

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section II of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Improving Regulations Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Improving Regulations Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** For further information on this document, please contact Stuart Miles-McLean, Office of Regulatory Policy and Management (1803A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202-564-6581; fax number: 202-564-7322; e-mail address: [ImprovingRegulations.SuggestionBox@epa.gov](mailto:ImprovingRegulations.SuggestionBox@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA extending its comment period for feedback on the design of its retrospective review plan under Executive Order 13563 to April 4, 2011. To assist you in focusing your comments or recommendations, EPA has provided various categories relating to issue/impact, program area, or a multipurpose general area. These categories are not intended to restrict the issues that you may wish to address. The following list provides the category of each docket. If you wish to submit comments, please select one of the appropriate dockets listed below or send by mail as described in the **ADDRESSES** section above.

#### 1. Integration and Innovation

Submit a comment on “Improving Regulations: Integration and Innovation” at docket # EPA-HQ-OA-2011-0161.

#### 2. Environmental Justice/Children’s Health/Elderly

Submit a comment related to “Improving Regulations: EJ, Children & Elderly” at docket # EPA-HQ-OA-2011-0168.

#### 3. Science/Obsolete/Technology Outdated

Submit a comment on “Improving Regulations: Science/Obsolete/Technology Outdated” at docket # EPA-HQ-OA-2011-0162.

#### 4. State, Local and Tribal Governments

Submit a comment related to “Improving Regulations: State, Local and Tribal governments” at docket # EPA-HQ-OA-2011-0163.

#### 5. Least Burdensome/Flexible Approaches

Provide comment on “Improving Regulations: Least Burden/Flexible Approaches” at docket # EPA-HQ-OA-2011-0165.

#### 6. Benefits and Costs

Submit a comment related to benefits and costs in “Improving Regulations: Benefits and Costs” at docket # EPA-HQ-OA-2011-0158.

#### 7. Small Business

Submit a comment related to “Improving Regulations: Small Business” at docket # EPA-HQ-OA-2011-0164.

#### 8. Compliance

Submit a comment related to “Improving Regulations: Compliance” at docket # EPA-HQ-OA-2011-0166.

#### 9. Economic Conditions/Market

Submit a comment about “Improving Regulations: Economic Conditions/Market” at docket # EPA-HQ-OA-2011-0167.

#### 10. Program Area: Air

Submit a comment about “Improving Regulations: Air” at docket # EPA-HQ-OA-2011-0155.

#### 11. Program Area: Pesticides

Submit a comment about “Improving Regulations: Pesticides” at docket # EPA-HQ-OA-2011-0157.

#### 12. Program Area: Toxic Substances

Submit a comment about “Improving Regulations: Toxic Substances” at docket # EPA-HQ-OA-2011-0159.

#### 13. Program Area: Waste

Submit a comment about “Improving Regulations: Waste” at docket # EPA-HQ-OA-2011-0160.

#### 14. Program Area: Water

Submit a comment about “Improving Regulations: Water” at docket # EPA-HQ-OA-2011-0154.

15. Use the “Improving Regulations: General” docket # EPA-HQ-OA-2011-0156 to submit an idea for how best to promote retrospective analysis of rules. This docket may also be used for any comment that:

- Pertains to more than one issue/impact and/or program area.
- Doesn’t relate to any of the other docket categories listed in this section.

EPA welcomes comment and feedback from all parties on the issues listed herein. The Agency is collecting this information for its planning purposes and is not bound to further action or response. All submissions will be made publically available on <http://www.regulations.gov>.

Dated: March 15, 2011.

**Michael Goo,**

*Associate Administrator, Office of Policy.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 1305

**RIN 0970-AC46**

#### Head Start Program

**AGENCY:** Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would amend Head Start program regulations to codify statutory eligibility requirements for Head Start and Early Head Start program enrollment and strengthen procedures to determine, verify, certify, and maintain records regarding eligibility for Head Start and Early Head Start program enrollment. It also proposes to create new requirements for the person seeking services to certify in a signed and dated statement that the documents and information that the person provided concerning eligibility are accurate to the best of the person’s knowledge, as well as new requirements for program staff who make the eligibility determination to certify in a signed and dated statement that the information on eligibility in the file is accurate to the

best of the person's knowledge, and based on that information, the person has determined the pregnant woman or child to be eligible for services. In addition, it proposes to create a new requirement for agencies to establish policies and procedures describing the actions that will be taken against staff who violate eligibility determination requirements and requires agencies to provide training related to eligibility requirements and the legal consequences of committing fraud. The intent of this rule is to reduce substantially the risk that children or pregnant women who are ineligible for participation in Head Start or Early Head Start programs are enrolled in these programs.

**DATES:** In order to be considered, comments on this proposed rule must be received on or before April 18, 2011.

**ADDRESSES:** Interested persons are invited to submit comments to the Office of Head Start, 1250 Maryland Avenue, SW., Washington, DC 20024, Attention: Colleen Rathgeb, Office of Head Start, or electronically via the Internet at <http://www.regulations.gov>. If you submit a comment, please include your name and address, identify the docket number for this rulemaking (ACF-2010-XXXXX), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address above, but please submit your comments and material by only one means. A copy of this Notice of Proposed Rulemaking may be downloaded from <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Colleen Rathgeb, Office of Head Start, 202-205-7378 (not a toll-free call). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Time.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory Authority**

This Notice of Proposed Rulemaking is published under the authority granted to the Secretary of Health and Human Services by section 644(c) of the Head Start Act, as amended by the Improving Head Start for School Readiness Act of 2007, as well as sections 645(a)(1)(A) and 645A(c) of the Act.

**II. Comment Procedures**

The Head Start Act provides for a period of at least 30 days for public comment. In making any modifications to this Notice of Proposed Rulemaking,

we will not consider comments received beyond the 30-day comment period. To make sure your comments are fully addressed, we suggest the following:

- Be specific rather than general;
- Address only issues raised by the proposed rule;
- Explain reasons for any objections or recommended changes;
- Propose specific alternative language, as appropriate; and
- Reference the specific section of the proposed rule being addressed.

**III. Background**

The Head Start program is a national program that promotes school readiness of low-income children by enhancing their cognitive, social, and emotional development through the provision of health, educational, nutritional, social, and other services that are determined, based on family needs assessments, to be necessary.

The Head Start program provides grants to local public and private non-profit and for-profit agencies to provide comprehensive child development services to economically disadvantaged children and families, with a special focus on helping preschoolers develop the skills they need to be successful in school. In FY 1995, the Early Head Start program was established to serve families of economically disadvantaged children from birth to three years of age and pregnant women from such families in recognition of the mounting evidence that the earliest years matter a great deal to children's growth and development.

On December 12, 2007, the President signed the Improving Head Start for School Readiness Act of 2007, Public Law 110-134. The law reauthorized the Head Start program through September 30, 2012, and built on the program's many successes. The reauthorization addressed the needs of children and families by focusing efforts on building increased systems of accountability, improving quality, and expanding program access. The 2007 reauthorization also made several changes to the eligibility criteria and related policies for participation in Head Start and Early Head Start programs described in Section 645 and 645A of the Act. The Act included homeless children as a category of individuals who are deemed to be from low-income families and therefore categorically eligible for enrollment in Head Start and Early Head Start, but who were not included explicitly in the previous version of the Act. Homeless children are among the most disadvantaged children in the country. Since the reauthorization, grantees have been informed of these changes through

a Program Instruction and various policy clarifications related to categories of individuals that are categorically eligible and the definition of homeless child to be used to determine eligibility. However, the current regulations do not specify how agencies are required to verify or certify that a child is homeless.

The proposed revisions to 45 CFR 1305.2 and 1305.4 directly respond to the findings of a recent investigation by the Government Accountability Office (GAO) that the Head Start program is at risk of having over-income children enrolled while legitimate under-income and categorically eligible children are put on wait lists. GAO presented its preliminary results about its ongoing investigation in testimony entitled, "Head Start: Undercover Testing Finds Fraud and Abuse at Selected Head Start Centers" before the House Education and Labor Committee on May 18, 2010, which is available at: <http://www.gao.gov/new.items/d10733t.pdf>. GAO published its final report on September 28, 2010, which reiterated many of the findings disclosed in the May testimony and discussed new findings related to specific fraud allegations at two Head Start grantees. This report is available at: <http://www.gao.gov/products/GAO-10-1049>.

