

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

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

Table of Contents

Introduction.....	3
Requirement to Establish a Designation Renewal System (DRS)	4
Expert Advisory Panel (the Committee).....	5
Proposed Designation Renewal System	6
Next Steps	38

Introduction

On December 12, 2007, the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110-134) amended the Head Start Act (the Act) to provide the United States Department of Health and Human Services (HHS) with the authority to recompetete 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 another five-year grant non-competitively.

Section 641 of the Act requires the Secretary of HHS to develop and implement a system for designation renewal 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.

Section 641(c) of the Act required the Secretary of HHS to convene an expert panel to inform the development of a DRS and “make recommendations to the Secretary on the development of a transparent, reliable, and valid system for designation renewal.” In December 2008, the Committee issued its report, “A System of Designation Renewal of Head Start Grantees.”

HHS has considered the Committee’s recommendations and developed a proposed system for Head Start designation renewal and recompetition. Per section 641(c)(5) of the Act, HHS published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* describing the proposed system, including a proposal for the transition to such system. The Act provides for a period of at least 90 days for public comment.

Concurrent with publishing this proposed rule, section 641(c)(10)(B) of the Act requires HHS to submit 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 provides a detailed description of the proposed new designation renewal system, including a clear rationale for any differences between the proposed system and the Committee's recommendations, if any such differences exist. This Report to Congress complies with this requirement of the Act.

Requirement to Establish a Designation Renewal System (DRS)

Section 641(c)(1) of the Act requires that the DRS be shaped 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) of the Act, based on:

- (A) annual budget and fiscal management data;
- (B) program reviews conducted under section 641A(c);
- (C) annual audits required under section 647;
- (D) classroom quality as measured under section 641A(c)(2)(F); and
- (E) Program Information Reports.

In the Conference Report that accompanied the Improving Head Start for School Readiness Act of 2007, the Conference Committee stated, "This system is meant to facilitate the designation of programs that are in good standing and are providing a high-quality comprehensive early childhood program, for a period of 5 years. The Conferees believe that other programs not providing a high-quality comprehensive early childhood program should not receive a designation renewal without first entering into an open competition." H.R. Conf. Rep. No. 110-439 at 111 (2007), *as reprinted in* 2007 U.S.C.C.A.N. 442, 462.

The Conference Committee also noted that they did not intend the designation renewal system to result in competition for all Head Start grantees because such a process could undermine overall program performance. As stated in the Conference Report: “Furthermore, the Conferees believe that the policy to limit open competition to under-performing Head Start agencies will improve overall program performance. The Conferees strongly believe the majority of Head Start programs are delivering high-quality services and therefore do not intend for this new designation system to result in competition for designation for the majority of Head Start programs. Furthermore, competing high-quality programs could undermine overall program quality. The Conferees believe that in most instances, stability and continuity within Head Start promotes better quality and greater efficiency.” Id.

Until the new system is developed and implemented, section 641(a)(2) of the Act states that the interim policy after the enactment of Pub. L. 110-134 is for HHS to award grants as it has done prior to the 2007 Head Start reauthorization.

Expert Advisory Panel (the Committee)

As mentioned previously, the Act required the Secretary of HHS to convene an expert panel to inform the development of a designation renewal system and “make recommendations to the Secretary on the development of a transparent, reliable, and valid system for designation renewal.”

The panel was to be comprised of individuals with demonstrated competency, as evidenced by training, expertise, and experience, in the following areas: early childhood program accreditation; research in early childhood development; governance and finance of non-profit organizations; delivery of services to populations of children with special needs and their

families; and assessment and evaluation of programs serving young children. The seven members of the Committee were appointed by the Secretary.

The Committee convened three two-day meetings in March, June, and October 2008 to review and discuss all relevant material and to develop a set of recommendations. The Committee issued its report presenting its recommendations in December 2008. The report, “A System of Designation Renewal of Head Start Grantees,” is available at the following website: <http://eclkc.ohs.acf.hhs.gov/hslc/Program%20Design%20and%20Management/Head%20Start%20Requirements/Renewal%20of%20Head%20Start%20Grantees>.

Proposed Designation Renewal System

In order to address the requirements of the Head Start Act to establish a system for Head Start Act designation renewal and recompetition, HHS is issuing a Notice of Proposed Rulemaking to amend Head Start program regulations under 45 Code of Federal Regulations Chapter XIII by adding a new Part 1307, Policies and Procedures for Designation Renewal of Head Start and Early Head Start Grantees.

In addition to Head Start programs, we propose to extend these requirements to Early Head Start programs pursuant to the authority of section 645A(b)(12) of the Act. Early Head Start programs provide family-centered services for low-income families – pregnant women, infants, and toddlers. These are the youngest children and most vulnerable families we serve. We believe that Early Head Start programs must be held to the same high standards as all other Head Start programs where possible in regard to designation and redesignation in order to ensure that they provide high-quality services to promote the development of the youngest children in the community and enable parents to move towards self sufficiency.

HHS thoroughly considered the Committee’s recommendations regarding designation renewal principles, determination criteria, and implementation, and has adopted the majority of the Committee’s recommendations in whole, or with minor modifications. In this section, we provide a detailed description of the proposed new designation renewal system, including a clear rationale for any significant differences between the proposed system and the Committee’s recommendations.

We believe this new system will increase the overall quality of Head Start by challenging poor performing grantees to improve their programs through competition with other applicants and by awarding grants to other organizations that demonstrate they can provide superior services to Head Start children and families through an open competition process.

The Committee’s recommendations focused on three aspects of the new designation renewal system: principles of the DRS; determination criteria; and implementation of the DRS.

Principles of the DRS

- ***Recommendation 1:*** The Office of Head Start (OHS) should develop a designation renewal system that is—
 - Reliable and valid in terms of the criteria and indicators used, and is transparent to families, programs and the public;
 - Simple and easily understood by all stakeholders; and
 - Integrated into ongoing systems for program improvement in such a way as to add value.

