the same effect under 45CFR 1303.15(c). A determination that a grantee will not be awarded funding noncompetitively is not a denial of refunding and in no way limits the ability of that grantee to apply for funding.

ACF acknowledges concerns about continuity of Head Start services and always seeks to minimize disruption in services to children and families. In cases in which a new grantee is selected as a result of recompetition, ACF believes that the transition generally will proceed without significant disruption of services to children and families in the community served. If ACF determines that a particular transition poses a risk of disruption of services, ACF may exercise its statutory authority to appoint an interim grantee in exceptional circumstances.

Proposed §1307.6 – Tribal government consultation under the Designation Renewal System for when an Indian Head Start is being considered for competition.

Comments: Many commenters expressed concern that there had not been appropriate Tribal consultation on the proposed regulation. Some respondents mentioned that all grantees should have the same process for Tribal programs. Commenters also said that MSHS grantees and rural grantees especially should be allowed the same provisions as described for Tribal programs.

Response: Because this rule simply implements the specific redesignation provisions related to Tribes that are required by the Act, the policies related to Tribal programs proposed in the NPRM are maintained.

Regarding concerns about consultation, consistent with Executive Order 13175, the Department of Health and Human Services (HHS) has established a Tribal Consultation Policy (Policy). This Policy affirms the authority of HHS to utilize notice and comment rulemaking as one form of consultation. ACF consulted with Tribes by raising the issues related to the Designation Renewal System at OHS Tribal consultations in 2009 and 2010 and by providing the 90-day opportunity to submit comments on this NPRM.

Proposed §1307.7 – Designation request and review process. ("Designation request, review and notification process" in the final rule.)

Comment: Commenters raised concerns that requiring grantees to apply to have their funding renewed without competition is burdensome to grantees and could result in programs not being considered if they miss the deadline to submit the paperwork. Respondents also expressed concern over the proposed three-year transition period and suggested that the transition period be lengthened to five years. Some suggested ACF make it clear that reviews under the Designation Renewal System taking place after the transition period focus on findings since the beginning of a grantee's current grant. Some commenters were confused about whether the designation review process was another on-site review separate from the on-site monitoring reviews required under section 641A(c)(1) of the Act.

Response: While ACF appreciates the comments on this provision, we are unable to change this provision because of the statutory requirement at Section 641(b) entitled “Application for Designation Renewal” which states “to be considered for designation renewal, an entity shall submit an application to the Secretary, at such time and in such manner as the Secretary may require.” ACF has tried to minimize the burden of the requirement that grantees officially apply for designation renewal. We have modified the final rule to only require that grantees submit their intent to be considered for designation renewal once during the transition period and during the period after the transition only once during the five year grant period.

Since the transition period of three years is established under section 641(c)(9) of the Act, we do not have the authority to modify its length. Therefore, we have not made any changes to the timeframe of the transition period in the final regulation. After the transition period, the time periods for relevant data will be only within that five-year grant period, as explained in final §1307.7(b)(3).

ACF has amended this section to explain the process more clearly. We also note that the DRS review is separate from the monitoring reviews required under section 641A(c)(1) of the Act. The language in final §1307.7(b) explains that the DRS reviews under Part 1307 consist of an ACF review of data to determine if one or more of the conditions under §1307.3 had been met by the Head Start and Early Head Start agency’s program. This DRS review is a review of all performance data available on a grantee, and is consistent with the focus on continuous program improvement by Head Start. It is not intended to comprise an additional on-site review, data from the monitoring reviews required under section 641A(c)(1) of the Act will be used in the DRS determination.

Final §1307.7(b) also describes the data that will be reviewed by ACF for three distinct time periods which are illustrated in the table in the Implementation of DRS section that follows.

In final §1307.7(c), we explain the method ACF will follow to provide notice to grantees on their Designation Renewal System status during each of the time periods. We also note that this process does not apply for Tribal Head Start programs; the process for those grantees is described under §1307.6. In the NPRM, ACF proposed sending grantees a preliminary notice 6 months prior to the ending of their grant to indicate whether they would be required to re compete. In response to public comment, this provision has been removed from the final rule because it is not necessary and causes additional burden on ACF and grantees.

ACF will provide notice by certified mail return receipt requested or another method that establishes the date of receipt of the notice by the addressee. During the first year of the transition period, letters will be sent to all grantees meeting any of the conditions except School Readiness Goals and CLASS: Pre-K since June 12, 2009, requiring competition for further funding, other than the conditions on School Readiness Goals and on CLASS: Pre-K instrument scores. All other grantees that did not meet any of the conditions will remain under indefinite project periods until the time period specified.