Specifically, in its investigation, GAO followed up on received allegations of fraud and abuse involving two Head Start grantees, including that Head Start centers allegedly manipulated recorded income to make over-income applicants appear under-income; encouraged families to report that they were homeless when they were not; enrolled more than 10 percent of over-income children allowed by the Head Start Act; and counted children as enrolled in more than one center at a time. In its final report, GAO states that it was able to substantiate that "children were enrolled in both the grantee and delegate sites," indicating that the grantee did not comply with the Head Start requirement to report an unduplicated count of its funded enrollment numbers. After further investigation of the programs alleged to have enrolled ineligible children by designating them as "homeless," GAO was unable to substantiate the fraud claim because not all of the records reviewed contained sufficient information to determine whether a given family was homeless. However, GAO noted that the lack of requirements related to verifying and documenting a child's homeless status raised concerns about the risk of fraud in the Head Start program.

In order to ascertain if this type of fraud was occurring at other Head Start

centers, GAO attempted to register fictitious children as part of 15 undercover test scenarios at centers in six States and the District of Columbia. GAO found that in eight instances, staff at the Head Start centers fraudulently misrepresented information, including disregarding part of the families' income to register over-income children into under-income slots. The undercover tests revealed that seven Head Start employees lied about applicants' employment status or misrepresented their earnings. GAO concluded that "this leaves Head Start at risk that over-income children may be enrolled while legitimate under-income children are put on wait lists." GAO also noted that "at no point during our registrations was information submitted by GAO's fictitious parents verified, leaving the program at risk that dishonest persons could falsify earnings statements and other documents in order to qualify."

Upon learning of GAO's investigation, we immediately took numerous actions within our statutory and regulatory authority to respond to GAO's findings and to bolster program integrity efforts across the Head Start and Early Head Start programs; prevent future fraud and mismanagement; and ensure that every slot is reserved for an eligible child. For example, ACF issued a Program Instruction on May 10, 2010, entitled, "Income Eligibility for Enrollment" (ACF-PI-HS-10-01), which reminds grantees of their legal obligations to verify the eligibility of each child served and determine eligibility in accordance with the Head Start statute and regulations, as well as the serious consequences for falsifying eligibility determinations. The Program Instruction is available at: [http://eclkc.ohs.acf.hhs.gov/hslc/Program%20Design%20and%20Management/Head%20Start%20Requirements/Pis/2010/resour\\_pri\\_002\\_051010.html](http://eclkc.ohs.acf.hhs.gov/hslc/Program%20Design%20and%20Management/Head%20Start%20Requirements/Pis/2010/resour_pri_002_051010.html). On May 17, 2010, the Secretary of HHS, Kathleen Sebelius, sent a letter to every Head Start and Early Head Start grantee in the country to underscore the serious nature of GAO's allegations and notify them that HHS is intensifying its oversight and enforcement actions. This letter is available at: [http://www.hhs.gov/news/press/2010pres/05/head\\_start\\_letter.html](http://www.hhs.gov/news/press/2010pres/05/head_start_letter.html). We also have begun to conduct more unannounced monitoring visits to Head Start grantees; have created a Web-based "hotline" that will allow those with information of impropriety of any kind to report directly to the Secretary of HHS; have begun to increase oversight and reviews of programs with identified risk factors;

and will continue to use our authority to suspend or terminate grantees where pervasive fraud or misuse of funds is found.

However, we believe GAO's findings necessitate the implementation of new enrollment procedures, as proposed by this regulation, in order to reiterate and strengthen the requirements. Therefore, we are proposing new requirements for Head Start and Early Head Start agency staff regarding verification, documentation, and certification of the information submitted by the applicants prior to determining if a pregnant woman or child is eligible for participation in a Head Start or Early Head Start program. This proposed regulation will ensure that taxpayer dollars are spent in conformance with the purpose and requirements of the Head Start Act and that the neediest children and families in our country benefit from the program's services. The purpose of the program, as stated in section 636 of the Head Start Act, is to "promote the school readiness of low-income children" and provide "low-income children and their families of health, educational, nutritional, social, and other services that are determined, based on family needs assessments, to be necessary." As stated in sections 645 and 645A of the Head Start Act and Part 1305 of the current Head Start regulations, the eligibility requirements of the program require that, with limited exceptions, participants must be either "income eligible," meaning the pregnant woman or family's income is equal to, or less than, the income guidelines (the "official poverty line") or "categorically eligible," meaning that the individuals are eligible for participation in a Head Start or Early Head Start program even if the income of the pregnant woman or family exceeds the income guidelines due to being a member of one of the specific categories of individuals authorized under the Act and current regulations—being eligible for public assistance; being a homeless child; or being a child in foster care. While the Head Start Act provides authority for grantees to enroll a certain portion of pregnant women and children who are not income or categorically eligible, the statute nonetheless makes clear that the primary target populations for the Head Start and Early Head Start programs are low-income and categorically eligible children and their families, and, in the case of Early Head Start, low-income pregnant women. Therefore, most of the enrollment slots are reserved for pregnant women and children who are income or categorically eligible.

In particular, we believe GAO's findings regarding the apparent

fraudulent enrollment of ineligible children in Head Start slots that are reserved for children who are income and categorically eligible necessitate the implementation of new enrollment procedures to ensure eligible children receive Head Start services in a timely fashion and to prevent harm resulting from being denied access to these services. In the case of Head Start, if an eligible child misses all or a part of the year of Head Start services because an ineligible child is enrolled in a slot intended for the eligible child, the eligible child suffers real harm by being deprived of an essential educational experience needed to prepare him or her for success in elementary school. In the case of Early Head Start, if an eligible infant or toddler misses all or a part of the year of Early Head Start services, the child suffers harm by being denied participation in a program that has been shown by research to help children perform significantly better on a range of measures of cognitive, language, and social-emotional development than those in a randomly assigned control group and potentially to reduce the risk of poor cognitive, language, and school outcomes later on in life.

GAO identified the lack of verification requirements as a concern related to enrollment fraud as they found evidence that "Head Start staff encouraged parents to report that they were homeless when they were not in order to qualify them for the program." Therefore, we believe it is essential to issue this proposed rule to prevent cases of fraud in which staff intentionally enroll children based on being homeless, despite knowing they are ineligible. Specifically, this proposed regulation reflects the status of homeless children as categorically eligible for participation in Head Start and Early Head Start in order to conform to the Head Start Act and specifies how agency staff must verify, certify, and document in a child's record how they explored a claim by a child's parent, guardian, or other person(s) seeking services for the child who has knowledge of the family's situation that the child is homeless.

We note that since GAO's findings were released, we have kept the Head Start grantee community, Congress, and the general public apprised of our increased focus on program integrity and our planned changes in operating procedures. In addition, these proposed requirements would place a minimal burden on grantees. For example, this proposed regulation would add a requirement for grantees to maintain source documents in each child and pregnant woman's record; grantees

already are required to review these source documents for the purposes of income eligibility determination, so the proposed new requirement would be to review source documents for categorical eligibility, as well as maintain copies of all source documents used to determine eligibility in each pregnant woman and child's eligibility determination record.

#### IV. Discussion of Regulatory Provisions

As discussed, the findings of a recent investigation by GAO identified weaknesses in existing eligibility verification and documentation requirements that allegedly resulted in the enrollment of ineligible children. The proposed revisions to § 1305.2 and § 1305.4 are intended to reiterate and strengthen Head Start and Early Head Start agency procedures for determining eligibility for program enrollment, including procedures to verify, certify, and document such eligibility, and eliminate such weaknesses. In addition, the regulation proposes to create a new requirement for pregnant women and parents, guardians, or other person(s) seeking services for the child who have knowledge of the family's situation to certify that they have submitted factual and accurate documents to be used to verify their eligibility. The regulation proposes to create new requirements for program staff who make the eligibility determination to certify that the information relied on in making the decision is accurate to the best of his or her knowledge. The regulation proposes to initiate new requirements for agencies to establish policies describing the actions that will be taken against agency staff who intentionally violate Federal and agency eligibility determination regulations, policies, and procedures. The regulation also proposes new requirements for agencies to provide training related to eligibility requirements and the legal consequences of committing fraud. The proposed revisions also change the definitions of "Head Start eligible," "income guidelines," and "low-income family" and add a definition of "homeless children" to conform to statutory requirements and provisions.