Response to recommendation 1:

HHS strongly agrees with the Committee’s first recommendation and considered it as the overarching guide for developing the proposed designation renewal system. HHS used

reliability, validity, and transparency; simplicity and understandability; and connections to program improvement systems as the guiding principles in designing the proposed system. However, some of the Committee's specific recommendations about criteria to incorporate into the DRS were not adopted because they would have resulted in a more complex, less easily understood, system design. In those cases, our reactions to the other recommendations were guided instead by the Committee's overarching principles.

- ***Recommendation 2:*** OHS should use multiple sources of valid and reliable data in making designation renewal determinations, including:
 - Annual budget and fiscal management data;
 - Program monitoring reviews;
 - Annual audits;
 - Classroom quality observation measures; and
 - Program Information Reports.

Response to recommendation 2:

HHS also agrees with the Committee's second recommendation to use multiple sources of valid and reliable data in making DRS determinations. The proposed system incorporates all of the data sources mentioned in the Committee's report and in the Head Start Act, as well as additional data sources.

Specifically, HHS proposes to consider the following data sources when making DRS determinations:

- annual budget and fiscal management data;

- program reviews conducted under section 641A(c)(1)(A), (C), or (D) of the Act – full triennial reviews, follow-up reviews, or other reviews, including unannounced site inspections of Head Start centers, as appropriate;
- findings and opinions of either an audit conducted in accordance with section 647 of the Act; an audit, review or investigation by a State agency; a review by the National External Audit Review (NEAR) Center; or an audit, investigation or inspection by the Department of Health and Human Services Office of Inspector General as mandated under Public Law 95-452; and
- classroom quality as measured under section 641A(c)(2)(F).

In addition to the aforementioned data sources, HHS proposes new reporting requirements in order to collect data concerning the occurrence of certain DRS conditions on which Head Start agencies currently are not required to report. Under the proposed rule, Head Start agencies are required to report in writing to HHS within ten working days of occurrence of any of the following events: (1) the agency has had a license to operate a center revoked 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); (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 has one or more material weaknesses or is at risk for ceasing to function as a going concern.

In our development of this proposed rule, we also considered incorporating into the DRS the results of the Program Information Report (PIR), a survey tool used by HHS to collect self-

reported information about Head Start and Early Head Start services received by children and families enrolled in Head Start programs. We recognize that Congress included the PIR as a source of information for the DRS in the 2007 reauthorization of the Head Start Act. Specifically, section 641(c)(1)(E) of the Act requires that Program Information Reports be only one of the sources of information that the DRS will use to make its determination of whether the grantee meets the program and financial management requirements and standards described in section 641A(a)(1) of the Act. However, the Committee stated in its report that the PIR has “significant limitations,” and noted in particular “documented reliability problems.” Moreover, a number of public comments also were received by the Committee arguing against use of PIR data as part of the DRS due to reliability concerns. We note that in carrying out ongoing Federal oversight of programs, and as preparation for conducting triennial reviews, Federal staff already review the PIR data of specific programs and look for “red flags” that warrant follow-up attention. Therefore, HHS will continue to use the PIR to gather background information about programs and proposes to consider PIR data when performing DRS reviews, with due regard to its limitations in respect to accuracy and completeness. In addition, HHS will be proposing changes to the PIR in 2011 to improve its reliability and validity and may incorporate it more directly in designation renewal decisions in subsequent rulemaking.

- ***Recommendation 3:*** OHS should base the system on Automatic Indicators of such a serious nature that a single occurrence would automatically require a grantee to compete for renewal, and Key Quality Indicators that would require competition when a pattern of poor performance on multiple indicators is present.

Response to recommendation 3:

HHS agrees with the recommendations of the Committee that the DRS system should be based on a set of indicators, which we refer to as conditions/criteria that would trigger competition. The proposed conditions/criteria draw substantively from both Automatic Indicators and Key Quality Indicators. HHS agrees with the Committee that Head Start and Early Head Start grantees should have a clear understanding of what criteria will be used as “triggers” in making the decision to recompete a grant.

HHS is proposing that a minimum of 25 percent of all Head Start grantees (including both Head Start and Early Head Start grantees) reviewed during a one-year cycle will be required to recompete. To determine which grantees will be required to recompete, HHS is proposing that all grantees that meet a specified set of conditions or criteria be required to recompete. If the number of grantees meeting those conditions is less than 25 percent of all grantees, then additional grantees will be selected based on additional performance indicators, as discussed below.

Grantees will be required to recompete if they meet any one of seven conditions in three critical areas of Head Start program administration: quality, licensing and operation, and fiscal and internal controls. We incorporated the Committee’s recommendations to include particular “Key Quality Indicators” into the DRS by including deficiencies determined through ongoing Federal monitoring reviews as one of the triggers for recompetition. It should be noted that the majority of “Key Quality Indicators” discussed in the Committee’s recommendations may be deficiencies cited in Head Start reviews. Any agency that has been determined to have one or more deficiencies in a single review will be required to recompete for renewal, as described further below.

If the conditions outlined in the rule do not identify a minimum of 25 percent of grantees, then as discussed later in this report, other indicators of low performance will be used to identify the remaining grantees that will be required to re compete. HHS believes that the expectation embodied in this provision is critical to ensuring that the proposed rule realizes its potential to improve the quality of Head Start programs, both by providing a strong incentive to all grantees to meet a high standard of quality and providing opportunities for better performing entities to receive Head Start grants.

- **Recommendation 4:** OHS should establish a clear threshold to determine which grantees must compete for renewal of the Head Start grant.

Response to recommendation 4:

HHS believes we have designed a proposed system for designation renewal that establishes a clear threshold to determine which Head Start and Early Head Start grantees must compete for renewal. Under the DRS, all programs that meet one of seven specified conditions will be required to re compete. If that process does not result in at least 25 percent of all grantees being required to re compete, then grantees that perform poorly on other objective criteria established by the Secretary as compared to other grantees will be required to re compete. HHS is considering two possible approaches for this second mechanism (described more below) for identifying grantees that will be required to re compete and is seeking comment on those options and on alternatives to those options. The Final Rule will specify the precise mechanism to be used in the DRS in conjunction with the seven conditions.