- During the remainder of the transition period, ACF will provide notice to all grantees still under grants with indefinite project periods on the all conditions including School Readiness Goals and CLASS: Pre-K. These letters will state either:
 - 1) that the agency will be required to compete for funding for an additional five-year period because one or more conditions has been met, will identify the conditions ACF found, and will summarize the basis for the finding or
 - 2) that such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because none of the conditions have been met. However, the notice specifies that if prior to the award of that grant, ACF determines that the grantee has met one of the conditions, this determination will change and the grantee will receive notice that it will be required to compete for funding for an additional five-year period.

- Following the transition period, ACF will give written notice to all grantees at least 12 months before the expiration date of an agency's five year grant period stating the same information described above. In addition, we specify that if prior to the award of that grant, ACF determines that the grantee has met one or more of the conditions, this determination will change and the grantee will receive notice that it will be required to compete for funding for an additional five-year period.

Proposed §1307.8 – Use of CLASS: Pre-K Instrument in the Designation Renewal System

Comments: Section 1307.8 specifically addresses the implementation of CLASS: Pre-K in the Designation Renewal System. Many commenters raised concerns that OHS does not follow the University of Virginia's protocol in its use of CLASS: Pre-K. A number of respondents also raised concerns regarding inconsistencies in how CLASS: Pre-K is used in monitoring and how reviewers conduct the observations. Many respondents raised concerns about the sampling methodology used to determine which classrooms would be observed. Other respondents raised concern with the reliability of the CLASS: Pre-K instrument when it is used at different times during the day or year. These comments expressed concerns that grantees would be treated differently depending on the time of day or season of the review or observations at a certain point in time would not be a fair representation of classroom quality. These comments stated that CLASS: Pre-K scores were lower, for example, for programs reviewed in the spring than those reviewed in the winter. Others raised concerns about the continued reliability of the reviewers

Response: ACF has worked with the developers in determining the most appropriate number of observations. Although the Classroom Assessment Scoring System manual describes that the recommended protocol for conducting CLASS observations is four cycles in each class, the University of Virginia (UVA) has advised ACF that four cycles with a single teacher, while appropriate for research, is not the best use of resources when ACF's objective is to get a picture of classroom quality at the grantee level. Instead, UVA has recommended a protocol that involves fewer cycles per teacher, but that includes more teachers.

Further, data from the HHS Family and Child Experiences Survey (FACES) study, which provides descriptive data on a nationally representative sample of three and four-year olds entering Head Start, reinforced ACF's decision to conduct two rather than four CLASS observations. FACES data indicates that four CLASS observations were not consistently

conducted of all grantees, even though that was the intention in the study design. Given the importance of observing more classrooms, rather than fewer classrooms for a longer period of time, ACF will conduct two cycles in each classroom in the sample.

ACF has focused considerable attention on its implementation of the CLASS: Pre-K in the monitoring review system to ensure that CLASS: Pre-K observations are conducted consistently across monitoring reviews. In addition to developing a random sampling methodology, ACF has integrated ongoing training for CLASS: Pre-K reviewers to ensure their continued reliability, as well as a reviewer double coding process to assure the consistency of the implementation. “Double coding” is a technical term that refers to the process of using two reviewers during observational measures to ensure that both reviewers reach the same conclusion, and it offers evidence of reliability and consistency. ACF also has made the determination that reviews will not be conducted in the first two and last two weeks of the program year, as well as the two weeks surrounding the winter holidays. However, we believe strongly that children need to be in high-quality early childhood settings for the entire length of their day; thus, we will continue to conduct CLASS: Pre-K observations at any time throughout the day with the exception of naptime and outdoor unstructured free play.

ACF has worked with statisticians to develop a statistically sound methodology for sampling the center-based preschool classes of grantees that will be observed using CLASS: Pre-K. The sampling methodology ensures that a sufficient number of classes are selected from across the grantee’s total classes; as a result, the resulting score will be generalizable to the grantee’s total classes overall. This approach also was vetted through an external review process. For more information on ACF’s sampling methodology, please reference the following link: <http://eclkc.ohs.acf.hhs.gov/hslc>. Since ACF is implementing a significantly improved and more rigorous random sampling of each grantee’s classes, determinations for designation renewal will be made based on the most recent CLASS: Pre-K observation, rather than the two most recent CLASS: Pre-K observations as was proposed in the NPRM.

Summary of Final Designation Renewal System

This section summarizes the final system for designation renewal that is described in the new 45 CFR Part 1307.

§1307.1 Purpose and scope.