Note that we use the term "we" throughout the regulatory text and preamble. The term "we" means the Secretary of the Department of Health and Human Services in consultation with the Assistant Secretary for Children and Families and other officials within the Department. Likewise, the term "Act" refers to the Head Start Act, as amended.

#### Section 1305.2—Definitions

This regulation proposes to modify the definitions of "Head Start eligible," "income guidelines," and "low-income family" to comply with statutory requirements and provisions. The current definitions contain outdated information regarding eligibility guidelines and/or incorrect statutory citations that we believe must be updated in order to ensure all grantees have correct and clear information related to participant eligibility and enrollment. Otherwise, the Head Start program will be vulnerable to incorrect eligibility and enrollment determinations. To provide clarification for grantees, we also propose to add the definition of "homeless children" as paragraph (i) from section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), which was added as a definition in section 637(11) of the Head Start Act in the 2007 reauthorization, and to redesignate the subsequent definitions accordingly.

The current definition of "Head Start eligible" states that: "A child that meets the requirements for age and family income as established in this regulation or, if applicable, as established by grantees that meet the requirements of section 645(a)(2) of the Head Start Act. Up to 10 percent of the children enrolled may be from families that exceed the low-income guidelines. Indian Tribes meeting the conditions specified in 45 CFR 1305.4(b)(3) are excepted from this limitation." This definition does not reflect current statutory eligibility requirements. For example, the rule that "up to 10 percent of the children enrolled may be from families that exceed the low-income guidelines" was changed when the 2007 reauthorization created several other eligibility provisions. In addition, the definition does not include "Early Head Start" in the lead-in language. Therefore, the new definition of "Head Start and Early Head Start eligible" at § 1305.2(g) is proposed to read as follows: "Head Start or Early Head Start eligible means a pregnant woman or child who meets the requirements for age and family income or categorical eligibility or, if applicable, the requirements established by a grantee under section 645(a)(2) of the Head Start Act or by a Head Start program operated by an Indian Tribe under 45 CFR § 1305.4(d)."

As indicated, we propose to add a definition in § 1305.2 of "homeless children." The 2007 reauthorization expanded eligibility to include homeless children as categorically eligible for participation in Head Start. The definition of "homeless children"

also was added to section 637(11) of the Head Start Act, which states that "[t]he term "homeless children" has the meaning given the term "homeless children and youth" in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))." To improve clarity for grantees and enable them to have the necessary references related to eligibility determination in one regulation, we propose to include a definition of "homeless children" based on the McKinney-Vento Homeless Assistance Act as § 1305.2(i) to mean individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C. 11302(a)(1)); and include (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement; (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S.C. 11302(a)(2)(C)); (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and (iv) migratory children (as such term is defined in 20 U.S.C. 6399) who qualify as homeless for the purposes of this part because the children are living in circumstances described in paragraphs (i) through (iii).

The current definition of "income guidelines" at § 1305.2(j) references an outdated section of the Head Start Act. The current definition defines "income guidelines" as "the official poverty line specified in section 652 of the Head Start Act." However, the official poverty line in the Act now is referenced in the definitions section (section 637(19)) of the Head Start Act. Therefore, we propose to update § 1305.2(j) to reference the correct Head Start Act citation and to redesignate it as paragraph (k). The proposed new definition of income guidelines at § 1305.2(k) means the official poverty line specified in section 637(19) of the Head Start Act. The U.S. Department of Health and Human Services publishes the income guidelines each year in the **Federal Register**; they also are available at <http://aspe.hhs.gov/poverty/>.

The current definition of "low-income family" at § 1305.2(l) states that low-

income family means a family whose total annual income before taxes is equal to, or less than, the income guidelines. The definition also states that, for the purpose of eligibility, a child from a family that is eligible for public assistance or a child in foster care is eligible even if the family income exceeds the income guidelines. Public assistance and foster care, as well as being a homeless child, are classified as the three types of "categorical eligibility" that are authorized by current statute and regulations and further specified in this regulation. We propose to remove the public assistance and foster care categories of recipients currently included in the definition of "low-income family" to prevent confusion and mistakes because agencies are not required to verify family income in these cases. We also propose to redesignate paragraph (l) as paragraph (m). The proposed definition of "low-income family" at § 1305.2(m) only refers to eligibility based on the income guidelines and reads as follows: "Low-income family means a family whose total income before taxes is equal to, or less than, the income guidelines."

*Section 1305.4—Determining, Verifying, and Documenting Eligibility*

In order to update and strengthen the content of § 1305.4 related to determining, verifying, and documenting Head Start and Early Head Start program eligibility consistent with the changes made through the 2007 reauthorization of the Head Start Act, we propose to revise the heading of § 1305.4, "Age of child and family income eligibility" to read "Determining, verifying, and documenting eligibility."

Because the current regulations regarding eligibility were updated last on March 16, 1998, prior to the 2007 reauthorization of the Head Start Act, these proposed revisions represent the full scope of actions Head Start and Early Head Start agencies are required now by statute to undertake related to determining participant eligibility. We propose to revise § 1305.4 to incorporate the new income eligibility criteria added in the 2007 reauthorization. These proposed determination requirements are described in paragraphs (a) through (d). We believe that the lack of updated and accurate descriptions of eligibility criteria in the current regulations otherwise would contribute to confusion and enrollment determination errors by Head Start and Early Head Start programs.

The current regulations require programs to verify family income (§ 1305.4(c)); identify which documents should be reviewed (§ 1305.4(d)); and

establish rules under which an agency must maintain a signed statement by an employee that identifies which documents were examined and stating the child is eligible (§ 1305.4(e)). The current regulations only specify that income eligibility based on having income below the Federal poverty line, has to be verified and do not require that copies of documentation be maintained in the agency records. We believe that the lack of clear up-to-date rules governing eligibility determination, verification, certification, and documentation requirements in the current regulations exposes the Head Start and Early Head Start programs to an unacceptable risk of fraud, as revealed by GAO's investigation.

Therefore, as detailed later in this preamble, in paragraphs (e) to (g), we describe proposed requirements for agency staff to verify income and categorical eligibility and propose specific instructions about the required certification and documentation steps program staff must take. In paragraph (g), the regulation proposes new requirements for pregnant women and person(s) seeking services for individual children to certify that the documents and information that they provided concerning eligibility are accurate to the best of their knowledge, as well as a new requirement for the program staff persons who made the eligibility determination also to certify that the information on eligibility in the file is accurate to the best of their knowledge. Paragraph (g) also proposes to add new requirements related to documentation to ensure that agency staff maintains eligibility determination records for each pregnant woman or child, including copies of all documents submitted by a pregnant woman or persons seeking services on behalf of a child to the program relating to the pregnant woman's or child's eligibility for services and any staff member's notes recording any other information related to eligibility received from any source; documentation establishing that an agency staff member verified the accuracy of the information on eligibility; a record of the category under which the pregnant woman or child was determined eligible; and the required beneficiary and staff certifications. Additionally, paragraph (g) explains the retention and access requirements related to eligibility determination records.

In paragraph (h) we propose a new requirement that all Head Start and Early Head Start agencies must establish policies and procedures describing the actions that will be taken against agency

staff who commit intentional violations of Federal and agency eligibility determination requirements, including enrolling pregnant women and children who staff have not documented as eligible to participate in the program.

In paragraph (i), we propose to extend current regulatory training requirements at § 1304.52(l) to specify that such training for all governing body, policy council, management and those staff members who have the responsibility to make eligibility determinations must include an explanation of the legal consequences of committing fraud and information on methods for obtaining facts necessary for complete and accurate eligibility determinations.