- **Recommendation 5:** OHS should apply the designation renewal system uniformly across all grantees. Implementation of the designation renewal system must—
 - Be consistent with the statutory provisions for designation renewal of Tribal grantees;

- Take into consideration unique characteristics of migrant and seasonal programs; and
- Take into consideration any unique characteristics of Early Head Start programs.

Response to recommendation 5:

As the Committee recommended, HHS designed the proposed DRS to be applied uniformly across all grantees and to address the statutory provisions for designation for Tribal grantees; the unique characteristics of migrant and seasonal programs; and the unique characteristics of Early Head Start programs.

The regulation proposes the same timeframe and process for Tribal government consultation under the DRS for when an Indian Head Start grant is being considered for competition as is described in section 641(c)(7)(B) of the Act; this process differs from the DRS for other Head Start agencies. When making a designation renewal determination, HHS will engage in government-to-government consultation with the appropriate Tribal government or governments for the purpose of establishing a plan to improve the quality of Head Start programs operated by the Indian Head Start agency. The plan will be established and implemented within six months. Not more than six months after the implementation of that plan, HHS will reevaluate the performance of the Indian Head Start agency. Following a determination that the Indian Head Start agency still is not delivering a high-quality and comprehensive Head Start program, HHS will conduct an open competition. Per section 641(e) of the Act, a non-Indian Head Start agency will not be eligible to receive a grant to carry out an Indian Head Start program, unless no Indian Head Start agency in the community is available for designation to carry out an Indian Head Start program. In such a circumstance, a non-Indian Head Start agency may receive a grant to carry out an Indian Head Start program, but only until such time as an

Indian Head Start agency in such community becomes available and is designated pursuant to section 641 of the Act.

The proposed DRS inherently takes into consideration the unique characteristics of Early Head Start programs and migrant and seasonal programs because the Head Start program monitoring system accounts for those program variations. Therefore, all of the data sources used and information collected will be considered in the context of each particular Head Start program type. Additionally, we have proposed exceptions for several of the DRS conditions based on Head Start program type. For example, we recognize that the Head Start Child Outcomes Framework that will be considered under the second condition related to school-readiness is not developed for Early Head Start programs. Instead, we propose to utilize the Child Competencies listed in the Early Head Start Program Performance Measures Framework as the appropriate tool to assess outcome domains relevant to infants and toddlers enrolled in Early Head Start programs. As another example, we acknowledge that the CLASS: Pre-K instrument, which will be considered under the third condition related to classroom observation, is not developed for Early Head Start programs or home-based programs; therefore, this condition will not apply for these programs. When HHS is satisfied with a valid and reliable measure of quality interactions for Early Head Start programs and home-based programs, a measure will be added as a recompetition condition through a subsequent rulemaking process.

Determination Criteria

- ***Recommendation 6:*** Automatic Indicators, whose occurrence would automatically require a grantee to compete for renewal, should include: (1) suspension; (2) bankruptcy or debarment; (3) revocation by a State or local government of a license to operate a child care

program; and (4) a significantly higher number of deficiencies in OHS monitoring than the average grantee.

Response to recommendation 6:

As previously described under the third recommendation, HHS agrees with the sixth and seventh recommendations of the Committee that the DRS system be based on a set of indicators that would trigger competition. We refer to these indicators as conditions/criteria; this concept consolidates the substantive elements contained in the terms “Automatic Indicators” and “Key Quality Indicators.” As stated previously, HHS agrees with the Committee that Head Start and Early Head Start grantees should have a clear understanding of what criteria will be used as “triggers” in making the decision to re compete a grant.

HHS proposes to establish a process in which each grantee that meets one of seven conditions during the relevant time period must re compete for its grant. We believe that these seven conditions may result in re competition for at least 25 percent of grantees as required by the proposed rule. However, given the uncertainty regarding the impact of this new system and the critical need to ensure high-quality services, we propose that if a minimum of 25 percent of Head Start and Early Head Start grantees are not required to compete based on the specified conditions, then objective criteria established by the Secretary would identify additional low performing grantees that will be required to re compete such that the total number of grantees required to re compete meets the 25 percent requirement. We have requested public comments on several possible criteria to use to strengthen the test for redesignation of poorly performing Head Start grantees. We are considering two primary structures for defining the additional criteria to be met by grantees if needed to satisfy the 25 percent standard and seek public

comments on the most effective approach to ensure high-quality performance by all grantees. We also are considering use of a combination of the two approaches outlined below.

The first approach would be based on a system that would assign values to non-compliance findings from reviews under section 641A(c)(A), (C), and (D) of the Act, with higher values assigned to more problematic non-compliance findings. This would result in a system in which a higher score indicated that the grantee had demonstrated a pattern of weaker performance. Each grantee then would be ranked among all the other grantees reviewed in that year. Grantees that received the highest scores would be identified for recompetition as a result of their pattern of poor performance compared to all other grantees reviewed during the same time period.

The second approach we are considering would introduce the use of evidence-based rating instruments into the Head Start monitoring review system. Such rating instruments include: the Early Childhood Environment Rating Scale, the Infant Toddler Environment Rating Scale, and the Family Child Care Environment Rating Scale. Low scores determined using any of these instruments would result in recompetition. Use of these instruments could provide an increased ability to distinguish the level of quality of services being provided in Head Start and Early Head Start classrooms and family child care homes with evidence-based measures.

While we did not include in the DRS *all* of the criteria recommended by the Committee, the conditions/criteria that are incorporated into the proposed DRS are based on the Committee's recommendations of particular automatic or key quality indicators. In terms of the automatic indicators that the Committee recommended, we propose to incorporate these criteria, with the exception of bankruptcy, for reasons described below.

We have categorized the seven conditions for designation renewal into three critical areas of Head Start program administration: quality, licensing and operation, and fiscal and internal controls. A description of these seven conditions and how they compare to the Committee's recommendations follows in the responses to Committee recommendations 6 to 11.