In §1307.1, we establish the purpose and scope of the new Part 1307 we have created. The Designation Renewal System is established in this Part to determine whether Head Start and Early Head Start agencies deliver high-quality services to meet the educational, health, nutritional, and social needs of the children and families they serve; meet the program and financial requirements and standards described in section 641A(a)(1) of the Head Start Act; and qualify to be designated for funding for five years without competing for such funding as required under section 641(c) of the Head Start Act with respect to Head Start agencies and pursuant to section 645A(b)(12) and (d) with respect to Early Head Start agencies. A competition to select a new Head Start or Early Head Start agency to replace a Head Start or Early Head Start agency that has been terminated voluntarily or involuntarily is not part of the Designation Renewal System established in this Part, and is subject instead to the requirements of Part 1302.”

§1307.2 Definitions.

In §1307.2, we include several terms that already are defined in other Head Start regulations for the ease of reference, as well as define several new terms: “aggregate child-level assessment data,” “child-level assessment data,” “going concern,” “school readiness goals,” and “transition period.”

§1307.3 Basis for determining whether a Head Start agency will be subject to an open competition.

In §1307.3, we explain the basis for how HHS will determine whether a Head Start or Early Head Start agency will be subject to an open competition. The final DRS includes seven conditions that indicate that a Head Start or Early Head Start agency is not delivering high-quality and comprehensive services and “trigger” the grant for competition. A Head Start or Early Head Start agency will be required to compete for its next five years of funding whenever the responsible HHS official determines that one or more of the following seven conditions existed during the relevant time period and including but not limited to information collected by a review conducted under section 641A of the Act:

8. One or more deficiencies identified through reviews other than the one’s at the end of a grantee’s first year of operation under section 641A(c)(1)(B).
9. Failure to establish and use goals for improving school-readiness of children through reviews other than the one’s at the end of a grantee’s first year of operation under section 641A(c)(1)(B), starting with the effective date of this rule.
10. Low score on one or more domains of the CLASS assessment tool starting with effective date of this regulation.

- Any program that scores below the following “floors” or “low-quality thresholds” on any of the three CLASS domains would be required to compete:
 - Instructional Support – below 2
 - Emotional Support – below 4
 - Classroom Organization – below 3
 - Note that the differences in these scores reflect research on the relationship between scores and child outcomes.
 - Any program that scores in the bottom 10% on any of the three CLASS domains would be required to compete for continued funding, except that if a program scores in the bottom decile but the score equals or exceeds the exceptional level of quality threshold, the program would not be required to compete on the basis of this criterion.
11. License to operate revoked by a State or local licensing agency, except if the revocation is overturned or withdrawn before the announcement of the competition. A pending challenge to the license revocation, after correction of the violation, shall not affect application of the provision after the competition for five-year funding is announced. Head Start Agencies must report in writing to the responsible HHS official within 30 working days of December 9, 2011 if the agency has had a revocation of a license to operate a center by a State or local licensing entity during the period between June 12, 2009 and December 9, 2011.
 12. Suspension of grant by ACF, except if the suspension has been overturned or withdrawn, or the suspended grantee has appealed the suspension and did not have a chance to show cause as to why the suspension either should be lifted or should not be imposed, in which case the grantee will not be required to compete based on this condition.
 13. Debarment by any Federal or State agency; or disqualification from Child Adult Care Food Program (CACFP).
 14. Within the 12-month period preceding the decision on whether a grantee must compete for funding, an ACF determination, based on an audit or investigation, that the grantee is at risk of ceasing to be a "going concern."

Data as of June 12, 2009 will be utilized for all of the conditions, with the exception of School Readiness Goals and CLASS for which data will be utilized starting with the effective date of this rule.

§1307.4 Grantee reporting requirements concerning certain conditions.

The final rule also requires grantees to report to OHS within 10 working days on several of the conditions:

1. License revocation; if revocation since June 12, 2009 must report within 30 days of final rule effective date;
2. Bankruptcy or reorganization as a result of filing for bankruptcy;
3. Debarment from Federal or State agency or disqualification from CACFP; and
4. Audit finding of ceasing to continue to be a going concern.

§1307.5 Requirements to be considered for designation for a five-year period when no entity in a community is determined to be delivering a high-quality and comprehensive Head Start program.

In order to compete for a five-year grant, an agency must submit an application to the responsible HHS official that demonstrates that it is the most qualified entity to deliver a high-quality and comprehensive Head Start or Early Head Start program. This section also specifies that organizations that have been terminated for cause or denied refunding within the preceding five years will be excluded from competitions for funding.

§1307.6 Tribal government consultation under the Designation Renewal System for when an Indian Head Start grant is being considered for competition.