Specifically, proposed paragraph (a) reflects the statutory requirements at section 638 of the Act regarding age eligibility for participation in the Head Start program. Following the statute, we begin paragraph (a) by noting the exception stated in section 645(a)(2) of the Head Start Act, which authorizes qualifying communities to develop their own eligibility criteria within statutory limits. Section 645(a)(2) applies to a Head Start program that is operated in a community with a population of 1,000 or less individuals and the following conditions apply: There is no other preschool program in the community; the community is located in a medically underserved area, as designated by the Secretary pursuant to section 330(b)(3) of the Public Health Service Act [42 U.S.C. 254c(b)(3)], and is located in a health professional shortage area, as designated by the Secretary pursuant to section 332(a)(1) of such Act [42 U.S.C. 254e(a)(1)]; the community is in a location which, by reason of remoteness, does not permit reasonable access to preschool and medical services; and not less than 50 percent of the families to be served in the community are eligible under the eligibility criteria established by the Secretary under paragraph in section 645(a)(1) of the Act. A Head Start program in such a locality is required to establish the eligibility criteria to be used, except that no child residing in such community whose family is eligible under such eligibility criteria shall, by virtue of regular eligibility criteria, be denied an opportunity to participate in such program.

Section 645A(c) of the Act provides that to be eligible for participation in Early Head Start programs, an individual must be a pregnant woman or a child under the age of three. Section 645(a)(5)(A) of the Act provides that children who are at least three years old through the age of compulsory school attendance are age eligible for

participation in Head Start programs. The current regulations at § 1305.4(a) describe age eligibility requirements as follows: "To be eligible for Head Start services, a child must be at least three years old by the date used to determine eligibility for public school in the community in which the Head Start program is located, except in cases where the Head Start program's approved grant provides specific authority to serve younger children. Examples of such exceptions are programs serving children of migrant families and Early Head Start programs." However, the paragraph is outdated and needs to be changed in order to reflect current statutory provisions. We believe the lack of thorough and clear descriptions of age eligibility criteria could contribute to confusion and enrollment mistakes by Head Start and Early Head Start programs as they respond to the new verification procedures proposed through this regulation. In addition, in order to clarify which age eligibility requirements apply to Early Head Start participation versus those that apply to Head Start participation, we propose to create two paragraphs to distinguish the different age eligibility requirements for each program.

Since the current paragraph (a) does not refer to the specific age eligibility requirements for Early Head Start programs, we propose in paragraph (a)(1)(i) that to be eligible for Early Head Start services, "a child must be an infant or toddler between the ages of zero and three years old." Current paragraph (a) also does not refer to the age eligibility of pregnant women. Therefore, we propose to add a provision in (a)(1)(ii) to specify that a pregnant woman may be any age in order to be eligible for enrollment in an Early Head Start program.

In proposed paragraph (a)(2), we primarily state the same eligibility requirements currently found in paragraph (a). Specifically, proposed (a)(2) states that "To be age eligible for Head Start services, a child must be at least three years old by the date used to determine eligibility for public school in the community in which the Head Start program is located and not older than the age of required school attendance, except in cases where the Head Start program's approved grant provides specific authority to serve younger children. Examples of such exceptions are programs serving children of migrant and seasonal farmworker families." The date to be used for age determination remains the same as the current regulation. We propose to remove the current exception of Early

Head Start programs since we now explain the Early Head Start requirements separately in proposed paragraph (a)(1). We also propose to add reference to "seasonal farmworker families" to reflect statutory terminology.

Under proposed paragraph (b)(1), we describe the statutory income eligibility requirements found in section 645(a)(1) of the Act. As described above with regard to paragraph (a), we begin proposed paragraph (b) with the exception stated in section 645(a)(2) of the Head Start Act, which authorizes qualifying communities to develop their own eligibility criteria. Proposed paragraph (b)(1) reflects the requirements for Head Start and Early Head Start eligibility that pregnant women and age eligible children from low-income families shall be eligible for participation in Head Start and Early Head Start programs.

Proposed paragraph (b)(2) reflects the new statutory authority at section 645(a)(1)(B)(iii)(I) established by the 2007 reauthorization of the Head Start Act. This paragraph explains that to a reasonable extent, but not to exceed 10 percent of participants, participants may include age eligible children and pregnant women in the area served who would benefit from Head Start or Early Head Start programs, but who are not eligible under paragraphs (b)(1) or (c) [income or categorically eligible]. In order to conform to the new statutory authority that was provided in section 645(a)(1)(B)(iii)(I) through the 2007 reauthorization, we reiterate in proposed paragraph (b) that programs may enroll pregnant women or children from over-income families "in the area served who would benefit from such programs."

Proposed paragraph (b)(3) reflects the new statutory authority at section 645(a)(1)(B)(iii)(II) established by the 2007 reauthorization of the Head Start Act. This paragraph explains that from the area served, programs may enroll an additional 35 percent of participants beyond the 10 percent eligible under proposed paragraph (b)(2) that are pregnant women and age eligible children whose families have incomes over 100 percent but below 130 percent of the income guidelines, who do not satisfy the eligibility requirements described under paragraphs (b)(1) or (c) [income or categorically eligible]. We are reiterating the provision in this proposed rule to conform to the new statutory authority that was provided through the 2007 reauthorization.

Proposed paragraph (b)(3)(i) specifies that agencies that choose to serve individuals eligible under this

paragraph must establish and implement outreach, prioritization, and enrollment policies and procedures that ensure they are meeting the needs of children and pregnant women eligible based on being a member of a low-income family, as defined in this proposed rule, and enrolling at least 10 percent of children with disabilities who are eligible under proposed paragraph (b)(2), prior to serving the pregnant women and children from families with incomes over 100 percent to 130 percent of the income guidelines.

In order to align the Head Start regulations with the Act, proposed paragraph (b)(3)(ii) also references the annual reporting requirements stated in section 645(a)(1)(B)(iv) of the Act for agencies that choose to serve additional children and pregnant women per the authority granted at section 645(a)(1)(B)(iii)(II) of the Act. The 2007 reauthorization added the reporting requirement under section 645(a)(1)(B)(iv) for all Head Start and Early Head Start agencies that serve additional pregnant women and children under section 645(a)(1)(B)(iii)(II) to document how the grantees enrolling additional over-income children are meeting the needs of children from low-income families, homeless children, children in foster care, and pregnant women and children from families eligible for public assistance, as well as to document that they have implemented outreach and enrollment policies and procedures that ensure the agency is enrolling at least 10 percent of children with disabilities prior to serving children from families with incomes over 100 percent and under 130 percent of the income guidelines.

Proposed paragraph (c) describes the three types of categorical eligibility for Head Start and Early Head Start based on section 645(a)(1)(B)(i) and (ii) of the Act and 45 CFR 1305.4(l).

The first proposed type of categorical eligibility reiterates the eligibility condition stated in section 645(a)(1)(B)(i) of the Act that a child is eligible if the child's family is "eligible or, in the absence of child care, would potentially be eligible for public assistance." In addition, children and pregnant women are eligible under the proposed regulation for Early Head Start based on section 645A(c) of the Head Start Act, which makes the eligibility criteria in section 645(a)(1) of the Act applicable to the enrollment of children and pregnant women in Early Head Start programs. As provided in policy guidance, TANF and SSI are the only two programs that are considered as

public assistance for determining Head Start Eligibility.

The second proposed type of categorical eligibility specifies that a homeless child is eligible for participation, as stated in section 645(a)(1)(B)(ii) of the Act. Section 645A(c) of the Head Start Act makes the eligibility criteria in section 645(a)(1) of the Act applicable to the enrollment of children and pregnant women in Early Head Start programs. As described earlier, the 2007 reauthorization added the provision stating that homeless children are categorically eligible for participation in Head Start. The definition of “homeless children” also was added to section 637(11) of the Head Start Act, which states that “[t]he term “homeless children” has the meaning given the term “homeless children and youth” in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)).” As stated previously, we propose to add this definition of “homeless children” to § 1305.2(i) to improve clarity for grantees.

The third type of categorical eligibility proposes that children in foster care are eligible for participation, which already is specified in the current definition of “low-income family” in § 1305.2(l) (proposed to be redesignated as § 1305.2(m)). It has been longstanding Head Start policy for foster children to be eligible for participation in Head Start, without regard to their foster family’s income. We propose in paragraph (c) to add a reference to the regulatory definition of foster care used for Federal child welfare programs to this Head Start rule to enable grantees to conduct the eligibility determination process accurately and consistently. We propose to reference 45 CFR 1355.20(a), which defines foster care to mean “24-hour substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.”