HHS believes that an agency that has been determined to have one or more deficiencies, as defined in section 637(2) of the Act, in a single review has demonstrated poor performance that should require the grantee to re compete for renewal. Reviews conducted under section 641A of the Act can result in deficiencies in each of the areas of education, health, family engagement, and management and fiscal systems. Failure to correct a deficiency within the allotted time, which HHS generally establishes as 30 to 45 days for health and safety and financial integrity issues, and 90 to 180 days for most other deficiencies, is grounds to terminate an agency from the Head Start or Early Head Start program under section 641A(e)(1)(C) of the Act. HHS believes that Head Start programs determined to have a failure of this kind are not providing children with a high-quality and comprehensive Head Start program. In particular, we note in the NPRM that violations of program requirements demonstrating a systemic or substantial lack of program integrity, such as the absence of effective internal financial controls or a failure to properly apply eligibility criteria, will result in deficiency findings.

Related to this condition, the Committee's sixth recommendation was for HHS to consider as an "Automatic Indicator" whether a grantee has experienced "a significantly higher number of deficiencies in OHS monitoring than the average grantee," as defined "as a number of deficiencies that is two standard deviations from the mean." The Committee noted that "the use of standard deviations to determine the specific number of deficiencies that would require a grantee to compete is appropriate because it ensures that grantees required to compete have an

exceptionally high number of problems.” While we considered using standard deviations to determine the threshold, we were concerned that this methodology would not be simple and easily understandable for grantees because the data used would vary for each cohort of grantees reviewed, as well as for each review cycle, since not all grantees will be reviewed simultaneously. As a result, we believed this would be inconsistent with the Committee’s recommendations to ensure the system is applied equitably across all grantees and to establish a clear threshold to determine which grantees must recomplete. Ultimately, we believe that whether a grantee has experienced “one or more deficiencies in a single review” is a simple, transparent, and fair threshold that can be applied uniformly for all grantees.

The next condition considers whether an agency has had its license to operate a center or program revoked by a State or local licensing agency, and the revocation of the license has not been overturned or withdrawn. This condition is based on the Committee’s sixth recommendation to consider revocation of a license to operate a child care program as an automatic indicator requiring competition under the DRS. Grantees operating center-based and combination program option facilities or home-based group socialization activities are required under 45 CFR 1306.30(c) to comply with State and local requirements concerning licensing. As previously mentioned, revocation of a license to operate either a child care facility or program, or any other necessary permit, can be grounds for a “deficiency” finding, as the term is defined in section 637(2) of the Act; failure to correct a deficiency within the required time frame is grounds to terminate an agency from the Head Start or Early Head Start program under section 641A(e)(1)(C) of the Act.

Grantees have appeal rights for license revocations and it is possible that these actions may be overturned. If a license revocation is overturned successfully, or withdrawn by the

responsible State or local agency, it will not be used as a basis for a recompetition decision. However, if a challenge to a license revocation is pending at the time of a final decision by HHS on required competition, the grantee would be required to compete for further funding. An agency that has had its license revoked, but subsequently has it restored during the period for deficiency correction, still would be required to re compete for funding. HHS understands that licensing requirements vary based on State and locality, but agrees with the Committee that licensing standards reflect the standards of care for young children in that community and that a sustained license revocation is a serious violation of those standards.

HHS is aware of the fact that some grantees, like local government agencies and Indian tribes, are responsible both for administering Head Start programs and enforcing licensing standards applicable to Head Start facilities. Therefore, we have concerns about the potential conflict of interest that could arise when such agencies enforce licensing standards for their own Head Start programs. In the NPRM, HHS has asked for public comments on this concern and ideas for mitigating risks that may be associated with this condition, as well as public comments on the impact of this condition on large grantees.

We also propose as a condition for recompetition whether an agency has been suspended from the Head Start or Early Head Start program by HHS, where the suspension has not been overturned or withdrawn. “Suspension of a grant” is defined at 45 CFR 1303.2 as the “temporary withdrawal of the grantee’s authority to obligate grant funds pending corrective action by the grantee.” In accordance with 45 CFR 1303.12(a), HHS may suspend a grant “in whole or in part for breach or threatened breach of any requirement stated in Section 1303.10 pursuant to notice and opportunity to show cause why assistance should not be suspended.” In addition, under 45 CFR 1303.12(a), HHS may suspend a grant “in whole or in part without prior

notice and an opportunity to show cause if it is determined that immediate suspension is necessary because of 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." A grantee that has been suspended will be required to compete for further funding unless the suspension has been overturned or withdrawn before the date HHS makes its recompetition determination under proposed section 1307.7. Subsequent restoration of the grantee to the Head Start program after correction of the violation shall not affect application of this requirement that a grantee that has been suspended be required to compete for further funding. A grantee that has had its suspension withdrawn or overturned before the HHS decision under proposed section 1307.7 still may be required to compete for further funding based on having met one of the other conditions/criteria in proposed section 1307.3. HHS agrees that any Head Start agency that has been suspended successfully has demonstrated extremely poor performance and should be required to re compete.

Another condition addresses part of the Committee's sixth recommendation to include agency bankruptcy or debarment as automatic indicators for recompetition. Our proposed condition states that an agency that has been debarred by any Federal or State agency from receiving Federal or State funds or disqualified from the Child and Adult Care Food Program (CACFP) is required to re compete. CACFP disqualification applies to individuals who have been disqualified from participation in the CACFP as principals of institutions, sponsored centers, or as operators of day care homes, as a result of being determined to be responsible for an uncorrected serious deficiency in the operation of an institution, a sponsored center, or a family day care home that participates in the program. In the NPRM, we address several possible scenarios related to debarment. First, we note that a former grantee during the period of

its debarment would not be eligible for grants and other “Covered Transactions,” including grants under the Head Start Act unless the agency obtains a waiver to correct the deficiency involving debarment, pursuant to 2 CFR §180.135. Next, we explain that an agency that is terminated because it has been debarred will not be in the position to be refunded without undergoing competition because it is no longer participating in the Head Start or Early Head Start program. We also note that while we cannot preclude previously debarred grantees after their period of debarment has ended from applying in an open competition, past performance is a criterion for funding under section 641(d)(2)(A) of the Act.