In the case of an Indian Head Start or Early Head Start agency determined not to be delivering a high-quality and comprehensive Head Start or Early Head Start program, the responsible HHS official will engage in government-to-government consultation with the appropriate Tribal government or governments and establish a plan to improve the quality of the Head Start program or Early Head Start program operated by the Indian Head Start or Indian Early Head Start agency. The plan will be established and implemented within six months after the responsible HHS official's determination. Not more than six months after the implementation of that plan, the responsible HHS official will reevaluate the performance of the Indian Head Start or Early Head Start agency. If the Indian Head Start or Early Head Start agency is still not delivering a high-quality and comprehensive Head Start or Early Head Start program, the responsible HHS official will conduct an open competition to select a grantee to provide services for the community currently being served by the agency. A non-Indian Head Start or Early Head Start agency will not be eligible to receive a grant to carry out an Indian Head Start program, unless there is no Indian Head Start or Early Head Start agency available for designation to carry out an Indian Head Start or Indian Early Head Start program and may receive a grant to carry out an Indian Head Start program only until such time as an Indian Head Start or Indian Early Head Start agency in such community becomes available and is designated as a grantee.

§1307.7 Designation review and notification process.

Each Head Start or Early Head Start agency wishing to be considered to have their designation as a Head Start or Early Head Start agency renewed for a five-year period without competition must apply to be considered for designation renewal. During the transition period, each grantee wishing to be considered for designation renewal without competition must request that status from ACF within six months of the effective date of this regulation. After the transition period, each grantee wishing to be considered for designation renewal without competition must request that status from ACF at least 12 months before the end of their five-year grant period.

In the first year, ACF will review data from June 12, 2009 forward on all conditions except CLASS and School Readiness Goals. In the second year of the transition, CLASS and School Readiness Goal data from December 9, 2011 will be reviewed as well as data on the other five conditions starting June 12, 2009. This means, that over the course of the transition period, no

program will receive a Head Start or Early Head Start grant automatically before being judged on all of the criteria. Following the transition period, ACF will review the data on each Head Start and Early Head Start agency in the fourth year of its five-year grant to determine if any of the conditions under §1307.3 existed in the agency's program during the period of that grant.

The table in the Implementation section is provided to illustrate which data will be considered for the DRS conditions during the three time periods: year one of the transition period, the remainder of the transition period, and during the five-year grant period.

§1307.8 Use of CLASS: Pre-K Instrument in the Designation Renewal System.

ACF will conduct observations of multiple classes operated by the grantee based on a random sample of all classrooms and rate the conduct of the classes observed using the CLASS: Pre-K instrument. After the observations are completed, ACF will report to the grantee the scores of the classes observed during the CLASS: Pre-K observations in each of the domains covered by the CLASS: Pre-K instrument. ACF will average CLASS: Pre-K instrument scores in each domain for the classes operated by the agency that ACF observed to determine the agency's score in each domain. . Early Head Start programs and programs using the Home-Based option only will not be rated on the CLASS: Pre-K instrument.

Except when the grantee serves children in its program in a single classroom, that class will be observed and rated using the CLASS: Pre-K instrument. The domain scores for that class will be the domain scores for the grantee for that observation

Implementation of the Designation Renewal System

This section provides an overview of how HHS will implement the new Designation Renewal System. The new DRS is effective December 9, 2011, 30 days after publication of the final rule in the *Federal Register*. The table at the end of this section illustrates the process and timeframe described in this section. It is important to reiterate that the DRS complements but does not remove HHS's ability to terminate grantees and run a competition for a service area. Any new grant awarded through the OHS replacement process from December 9, 2011 forward will be a five year grant.

Once the DRS regulation is effective, the three-year transition period will begin. Grantees that have been found to meet one of the conditions, except the CLASS or School Readiness Goals conditions, between June 12, 2009 and November 9, 2011 will be notified in December 2011 that it has been determined that they will need to compete for continued funding. Grantees will be told which of the conditions they have met that has resulted in their designation for competition. These competitions will begin in early 2012. No five year grants will be awarded non-competitively in the first year of the transition. Grants that are competed and awarded (either to a new grantee or an incumbent) will be five year grants. Starting with the second year of the transition, all of the seven conditions will be considered in the designation decision and all indefinite grants will be transitioned to five-year grants.

Notice from Grantees to ACF and from ACF to Grantees

During the transition period, each agency wishing to be considered to have their designation as a Head Start or Early Head Start agency renewed for a five-year period without competition shall request that status from ACF within six months of the effective date of this regulation. ACF will then review the relevant data to make a determination if that grant can be awarded without competition based on the seven conditions. After the transition period, each grantee will be required to notify ACF of their request to have their designation renewed for another five year period without competition at least 12 months before the end of their current grant.