In summary, proposed paragraph (c) provides that pregnant women and age eligible children are categorically

eligible for enrollment in Head Start and Early Head Start if: (1) The pregnant woman or the child’s family is eligible or, in the absence of child care, would potentially be eligible for public assistance; (2) the child is homeless, as defined in § 1305.2(i); or (3) the child is in foster care.

In proposed paragraph (d), we move the requirements and procedures related to the special income eligibility rules governing Indian Tribes that are reflected currently in § 1305.4(b)(3) and (4) to proposed paragraph (d)(1) through (5). The current paragraph only includes references to income eligibility based on the low-income guidelines, but does not include references to categorical eligibility. Therefore, we also propose to update this paragraph to conform to the statutory authority.

Under the proposed paragraph, a Head Start or Early Head Start program operated by an Indian Tribe may enroll more than 10 percent of its children from families whose incomes exceed the low-income guidelines or are not categorically eligible when:

- All children from Indian and non-Indian families living on the reservation that meet the low-income guidelines or are categorically eligible who wish to be enrolled in the program are served by the program;
- All children from income-eligible or categorically-eligible Indian families native to the reservation living in non-reservation areas, approved as part of the Tribe’s service area, who wish to be enrolled in the program are served by the program. In those instances in which the non-reservation area is not served by another Head Start or Early Head Start program, the Tribe must serve all of the income-eligible and categorically-eligible Indian and non-Indian children whose families wish to enroll them in the program prior to serving over-income children;
- The Tribe has the resources within its grant or from other non-Federal sources to enroll children from families whose incomes exceed the low-income guidelines or are not categorically eligible without using additional funds from HHS intended to expand Head Start or Early Head Start services; and
- At least 51 percent of the children to be served by the program are from families that meet the income-eligibility guidelines or are categorically eligible.

Proposed paragraph (d)(5) maintains the content from current § 1305.4(b)(4), but updates the reference in this provision from paragraph (b)(3) to paragraph (d). The paragraph proposes that programs which meet the conditions of paragraph (d) must annually set criteria that are approved

by the Policy Council and the Tribal Council for selecting over-income children who would benefit from such a program.

Proposed paragraph (e) would establish requirements for family income to be verified before a child or pregnant woman is determined to be eligible for Head Start or Early Head Start participation based on being a member of a low-income family. We propose adding these income verification requirements to respond to GAO’s findings and concerns related to the lack of requirements in many programs to verify, document, and maintain records. This proposed income verification process would reduce the risk GAO cited whereby “dishonest persons could falsify earnings statements and other documents in order to qualify.” This responds directly to GAO’s recommendation that we establish “more stringent income verification requirements, documentation requirements, or both by Head Start employees responsible for certifying family eligibility, such as maintaining income documentation provided by the applicant (e.g., pay stubs or W-2s).” Moreover, we have communicated to the public and to grantees on several occasions that we would be addressing GAO’s findings by strengthening our verification requirements. For example, Secretary Sebelius provided notice to all grantees through her May 17, 2010 letter that we would be developing new regulations “that will address verification requirements.”

Proposed paragraph (e) incorporates the current regulatory requirement related to income verification in § 1305.4(c), which requires that family income must be verified by the Head Start or Early Head Start program before determining that a child is eligible based on income guidelines. We propose to continue the longstanding requirement that family income must be verified prior to determining eligibility for enrollment in a Head Start or Early Head Start program. As defined in proposed § 1305.2(b), the term “enrollment” means “the official acceptance of a family by a Head Start program and the completion of all procedures necessary for a child and family to begin receiving services.”

Paragraph (e) proposes a new requirement related to a pregnant woman’s or family’s declaration that the pregnant woman or family has no income. Currently, there are no regulations that specify what actions agencies should take when a pregnant woman or a child’s parent, guardian, or other person(s) seeking services for the



child who has knowledge of the family's finances states that the pregnant woman or family has no income to report. We recognize the difficulty Head Start and Early Head Start agencies face in obtaining documentation supporting a declaration that an individual has no income. Therefore, in such cases when a pregnant woman or family reports having no income and submits no documentation proving that the pregnant woman or family has no income, proposed paragraph (e) would require agency staff to document that they explored a pregnant woman or family's declaration that they have no income. For example, programs should gather as much relevant information as possible about the pregnant woman or family; *i.e.*, the location, living arrangements, employment situation, *etc.* of the pregnant woman or family to make as informed a judgment as possible about the pregnant woman or family's eligibility status. Agencies may examine and maintain documentation representing relevant evidence of a pregnant woman or family's low-income status, such as receipt of Supplemental Nutrition Assistance Program (SNAP) or Medicaid benefits, or any other evidence of public or private assistance by which a family with children is meeting its ongoing needs for food, housing, and health care.

Accordingly, under proposed paragraph (e), before a child or pregnant woman is determined to be eligible on the basis of family income, the pregnant woman or the child's parent, guardian, or other person(s) seeking services for the child who has knowledge of the family's finances must submit information to the program concerning the family's income. Under the proposed rule, verification must include examination of documents, such as individual income tax forms, W-2 forms, pay stubs, pay envelopes, or written statements from employers (if individual income tax forms, W-2 forms, pay stubs, or pay envelopes are not available). Income would be required to be compared to the poverty guidelines for the appropriate size of family, and program staff would need to document whether a pregnant woman or child's family qualifies as a low-income family under the income guidelines for the appropriate size of family. Under the proposed rule, when appropriate, in cases in which no documentation regarding the income eligibility of the pregnant woman or child has been received by the agency, or when it is either more efficient or reliable to do so rather than to search for eligibility documentation, programs could seek

information from third parties who have first-hand knowledge about the pregnant woman's or child's eligibility, and document the names, titles, and relationship to the applicant in the participant's record. Programs also could seek third party information in cases where documents are not submitted to prove a claim that a pregnant woman or family has no income. We believe all applicants must be given the opportunity to withhold consent related to each third party the program would like to contact. Therefore, we propose that if programs plan to seek third party verification from one or more entities regarding an applicant's eligibility, staff must inform the applicant about each entity that they intend to contact and have the applicant sign a consent form permitting the program to contact each of the specified third parties; this would provide applicants the opportunity to withhold their consent for third party verification from one or more entities. If applicants do not sign the consent form, the Head Start program would not be allowed to contact that entity and the applicant would remain responsible for providing appropriate documentation. We also propose that when programs contact third parties, they should limit the information discussed and questions posed to the third party to the information necessary to obtain the required eligibility information. Programs should be especially sensitive to any potential domestic violence issues prior to seeking verification of the required eligibility information.

In paragraph (f), we propose to require agencies to verify and document categorical eligibility before a pregnant woman or child is determined to be eligible for Head Start or Early Head Start participation. We propose to require the pregnant woman or the child's parent, guardian or other person(s) seeking services for the child who has knowledge of the family's situation to submit information to the program concerning the family's categorical eligibility. As proposed, verification of categorical eligibility by the program must include examination of the relevant documents submitted by the pregnant woman or family for the relevant type of categorical eligibility, as described below. If a pregnant woman or child could qualify for Head Start or Early Head Start participation based on more than one eligibility criterion, then the program should enroll the child under the criterion that is easiest to verify and document; it would not be necessary to verify and document multiple eligibility criteria.

The first requirement in proposed paragraph (f)(1) addresses categorical eligibility based on eligibility for public assistance. This proposal aligns with the requirement currently at § 1305.4(d), which specifies that verification of family income "must include examination of \* \* \* documentation showing current status as recipients of public assistance." Under proposed paragraph (f)(1), we require agency staff to examine any official documents submitted for the purpose of demonstrating that the pregnant woman, the child, or child's parent or guardian, is eligible or, in the absence of child care, would potentially be eligible for public assistance. Based on Federal Head Start grantee monitoring experience, we are aware that some agencies already have developed policies and procedures, or practices, for verifying public assistance eligibility or receipt status. Since the substance of this proposed requirement is based on current practice by many grantees, we do not believe this would impose a large burden.

Under proposed paragraph (f), in cases in which a child is in foster care, we add a new requirement for agency staff to review a copy of a court order, other legal or government-issued document, or a statement of a State, Tribal, or local child welfare official demonstrating the child is in foster care. The current regulations do not require agencies to verify or document foster care status. Based on Federal Head Start grantee monitoring experience, we are aware that some agencies already have developed policies and procedures, or practices, for verifying foster care status through their collaborations with local child welfare agencies. Since the substance of this requirement is based on current practice by many grantees, we do not believe this proposed requirement would impose a large burden.