While we considered the Committee’s recommendation to incorporate agency bankruptcy as another condition, we decided to regard bankruptcy as a “red flag” that should result in further inquiry. The Committee’s recommendations included bankruptcy as an automatic condition for recompetition by stating that it is “indicative of instability in the program.” We agree that this is a very serious situation that raises the question of whether a grantee should continue to be funded to operate a Head Start program. However, we believe it is possible that, in some cases, a grantee could file for bankruptcy or agree to a reorganization plan as part of a bankruptcy settlement, but could continue to operate its Head Start program if it still has its Head Start funding intact. In addition, we believe the two financial standards we propose to establish as part of the seventh condition sufficiently satisfy the Committee’s suggestions concerning financial management. Moreover, we recognize that the exclusion of a grantee from the program based on bankruptcy may violate the prohibition in 11 U.S.C. 525(a) on a governmental unit discriminating in specified ways against an organization based upon its having gone bankrupt.

- **Recommendation 7:** Key Quality Indicators for program performance in the area of Program Management should include: (1) governance; (2) internal controls; (3) eligibility,

recruitment, selection, enrollment, attendance (ERSEA); (4) self-assessment and ongoing monitoring; (5) human resources; and (6) safety.

Response to recommendation 7:

As previously stated, HHS is incorporating many of the specific indicators recommended by the Committee under the seventh recommendation. Data related to all of these indicators in the areas of Program Management, Education, and Comprehensive Services will be considered if they are identified as deficiencies on Head Start monitoring reviews. While not classified as “Key Quality Indicators” as recommended by the Committee, we believe this approach draws substantially from the Committee’s concept. See detailed discussion under Recommendation 3.

- ***Recommendation 8:*** Key Quality Indicators for program performance in the area of Education should include: (1) curriculum; (2) assessment; and (3) structured learning environment.

Response to recommendation 8:

As previously stated, HHS is incorporating many of the specific indicators recommended by the Committee under the eighth recommendation. Data related to all of these indicators in the areas of Program Management, Education, and Comprehensive Services will be considered if they are identified as deficiencies on Head Start monitoring reviews. While not classified as “Key Quality Indicators” as recommended by the Committee, we believe this approach draws substantially from the Committee’s concept. See detailed discussion under Recommendation 3.

- ***Recommendation 9:*** When OHS is satisfied that it has a valid, reliable, and practical classroom observation tool, and effective measures of child outcomes and of individualization, then such tools and measures should be incorporated into the designation renewal system.

- In the event that the Head Start Program Performance Standards are revised, we would expect OHS to have appropriate tools to assess progress in school readiness upon publication of those final regulations.
- When OHS is satisfied that it has valid, reliable, and practical tools for Early Head Start to assess teacher-child interaction and home visiting, these should be incorporated into the designation renewal system.

Response to recommendation 9:

As the Committee recommended, HHS now is satisfied, based on extensive research and testing, that the Classroom Assessment Scoring System Pre-K (CLASS: Pre-K) has proven to be a valid, reliable, and practical classroom observation tool. HHS believes that a grantee that has a low score on one or more domains (depending on the time period in which the DRS review occurs, as described below) on both of its two most recent observations is not providing children the “head start” they deserve and should be required to re compete for renewal. HHS believes that a low score on CLASS: Pre-K is a reliable and valid indicator of poor performance in preparing Head Start children for school readiness, the primary statutory purpose of the Head Start program.

It should be noted that the regulations propose an alternative time period to be considered for this condition compared to the other conditions/criteria described in this section. In addition, the regulations propose an alternative standard of performance that would apply only for the cohort of grantees that receive its DRS review during the third year of the three-year transition period.

Specifically, HHS proposes that a Head Start agency will be required to compete for designation renewal if: 1) it scores one, on one or more domains on CLASS: Pre-K, on both of

the two most recent CLASS: Pre-K observations, when the observations are conducted after the effective date of Part 1307, and the findings are identified in a DRS review under Part 1307 conducted after the beginning of the third year of the transition period; and 2) it scores below three, on one or more domains on CLASS: Pre-K, on both of the two most recent CLASS: Pre-K observations, when the observations are conducted after the effective date of Part 1307, and the findings are identified in a DRS review under Part 1307 conducted after the close of the transition period. Thus, HHS proposes that the results from CLASS: Pre-K observations will not be considered starting on June 12, 2009 as will be the case for the other conditions/criteria related to recompetition and instead will be considered starting after the effective date of this Part and either at the beginning of the third year of the transition period or after the close of the transition period (depending on when the DRS review is conducted for each grantee).

Because of the great importance of the quality of teacher-child interactions in the Head Start classroom, HHS is implementing the use of CLASS: Pre-K results during the third year of the three-year transition period rather than waiting until the close of the transition period. For this third year of the transition period, we are proposing an alternative standard of performance related to CLASS: Pre-K data that would trigger recompetition. Given the relatively new use of CLASS: Pre-K in the Head Start program, for only the cohort of agencies reviewed under proposed section 1307.7 during the third year of the three-year transition period, agencies that received scores of one, on one or more domains of CLASS: Pre-K, on both of the two most recent CLASS: Pre-K observations would be required to compete for designation renewal. The Administration believes that it is a major step forward to bring the quality of teacher-child interactions to bear on redesignation.

As noted in the preamble, HHS is considering incorporating into the final rule that the condition based on CLASS: Pre-K observations will become effective in the second year of the transition period. In this case, we would use the same criteria for the grantees reviewed in this second cohort as we use for those in the third year of the transition period. We are interested in receiving public comments on both the implementation timeframe and the use of this alternative standard of performance during the second year of the transition period.