After the transition period, ACF will notify the grantee of their status on designation at least 12 months before the end of their current grant – in the fourth year of the five year grant. All communications will be certified return receipt requested or another system that establishes the date of receipt by the addressee. A notice that a grantee must compete will identify the conditions found and summarize the basis for the findings. If a grantee is notified that it has not met any of the conditions, that determination can change if the grantee meets one of the conditions before the end of its grant period. As competitions progress and there are transitions between grantees, ACF will work to minimize disruption of services for children and families, by coordinating to the extent possible the ending of one grant and beginning of another to ensure a smooth transition, and may utilize interim grantees.

Competition Process

Each of the funding opportunities will be announced to the public following the grantee being notified of their designation determination to compete. Funding Opportunity Announcements (FOA) will be posted on the ACF website and Grants.gov. After the closing date for

applications, a panel review will be conducted with a cadre of trained, skilled and knowledgeable reviewers. Any eligible entity, including the incumbent grantee, will be reviewed against the criteria in the Funding opportunity Announcement, including the statutory criteria established in the Head Start Act. If the successful applicant is a new grantee, a letter is sent to the Governor with a 45 day comment period as required by the Act. After the Governor's response is received or the 45 day period expires, the ACF Regional Office is notified and negotiates with the successful applicant. All applicants and Congress are notified of the five-year grant award.

Time Period	1307.3 Conditions to be Considered (specific provisions in 1307.3 have been abbreviated in this table, see 1307.3 for full text of conditions)	Designation Renewal Review
Year 1 of Transition	<p>(a) A deficiency on a review conducted under section 641A(c)(1)(A), (C), or (D) of the Act</p> <p>(d) Revocation of a License to Operate</p> <p>(e) Suspension by OHS</p> <p>(f) Debarred from receiving state or federal funds or Disqualified from CACFP</p> <p>(g) Within the 12-month period preceding the decision on whether a grantee must compete for funding, an ACF determination, based on an audit or investigation, that the grantee is at risk of ceasing to be a "going concern."</p>	<ul style="list-style-type: none"> • Data on all grantees will be reviewed. • Those meeting any of the conditions of 1307.3(a), (d), (e), (f) or (g) from data collected since June 12, 2009 will be required to compete. • No grantees will be moved to five year grants non-competitively this year.
Remainder of Transition	<p>(a) A deficiency on a review conducted under section 641A(c)(1)(A), (C), or (D) of the Act</p> <p>(b) Failure to establish program goals for improving the school readiness of children and to take steps to achieve those school readiness goals identified in a review under section 641A(c)(1)(A), (C), or (D) of the Act</p> <p>(c) Low CLASS scores as described in 1307.3(c)</p> <p>(d) Revocation of a License to Operate</p> <p>(e) Suspension by OHS</p> <p>(f) Debarred from receiving state or federal funds or Disqualified from CACFP</p> <p>(g) Within the 12-month period preceding the decision on whether a grantee must compete for funding, an ACF determination, based on an audit or investigation, that the grantee is at risk of ceasing to be a "going concern."</p>	<ul style="list-style-type: none"> • All grantees still under continuous grants and that ACF has complete data on the conditions of 1307.3(b)- (c) will have their data reviewed to determine if they meet those conditions since the effective date of this rule. • All grantees still under continuous grants will have their data reviewed to determine if they meet the conditions of 1307.3(a), (d), (c), (e), (f) or (g) since June 12, 2009.
Five Year Grant Period	<p>(a) A deficiency on a review conducted under section 641A(c)(1)(A), (C), or (D) of the Act</p> <p>(b) Failure to establish program goals for improving the school readiness of children and to take steps to achieve those school readiness goals identified in a review under section 641A(c)(1)(A), (C), or (D) of the Act</p> <p>(c) Low CLASS scores as described in 1307.3(c)</p>	<ul style="list-style-type: none"> • ACF will review the data on each Head Start and Early Head Start agency in the fourth year of the grant to determine if any of the conditions under §1307.3 existed in the agency's program during the period of that grant.

Time Period	1307.3 Conditions to be Considered (specific provisions in 1307.3 have been abbreviated in this table, see 1307.3 for full text of conditions)	Designation Renewal Review
	(d) Revocation of a License to Operate (e) Suspension by OHS (f) Debarred from receiving state or federal funds or Disqualified from CACFP (g) Within the 12-month period preceding the decision on whether a grantee must compete for funding, an ACF determination, based on an audit or investigation, that the grantee is at risk of ceasing to be a "going concern."	