Proposed paragraph (f) also adds a new provision to address cases when documents are not submitted to provide evidence of a child's status as homeless. Under proposed paragraph (f)(3), in lieu of other source documents, the program could substitute a written statement of a program staff member certifying that he or she has made reasonable effort to confirm a declaration by the parent, guardian, or other person(s) seeking services for the child that the child is a "homeless child," as defined in § 1305.2(i). As stated previously, the 2007 reauthorization added homeless children as a category of individuals that are categorically eligible for enrollment. The current regulations do not specify how agencies should verify



that a child is homeless. We believe it is essential for program integrity, especially in light of GAO's recent investigation into allegations that grantees enrolled children who were known by agency staff not to be homeless, to require that homelessness must be verified, and documentation must be maintained in the agency's files (as described in proposed paragraph (g)), in order to prevent cases of fraud in which staff intentionally enroll children based on being homeless despite knowing they are not. We recognize that obtaining verification and documentation of the circumstances that fall within the Federal definition of homeless children can present unique challenges to Head Start and Early Head Start agencies and to vulnerable families. We would encourage agencies to enroll homeless children based on the families' description of their living situation, if that description meets the definition and documentation is not readily available. Statements that describe the living situation also could be accepted from family members and other individuals that are cohabitating temporarily with the family. As proposed, verification of circumstances and collection of documents should be obtained within a reasonable timeframe. In order to verify homelessness, we would encourage grantees to conduct the following types of efforts: Engage their school district homeless liaisons, private and public shelter providers, HUD Continuums of Care, and other homeless service agencies in their service area to assist in the verification and documentation process. We also would urge agencies to exercise care to ensure that their verification activities do not increase the risk that families may be evicted or suffer other resulting adverse consequences. In addition, we would urge agencies to ensure that these efforts do not impose barriers to the enrollment and participation of homeless children in Head Start programs, an important goal expressed in the Head Start Act.

Paragraph (f) proposes that, before a child or pregnant woman is determined to be eligible on the basis of categorical eligibility, the pregnant woman or the child's parent, guardian, or other person(s) seeking services for the child who has knowledge of the family's situation must provide the program with: (1) A copy of official documents demonstrating current eligibility or receipt of public assistance benefits or services by the pregnant woman's or the child's family; (2) a copy of the court order or other legal or government-issued document or statement of

government child welfare official demonstrating the child is in foster care; or (3) a copy of any other source document that establishes categorical eligibility. Under the proposal, in place of the foregoing documents, the program could substitute a written statement of a program staff member certifying that the staff member has made reasonable efforts to confirm a child is homeless, as defined in proposed § 1305.2(i). The lack of documentation of homelessness should not be a barrier to enrollment. Under the proposal, when appropriate, in cases in which no documentation regarding the income eligibility of the pregnant woman or child has been received by the agency, or when it is either more efficient or reliable to do so rather than to search for eligibility documentation, programs could seek information from third parties who have first-hand knowledge about the pregnant woman's or child's eligibility, and document the names, titles, and relationship to the applicant in the participant's record. As proposed, programs also could seek third party information in cases where documents are not submitted to prove a claim that a pregnant woman or family has no income. We propose that if programs plan to seek third party verification from one or more entities regarding an applicant's eligibility, staff must inform the applicant about each entity that they intend to contact. In addition, the applicant would be required to sign a consent form permitting the program to contact specified third parties; this would provide applicants the opportunity to withhold their consent for third party verification from one or more entities. An applicant must be given the opportunity to withhold consent related to each entity the program would like to contact. If applicants do not sign the consent form the Head Start program could not contact that entity and the applicant would remain responsible for providing appropriate documentation. We propose that when programs contact third parties, they should limit the information discussed and questions posed to the third party to the information necessary to obtain the required eligibility information. Programs should be especially sensitive to any potential domestic violence issues prior to seeking verification of the required eligibility information.

In proposed paragraph (g), we strengthen and supplement current regulatory requirements related to eligibility certification and documentation to respond to GAO's finding that "the lack of documentation

made it virtually impossible to determine whether only under-income children were enrolled in spots reserved for under-income children" and its recommendations that we establish "more stringent income verification requirements, documentation requirements, or both by Head Start employees responsible for certifying family eligibility, such as maintaining income documentation provided by the applicant (e.g., pay stubs or W-2s)." As previously mentioned, current regulations require a signed statement by an employee of the Head Start program, identifying which documents were examined and stating that the child is eligible to participate in the program, but do not require staff to maintain copies of the documents.

First, this proposed paragraph requires all Head Start and Early Head Start programs to keep an eligibility determination record for each child or pregnant woman as part of the record maintained by the agency on that individual. Proposed paragraph (g)(1) requires this record to include copies of all documents submitted by a pregnant woman or persons seeking services on behalf of a child to the program by such persons or other persons relating to the pregnant woman's or child's eligibility for services and any staff member's notes recording any other information related to eligibility received from any source.

Proposed paragraph (g)(2) requires the record to include a copy of the statements and documents required under proposed paragraphs (e) and (f) (related to income and categorical eligibility). Based on Federal Head Start grantee monitoring experience, we are aware that some agencies already have developed policies and procedures, or practices, for maintaining copies of documents verified during eligibility determination. Since the substance of this requirement is based on current practice by some grantees, we do not believe this proposed requirement would impose a large burden.

Proposed paragraph (g)(3) requires that the record also includes a signed and dated statement by the person seeking services, *i.e.*, the pregnant woman or the child's parent, guardian, or other person seeking services for the child who has knowledge of the family's situation that "the documents and information that the person provided concerning eligibility are accurate to the best of the person's knowledge."

Proposed paragraph (g)(4) requires the record to include documentation establishing that an agency staff member has sought to verify the accuracy of the information on eligibility provided to

the agency by: (i) Conducting an in-person interview with the pregnant woman or the child's parent, guardian, or other person seeking services for the child who has knowledge of the family's situation; and (ii) when appropriate, in cases in which no documentation regarding the income eligibility of the pregnant woman or the child's family or regarding the categorical eligibility of the child based on being homeless has been received by the agency, or when it is either more efficient or reliable to do so rather than to search for eligibility documentation, seeking information from third parties who have first-hand knowledge about the pregnant woman's or child's eligibility, whose names, titles, and affiliations would be recorded in the record. If programs seek third party verification regarding an applicant's eligibility, the record would be required to include the applicant's signed consent form permitting the program to contact each particular third party, as required under proposed paragraphs (e) and (f).

Proposed paragraph (g)(5) requires the eligibility determination record to include documentation of the specific eligibility criterion under which the child or pregnant woman was determined eligible for participation. As stated above, under the proposed rule, if a pregnant woman or child could qualify for Head Start or Early Head Start participation based on more than one eligibility criterion, then the program should enroll the child under the criterion that is easiest to verify and document; it would not be necessary to verify and document multiple eligibility criteria. This includes a record of the income level or relevant eligibility category, as addressed in proposed paragraphs (b) and (c). The first criterion under which the child or pregnant woman could be determined eligible is based on having income below the income guideline for the family size, with the family size used documented, as described in proposed paragraph (b). The second criterion under which the child or pregnant woman could be determined eligible is whether the child's family or pregnant woman is eligible or, in the absence of child care, would potentially be eligible for public assistance, as described in proposed paragraph (c)(1). The third criterion, as stated in proposed paragraph (c)(2), is based on being a homeless child, as defined in proposed § 1305.2(i). The record also would need to include the provision of proposed § 1305.2(i) under which the child was determined to be homeless. The fourth criterion is whether the child is in foster care, as

proposed in paragraph (c)(3). The fifth criterion, as proposed in paragraph (b)(2), is being a pregnant woman or child in the area served who would benefit from such programs but who is not eligible otherwise for services (total enrollment in this category not to exceed 10 percent of the enrollment slots). The sixth criterion under which the pregnant woman or child could be determined eligible, which is described in proposed paragraph (b)(3), is whether the pregnant woman or child's family has income over 100 percent to 130 percent of the income guidelines (total enrollment in this category not to exceed 35 percent of the enrollment slots, in addition to any slots filled under paragraph (b)(2)). The final proposed criterion under which the pregnant woman or child could be determined eligible is whether the pregnant woman or child meets alternative eligibility criteria as permitted under § 1305.4(d) or section 645(a)(2) of the Act.