For both time periods, HHS is proposing the following methodology for determining the domain scores for Head Start grantees. The CLASS: Pre-K observations frequently will be incorporated into the reviews under section 641A(c)(1)(A), (C), or (D) of the Act. Except when all children are served by a grantee in a single classroom, HHS will conduct multiple class observations and rate the conduct of the classes observed using the CLASS: Pre-K instrument. When the grantee serves the children in its program in a single class, that class will be observed and rated using the CLASS: Pre-K instrument. The domain scores for that single class will be the domain scores for the grantee for that CLASS: Pre-K observation. For grantees that serve children in multiple classrooms, HHS will conduct CLASS: Pre-K observations on a subset of the classrooms. After the observation is completed, HHS will report to the grantee the scores of the classes observed during the CLASS: Pre-K observation in each of the domains covered by the CLASS: Pre-K instrument. HHS will average the scores in each of the domains for all classrooms assessed during an observation to determine the grantee's average score in each domain. HHS has provided and will continue to provide technical assistance to grantees on the CLASS: Pre-K instrument. HHS is considering conducting a follow-up CLASS: Pre-K observation for grantees that received scores below three, on one or more domains, (after the close of the transition period), or one, on one or more domains, (during the third year of the

transition period) to evaluate whether the grantees have improved their average scores in the relevant number of domains that received low scores or if a grantee's averaged score remains below the relevant threshold. Even if a grantee has improved its performance, however, it will be required to re compete for funding if its score is still below the relevant threshold in at least one domain.

We also are considering a number of alternatives related to (b)(3) and the method of calculating the recompetition trigger using the CLASS: Pre-K scores. One option we are considering is to apply different absolute thresholds for each of the three domains based on the national mean scores for those domains. For example, an absolute threshold for the domains of Emotional Support and Classroom Organization could be set at a higher level than the threshold for Instructional Support. This approach would reflect research that shows “the domains of Emotional Support and Classroom Organization typically are at the moderate to high level of quality in early childhood classrooms and Instructional Support, however, is typically at a low level of quality” (CLASS Implementation Guide, Hamre et al, December 2009). Research also is exploring whether there are thresholds of quality that must be achieved in each domain in order to influence children's development. For example, research has shown correlations between children's social emotional outcomes in classrooms scoring in the mid to high range of emotional support and for academic outcomes in the lower end of the mid range on Instructional Support (Threshold analysis of association between child care quality and child outcomes for low-income children in pre-kindergarten programs, Burchinal et al, June 2008).

Another alternative we are considering is to base the determination on the grantee's score on each domain relative to the scores of the other grantees reviewed in the same year and then measure a grantee's performance against that threshold. We are interested in receiving public

comments on these alternative approaches and whether they provide a more meaningful assessment of grantee performance and/or avoid possible unintended consequences.

The CLASS: Pre-K is not developed for, and will not be utilized in, either Early Head Start programs or home-based programs. We will be piloting and developing measures for Early Head Start, home-based, and home visiting programs in the future. When HHS is satisfied with a valid and reliable measure of quality interactions for these programs, a measure may be incorporated in the DRS through a subsequent rulemaking process.

Further, we propose that an agency be required to recompetete if it has been determined through a review during the relevant time period not to have assessed its own performance regarding school-readiness goals. This condition is consistent with the second aspect of the Committee's ninth recommendation that OHS should incorporate into the DRS effective measures of child outcomes and individualization. It also reflects the key quality indicators referenced in the Committee's seventh and eighth recommendations related to self-assessment and ongoing monitoring and assessment, respectively. The Committee report made clear that "Child outcomes are central to Head Start's purpose and should be considered in determining quality of programs." Of note, we propose to consider different criteria to determine if agencies have achieved their school-readiness goals for the time period prior to the effective date of this regulation than for the time period after the effective date of this regulation.

Specifically, for the period beginning on June 12, 2009 through the effective date of this regulation, HHS proposes that the criteria to be considered in the recompetition review is whether agencies have established and taken steps to achieve their goals for improving the school-readiness of children participating in their program in accordance with the requirements of section 641A(g)(2) of the Act. However, beginning with the effective date of this regulation,

HHS proposes that the criteria to be considered in the recompetition review are: whether agencies have analyzed individual child-level assessment data in order to determine each child's status and progress with regard to each of the domains of the Head Start Child Outcomes Framework and to plan how to individualize experiences and instructional approaches to best support each child's progress; and to have analyzed aggregated child assessment data at least three times per year, except for programs operating less than 90 days, which will be required to do so at least two times within their program period, and program data in order to support continuous program improvement and to inform professional development, staffing, and other program decisions. The Child Competencies listed in the Early Head Start Program Performance Measures Framework will be used as the appropriate tool to assess outcome domains relevant to infants and toddlers enrolled in Early Head Start programs because the Head Start Child Outcomes Framework is not developed for, and will not be utilized in, Early Head Start programs.

We propose to base this condition on different criteria during the following two time periods: 1) from June 12, 2009 through the effective date of this regulation, and 2) after the effective date of the regulation. This difference will ensure that agencies first are evaluated only on whether they have responded to the requirements specifically listed in the Head Start Act – to establish and take steps to achieve their goals for improving the school-readiness of children participating in their program (Section 641A(g)(2)). In the second time period starting when the regulation becomes effective, agencies will be evaluated on whether they have made further progress beyond the requirements of the Head Start Act, i.e., whether they have analyzed individual child-level assessment data and have analyzed aggregated child assessment and program data. The criteria to be used after the effective date of the regulation (analyzing child-

level assessment and program data to support continuous program improvement) are not required specifically in the Head Start Act. Therefore, while it would be premature to judge agencies on this second set of criteria prior to the effective date of the regulation, we believe it is essential to raise the bar in the future in order to continue to strengthen the quality of programs.

- **Recommendation 10:** Key Quality Indicators for program performance in the area of Comprehensive Services should include: (1) immunization; (2) screening and follow-up; (3) 10 percent disabilities with Individualized Education Plan/Individualized Family Service Plan, and tracking;¹ and (4) a developmental indicator on parent involvement.
 - When OHS is satisfied that it has valid, reliable, and practical measures of parent involvement, these measures should be incorporated into the designation renewal system.
 - In the event that there are revised Program Performance Standards, we would expect OHS to have appropriate tools to assess parent involvement.

Response to recommendation 10:

As previously stated, HHS is incorporating many of the specific indicators recommended by the Committee under the tenth recommendation. Data related to all of these indicators in the areas of Program Management, Education, and Comprehensive Services will be considered if they are identified as deficiencies on Head Start monitoring reviews. While not classified as “Key Quality Indicators” as recommended by the Committee, we believe this approach draws substantially from the Committee’s concept. See detailed discussion under Recommendation 3.