Proposed paragraph (g)(6) also adds a new Head Start staff certification requirement in direct response to GAO's aforementioned recommendation to establish "more stringent income verification requirements, documentation requirements, or both by Head Start employees responsible for certifying family eligibility." The proposed paragraph requires the record to include a signed and dated statement by the program staff person who made the eligibility determination certifying that the information on eligibility in the file is accurate to the best of the person's knowledge, and based on that information, the person has determined the pregnant woman or child to be eligible for services.

Finally, proposed paragraph (g)(7) specifies the record retention and access requirements for the documents and certifications maintained in each child and pregnant woman's record under this paragraph. These record retention and access practices must be consistent with section 647 of the Head Start Act and the uniform administrative requirement regulations regarding HHS grant awards implemented at 45 CFR 74.53 for awards and subawards to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations and 45 CFR 92.42 for grants and cooperative agreements to State, local, and Tribal governments. Among other requirements, Section 647 states that all grant recipients to "keep such records as the Secretary shall prescribe" and provide "access for the purpose of audit and examination to any books, documents, papers, and records of the

recipients that are pertinent to the financial assistance received" under the Head Start Act. A key requirement explained in both 45 CFR 74.53 and 92.42 is that documents shall be retained for a period of three years. Additionally, both of these sections state requirements related to the right of access by the HHS awarding agency, the U.S. Comptroller General, or any of their authorized representatives, to any pertinent books, documents, papers, or other records of recipients in order to make audits, examinations, excerpts, transcripts and copies of such documents. We have included a reference to these longstanding Departmental policies in order to respond to GAO's concerns that agencies were not required to maintain documents related to enrollment. This requirement will ensure that documents and certifications required to be maintained under this paragraph are retained for the appropriate amount of time and are accessible to the Office of Head Start and other Federal agencies, such as the HHS Inspector General and the GAO, as needed for monitoring, audit, investigative, and other purposes.

Proposed paragraph (h) addresses the establishment of agency policies regarding violation of eligibility determination regulations, policies, and procedures. Under this paragraph, we propose that all Head Start and Early Head Start agencies must establish policies and procedures describing the actions that will be taken against agency staff who commit intentional violations of Federal and agency eligibility determination regulations, policies and procedures including enrolling children and pregnant women who staff have not documented as eligible to participate in the program. We believe this proposed requirement is necessary in order to prevent future incidents of fraud like those found in the GAO investigation and to make clear to all agency staff the legal consequences of intentionally committing enrollment fraud.

Proposed paragraph (i), "Training," requires that all Head Start and Early Head Start agencies train all governing body, policy council, management and those staff members who have the responsibility to make participant eligibility determinations on Federal and agency eligibility regulations, policies, and procedures, including verification, certification, and documentation requirements. The requirements in proposed paragraph (i) are an extension of current requirements stated at § 1304.50(g)(1) that grantee and delegate agencies must have written policies that define the roles and responsibilities of the governing body

members and inform them of the management procedures and functions necessary to implement a high-quality program. They also would expand on current requirements stated at § 1304.52(l) that the training and development requirements that grantee and delegate agencies must implement, including to provide an orientation to new staff, consultants, and volunteers; provide training or orientation to Head Start and Early Head Start governing body members; and provide orientation and ongoing training to Head Start and Early Head Start Policy Council and Policy Committee members to enable them to carry out their program governance responsibilities effectively.

We have communicated to the public and to grantees on several occasions that we would be addressing GAO's findings by strengthening our training requirements. For example, we told GAO after it shared its investigation findings that we would "make sure that grantee staff received training regarding the proper way to validate income documentation;" this assurance was documented and shared publicly in GAO's May 18, 2010 testimony in the section entitled "Corrective Action Briefing." In addition, Secretary Sebelius provided notice to all grantees through her May 17, 2010 letter that we would be developing new regulations to

address "staff training on eligibility criteria and procedures."

Proposed paragraph (i) specifies that the training must be conducted within 30 days following the effective date of this final rule, and within 30 days of hiring or beginning of tenure of new governing body, policy council, management and those staff members who have the responsibility to make participant eligibility determinations. We propose to require agencies to develop policies regarding how often such training would be provided after the initial training to ensure that governing body, policy council, management and those staff members who have the responsibility to make participant eligibility determinations are aware of all current eligibility determination regulations, policies and procedures. The National Center on Program Management and Fiscal Operations will be developing training assistance on this topic to assist grantees.

We propose to require the training to include explanations of the legal consequences for individuals and agencies that commit fraud related to eligibility determinations, including by intentionally enrolling children or pregnant women that they know are ineligible. Examples of legal consequences to be explained during training include the disallowance of the

agency's Head Start or Early Head Start funds; the determination of deficiencies through the monitoring review process; the suspension or termination of the grant; or individual consequences for the staff involved who intentionally commit fraud. We also would require such training to address methods and strategies for obtaining facts necessary for complete and accurate eligibility determinations. These methods and strategies would need to address treating families with dignity and respect and give due regard for possible issues of domestic violence, stigma, and privacy. We propose to require all agencies to maintain ongoing records of training sessions. Examples of information that would need to be documented include: The dates sessions were conducted, instructor names and titles, and attendee names.

**V. Paperwork Reduction Act**

This proposed rule establishes new information collection requirements in § 1305.4(b), (e), (f), and (g). As required by the Paperwork Reduction Act of 1995, codified at 44 U.S.C. 3507, the Administration for Children and Families will submit a copy of these sections to the Office of Management and Budget (OMB) for review and they will not be effective until they have been approved and assigned a clearance number.

Requirement	Respondents	Annual	Average burden per respondent (hours)	Total burden hours
§ 1305.4(b)(3)(ii) .....	10	1 .....	2	20
§ 1305.4(e) and (f) .....	1,600	(should reflect info collections for each applicant).	2	3,200
§ 1305.4(g) .....	1,600	(should reflect info collections for each applicant).	2	3,200

We estimate the costs of implementing these proposed requirements would be approximately \$132,188 annually. We calculated this estimate by multiplying the average hourly salary for family services coordinators (\$20.59) by the estimated total burden hours (6,420).

With respect to these provisions, the Administration for Children and Families will consider comment by the public on this collection of information in the following areas:

- Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the proposed collection of

information, including the validity of the methodology and the assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect

if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, either by fax to 202-395-6974 or by e-mail to OIRA at [submission@omb.eop.gov](mailto:submission@omb.eop.gov). Please mark faxes and e-mails to the attention of the desk officer for ACF.

**VI. Regulatory Flexibility Act**

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), this proposed rule will not result in a significant economic impact on a substantial number of small entities.

This proposed rule primarily is intended to ensure accountability for Federal funds consistent with the purposes of the Head Start Act and is not duplicative of other requirements. We believe this proposed rule implements the aims of the Head Start Act, as amended, to improve the effectiveness of Head Start programs while preserving the ability of Head Start grantees to continue using creativity and innovation to promote the school readiness of low-income children.

Specifically, as noted under the Paperwork Reduction Act section of this preamble, we estimate the cost of implementing the proposed new reporting requirements would be approximately \$132,188 annually, which when applied to all 1,600 grantees nationally, results in a cost per grantee of less than \$85. In developing this estimate, we assumed that each of the 1,600 Head Start and Early Head Start grantees would spend an additional four hours beyond what they spend currently to conduct the proposed new eligibility verification, certification, and documentation procedures, as required by paragraphs (e) through (g). Included in our estimated annual costs are the minimal costs incurred by those grantees that choose to serve additional pregnant women and children per the authority granted at section 645(a)(1)(B)(iii)(II) of the Head Start Act, and therefore would be required to comply with the annual reporting requirements described in section 645(a)(1)(B)(iv) of the Head Start Act and paragraph (b)(3)(ii) of this proposed rule. Since no grantees have taken the opportunity to serve additional pregnant women and children per the authority granted at section 645(a)(1)(B)(iii)(II) of the Head Start Act to date, our reasonable expectation is that approximately 10 grantees per year might choose to use this authority in the future, at a total estimated cost of \$412 per year.