¹ This refers to meeting the requirement that at least 10 percent of actual enrollment include children with disabilities that have been determined eligible for special services under Individuals with Disabilities Education Act (IDEA) by the agency providing IDEA services in their community.

- **Recommendation 11:** Key Quality Indicators for program performance in the area of Financial Management should include: (1) an audit finding of going concern; and (2) a designation of fiscal high risk.

Response to recommendation 11:

Finally, our seventh condition adopts the Committee’s eleventh recommendation to include two criteria for program performance in the area of financial management: an audit finding of going concern and a designation of fiscal high risk. HHS believes that an agency that is determined to have one or more material weaknesses in its internal financial controls or to be unable to ensure that it can continue as a going concern is a high risk agency that has demonstrated poor financial performance that should result in the grantee being required to re compete for renewal. We propose in the NPRM that the term “going concern” means an organization that operates *without* the threat of liquidation for the foreseeable future, a period of at least 12 months. The basis for these conditions will be findings and opinions of either an audit conducted in accordance with section 647 of the Act; an audit, review or investigation by a State agency; a review by the National External Audit Review (NEAR) Center; or an audit, investigation or inspection by the Department of Health and Human Services Office of Inspector General as mandated under Public Law 95-452.

- **Recommendation 12:** The Secretary should re-evaluate the renewal system criteria after each cycle.

Response to recommendation 12:

HHS agrees with the Committee’s suggestion that the Secretary of HHS should re-evaluate the DRS criteria. In fact, we note several instances in which the data sources used for the DRS will be reevaluated in the future, such as adding a measure of quality interactions for

Early Head Start programs and Home-based programs, when HHS is satisfied it has a valid and reliable tool. However, rather than requiring the Secretary to reevaluate the criteria after each cycle, as the Committee recommended, we do not specify a timeframe in order to enable the Secretary to respond as needed whenever data sources change significantly or new data sources become available.

Implementation of the DRS

- ***Recommendation 13:*** OHS should ensure that the system is applied equitably across all grantees and that the designation renewal determination occurs in the fourth year of the grant and further ensure that the data used in assessing Key Quality Indicators is as current as possible (no more than one year old except for special cause).

Response to recommendation 13:

HHS designed the proposed DRS with the goal of treating all grantees equitably and we plan to implement the system accordingly. All grantees that meet one of the seven specified conditions will be required to recompete. The automatic triggers prevent subjectivity or bias from the process. If less than 25 percent of all grantees are required to recompete, then additional low performing grantees will be required to recompete based on other objective criteria established by the Secretary. Another way we plan to ensure the system is implemented equitably is by establishing standards for the grantee competition process that are consistent with the criteria listed at section 641(d)(2) of the Act. In addition, to ensure previously terminated grantees are treated consistently, we are proposing that any agency that has had its Head Start or Early Head Start grant terminated in the preceding five years will be excluded from participating in such a competition for a period of five years due to the extremely serious nature of uncorrected deficiencies that would have led to such a termination. HHS believes that because

of their poor performance such organizations cannot be considered to be “qualified applicants” in a community under section 641(d)(1) of the Act.

Our proposed plan also is consistent with the Committee’s recommendation that the designation renewal determination should occur in the fourth year of the grant. Once all grantees are transitioned from continuous grants to five-year grants, we propose to review all relevant data about a grantee’s performance during the fourth year of the grant period and make a determination, based on the conditions/criteria established in proposed section 1307.3, of whether the grantee is providing high-quality, comprehensive services. Grantees will be given at least 12 months preliminary notice and at least six months final notice prior to the end of their grant of their renewal status, i.e., whether they are required to recompute for their next five-year grant. Thus, we propose that the HHS review and preliminary and final determination notices occur during the fourth year of the five-year grant period.

HHS agrees with the Committee’s recommendation that we use recent data. However, we believe the use of historical data may also be important in some cases to identify those grantees that cannot sustain corrections and routinely fall back into poor performance after initially correcting non-compliances or deficiencies that were determined through Head Start monitoring reviews. Thus, HHS believes it is critical to have the ability to rely on multiple years of monitoring review data in order to identify chronic poor performing grantees.

Nevertheless, HHS proposes to examine relevant records about the grantee’s performance since June 12, 2009 consistent with section 641(c)(9)(B) of the Act, which specifies that Head Start agencies are not subject to the DRS requirements prior to 18 months after the enactment of the 2007 reauthorization of the Head Start Act. Therefore, no data prior to June 12, 2009 will be considered for six of the proposed conditions and the additional criteria under proposed section

1307.3, and no data will be considered prior to the effective date of the regulations for the third condition regarding CLASS: Pre-K scores.

- ***Recommendation 14:*** There should be a valid threshold to determine which grantees must compete for designation renewal. The validity of the threshold should be established by relating it to other independent measures that discriminate between programs providing high-quality services and programs that are not.
 - The Committee believes that the large majority of grantees would not be required to compete for another five-year grant under such a system. Only those grantees that were the lowest performing grantees relevant to the criteria would be required to compete.
 - The Committee expects that no more than approximately 15-20 percent of all grantees should be expected to compete for another five-year grant. The exact percentage must be supported by the most current data.
 - The Committee notes that this percentage should be expected to decrease over time as program quality improves.

Response to recommendation 14:

HHS agrees with the Committee that the DRS should have “a valid threshold to determine which grantees must compete for designation renewal” and that the “validity of the threshold should be established by relating it to other independent measures that discriminate between programs providing high-quality services and programs that are not.” In each of the seven specified conditions, we have sought to establish thresholds that differentiate between poor performers and grantees providing quality services. For example, we believe that given the serious nature of a finding of “deficiency,” any program that has a deficiency cannot be said to

be providing quality services and should be required to re compete for funding. Similarly, we believe that the thresholds established for CLASS: Pre-K make a meaningful distinction between quality and low performing grantees.

The Committee also noted its belief that the large majority of grantees would not be required to compete, and that only the lowest-performing grantees would be required to do so. It further elaborated that no more than approximately 15 to 20 percent of all grantees would be expected to compete, but that the exact percentage must be supported by the data. The Committee also expected that this percentage would decrease over time as program quality improves.

We acknowledge the Committee's expectation that "no more than approximately 15 to 20 percent of all grantees should be expected to compete for another five-year grant." However, the Administration is committed to funding only high-performing grantees and conducting effective and rigorous competitions. Recent research on Head Start programs has illustrated the need for improvement and for more rigorous standards across Head Start programs. We understand that neither the Committee nor the Congress intended for all grantees to re compete for grants as required by many Federal grant programs. However, given the importance of the provision of quality services for Head Start children and families, we believe that setting a minimum 25 percent standard for re competition is appropriate to ensure the best services for Head Start children.

The Administration is deeply committed to the mission of Head Start – to helping our nation's most vulnerable children get a head start on success in school and in life – and as such is deeply committed to improving quality across all Head Start programs. Participation in high-quality early childhood care and education programs can affect crucial child outcomes

dramatically, but participation in low-quality programs has little or no impact. Recent research suggests that quality in Head Start programs varies considerably, and suggests that there is significant room for improvement in Head Start programs. For example, “FACES Findings: New Research on Head Start Outcomes and Program Quality” reports that while average Head Start classroom quality is good, there was substantial variation.

Competition for grants is an important tool for encouraging excellence, establishing accountability for poor performance, and opening up Head Start to new energetic organizations that may have more capacity to run high-quality programs than some current grantees. Unless specified in the regulations for grantees that have been terminated, current grantees will be eligible to compete again for their current grants, but other potential grantees will be able to do so as well. Finally, subjecting a fixed percentage of grants to recompetition reduces the risk that low performing programs that score just above minimum thresholds do not receive continued funding automatically without being subjected to competition from other entities.

- ***Recommendation 15:*** OHS should implement the system in such a way that it is sensitive to funding and monitoring cycles, the burden on grantees and Federal oversight, and allows for an appropriate phase-in of the system.

Response to recommendation 15:

We believe our proposed transition plans for the DRS address the Committee’s recommendations that the system is implemented “in such a way that is sensitive to funding and monitoring cycles, the burden on grantees and Federal oversight, and allows for the appropriate phase-in of the system.” The only new paperwork requirement imposed on all grantees through this regulation will be that in order to initiate the designation review process, each Head Start or Early Head Start agency wishing to be renewed for five years without competition shall request

that status from HHS immediately after its monitoring review. Other new reporting requirements apply only to those grantees that experience any of the following four events: (1) the agency has had a license to operate a center revoked 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); or (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 has one or more material weaknesses or is at risk for ceasing to be a going concern.

We have developed a transition plan that is consistent with section 641(c)(9) of the Act and will phase-in the DRS system over a three-year time period after the final rule is published. HHS proposes to begin implementing the DRS within 12 months and will convert all the current continuous grants into five-year grants within a three-year transition period after the final rule is published. A minimum of 25 percent of all grantees (including both Head Start and Early Head Start grantees) reviewed in the same year will be required to compete for their next five years of funding. We propose that the designation review will be scheduled to occur during the year following the year that the grantee has its triennial review. Under this plan, one third of grantees will be reviewed in each of the first three years after the final rule is published in order for HHS to determine if they meet any of the conditions/criteria under proposed section 1307.3 that would require recompetition or if they will receive the first five-year grant non-competitively. After the three-year transition period is finished, all existing Head Start grantees will be subject to a five-year grant period. Grantees for which none of the proposed conditions/criteria are met will not

be required to recompetete and will be awarded another five-year grant; grantees for which one or more of the conditions/criteria are met will be required to recompetete.

- ***Recommendation 16:*** OHS should ensure that the competitive process is implemented in a manner that gives no advantage to any particular type of applicant and allows applicants to apply for part or all of the program or service area being competed.

Response to recommendation 16:

We agree with the Committee that the competitive process for grantees required to recompetete should be “implemented in a manner that gives no advantage to any particular type of applicant.” While the regulation does not address this element specifically, the application and competition processes for recompeteting grantees will be conducted in the same way as all other Head Start competitions, whereby all applications are reviewed through a competitive process in which panels of non-Federal reviewers score applicants on specific evaluation criteria. As for the second part of this recommendation, currently HHS allows applicants to apply for all or a part of the service area being competed and at this point plans to continue this approach.

- ***Recommendation 17:*** When a Head Start program is competed and a new grantee is selected, OHS should ensure a smooth transition with minimal disruption in services to children and families by transitioning to a new grantee during the summer—even if it means that the duration of the original grant is somewhat more or less than five years.

Response to recommendation 17:

We agree with the Committee’s principle of ensuring “a smooth transition with minimal disruption in services to children and families” when a Head Start program is recompeteted and a new grantee is selected. We believe that in most cases it will be possible to transition to new grantees during the summer and that such transitions generally will proceed without any

disruption to services to children and families in the community served. However, because the Head Start Act requires HHS to award Head Start grants for a five-year period, we do not have the authority to modify the duration of the grant to be different than five years. Therefore, if HHS determines that a particular transition poses a risk of disruption of services, HHS will exercise its discretion to utilize the replacement process in exceptional circumstances to ensure a smooth transition for those children and families impacted by the change.

Next Steps

After the Notice of Proposed Rulemaking describing the proposed system for Head Start designation renewal is published in the *Federal Register*, the Act provides for a period of at least 90 days for public comment. The Secretary will review and consider public comments prior to issuing the final rule on the new DRS in the *Federal Register*.

Prior to implementing the new system, consistent with section 641(c)(10), HHS will submit another Report to Congress summarizing the public comments received and the Secretary's response to each comment, describing the final system for designation renewal, and the plans for implementation of such system.

Until the new system is developed and implemented by the Secretary of HHS, section 641(a)(2) of the Act states that the interim policy after the enactment of Pub. L. 110-134 is for HHS to award grants as it has done prior to the 2007 Head Start reauthorization.