We request public comments on whether we have adequately considered all costs for small entities.

## VII. Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this Notice of Proposed Rulemaking is consistent with these priorities and principles. These regulations incorporate statutory changes to the Head Start program enacted in the Improving Head Start for School Readiness Act of 2007 and strengthen

procedures to determine, verify, certify, and maintain records regarding eligibility for Head Start and Early Head Start program enrollment. We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under E.O. 12866.

ACF does not believe there would be a significant economic impact from this proposed regulatory action. Based on our estimate described under the Paperwork Reduction Act section of this preamble, the total cost would fall well below the \$100 million threshold. The estimated total cost of implementation of these rules for all grantees is approximately \$132,188 annually.

## VIII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If an agency must prepare a budgetary impact statement, section 205 requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule consistent with the statutory requirements. Section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted. The Department has determined that this proposed rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year.

## IX. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

## X. Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. This proposed rule will not have substantial direct impact on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this proposed rule does not have sufficient

federalism implications to warrant the preparation of a federalism summary impact statement.

## XI. Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, HHS has concluded that it is not necessary to prepare a Family Policymaking Assessment.

## List of Subjects in 45 CFR Part 1305

Education of disadvantaged, Grant programs/social programs, Individuals with disabilities.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: September 14, 2010.

**David A. Hansell,**

*Acting Assistant Secretary for Children and Families.*

Approved: December 22, 2010.

**Kathleen Sebelius,**

*Secretary.*

For the reasons set forth in the preamble, we propose to amend Part 1305 of 45 CFR Chapter XIII as follows:

## PART 1305—ELIGIBILITY, RECRUITMENT, SELECTION, ENROLLMENT, AND ATTENDANCE IN HEAD START

1. The authority citation for part 1305 is revised to read as follows:

**Authority:** 42 U.S.C. 9801 *et seq.*, 5 U.S.C. 553(b).

2. Amend § 1305.2 by:
  - a. Revising paragraph (g)
  - b. Redesignating paragraphs (i) through (s) as paragraphs (j) through (t);
  - b. Adding a new paragraph (i); and
  - c. Revising newly redesignated paragraphs (k) and (m).

The revisions and addition read as follows:

### § 1305.2 Definitions.

\* \* \* \* \*

(g) Head Start or Early Head Start eligible means a child or pregnant woman who meets the requirements for age and family income or categorical eligibility or, if applicable, the requirements established by a grantee under section 645(a)(2) of the Head Start Act or by a Head Start program operated by an Indian Tribe under 45 CFR 1305.4(d).

\* \* \* \* \*

(j) Homeless children:

(1) Means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C. 11302(a)(1)); and

(2) Includes—

(i) Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S.C. 11302(a)(2)(C));

(iii) Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) Migratory children (as such term is defined in 20 U.S.C. 6399) who qualify as homeless for the purposes of this part because the children are living in circumstances described in paragraphs (i)(2)(i) through (iii) of this section.

\* \* \* \* \*

(k) Income guidelines means the official poverty line specified in section 637(19) of the Head Start Act.

\* \* \* \* \*

(m) Low-income family means a family whose total income before taxes is equal to, or less than, the income guidelines.

\* \* \* \* \*

3. Revise § 1305.4 to read as follows:

**§ 1305.4 Determining, verifying, and documenting eligibility.**

(a) *Age eligibility.* Except as provided in section 645(a)(2) of the Head Start Act:

(1) To be age eligible for Early Head Start services:

(i) A child must be an infant or toddler between the ages of zero and three years old.

(ii) A pregnant woman may be any age.

(2) To be age eligible for Head Start services, a child must be at least three years old by the date used to determine eligibility for public school in the community in which the Head Start program is located and not older than the age of required school attendance, except in cases where the Head Start program's approved grant provides

specific authority to serve younger children. Examples of such exceptions are programs serving children of migrant and seasonal farmworker families.

(b) *Income eligibility.* Except as provided in section 645(a)(2) of the Head Start Act:

(1) Age eligible children and pregnant women from low-income families shall be eligible for participation in Head Start and Early Head programs.

(2) To a reasonable extent, but not to exceed 10 percent of participants, participants may include age eligible children and pregnant women in the area served who would benefit from Head Start or Early Head Start programs, who are not eligible under paragraphs (b)(1) or (c) of this section.

(3) From the area served, an additional 35 percent of participants may include pregnant women and age eligible children whose families have incomes over 100 percent but below 130 percent of the income guidelines who also are not eligible under paragraphs (b)(1) or (c) of this section, if:

(i) Prior to serving the children and pregnant women eligible under paragraph (b)(3) of this section, the agency involved establishes and implements outreach, prioritization, and enrollment policies and procedures that ensure such agency is meeting the needs of children and pregnant women eligible under paragraphs (b)(1) or (c) of this section and children with disabilities eligible under paragraph (b)(2) of this section; and

(ii) Any agency serving additional children and pregnant women under this paragraph must report annually to the Secretary the information required at section 645(a)(1)(B)(iv) of the Head Start Act.

(c) *Categorical eligibility.* Pregnant women and age eligible children are categorically eligible for enrollment in Head Start and Early Head Start if:

(1) The pregnant woman or the child's family is eligible or, in the absence of child care, would potentially be eligible for public assistance;

(2) The child is homeless, as defined in § 1305.2(i); or

(3) The child is in foster care, as defined in § 1355.20(a).

(d) *Special rule for Indian Tribes.* Notwithstanding paragraph (b)(2) of this section, a Head Start or Early Head Start program operated by an Indian Tribe may enroll more than 10 percent of its children from families whose incomes exceed the low-income guidelines or are not categorically eligible when the following conditions are met:

(1) All children from Indian and non-Indian families living on the reservation

that meet the low-income guidelines or are categorically eligible who wish to be enrolled in the program are served by the program;

(2) All children from income-eligible or categorically-eligible Indian families native to the reservation living in non-reservation areas, approved as part of the Tribe's service area, who wish to be enrolled in the program are served by the program. In those instances in which the non-reservation area is not served by another Head Start or Early Head Start program, the Tribe must serve all of the income-eligible and categorically-eligible Indian and non-Indian children whose families wish to enroll them in the program prior to serving over-income children.

(3) The Tribe has the resources within its grant or from other non-Federal sources to enroll children from families whose incomes exceed the low-income guidelines or are not categorically eligible without using additional funds from HHS intended to expand Head Start or Early Head Start services; and

(4) At least 51 percent of the children to be served by the program are from families that meet the income-eligibility guidelines or are categorically eligible.

(5) Programs which meet the conditions of this paragraph (d) must annually set criteria that are approved by the Policy Council and the Tribal Council for selecting over-income children who would benefit from such a program.

(e) *Income verification.* Before a pregnant woman or child is determined to be eligible on the basis of family income, the pregnant woman or the child's parent, guardian or other person(s) seeking services for the child who has knowledge of the family's finances must submit information to the program concerning the family's income. Verification must include examination of documents such as individual income tax forms, W-2 forms, pay stubs, pay envelopes, or written statements from employers (if Individual Income Tax Forms, W-2 forms, pay stubs, or pay envelopes are not available). Income must be compared to the poverty guidelines for the appropriate size of family, and program staff must document whether a pregnant woman or child's family qualifies as a low-income family under the income guidelines for the appropriate size of family. When appropriate, in cases in which no documentation regarding the income eligibility of the pregnant woman or child has been received by the agency, or when it is either more efficient or reliable to do so rather than to search for eligibility documentation, programs

may seek information from third parties who have first-hand knowledge about the pregnant woman's or child's eligibility, and document the names, titles, and relationship to the applicant in the participant's record. Programs also may seek third party information in cases where documents are not submitted to prove a claim that a pregnant woman or family has no income. If programs plan to seek third party verification from one or more entities regarding an applicant's eligibility, staff must inform the applicant about each entity that they intend to contact. In addition, the applicant must sign a consent form permitting the program to contact specified third parties; this provides applicants the opportunity to withhold their consent for third party verification from one or more entities. An applicant must be given the opportunity to withhold consent related to each entity the program would like to contact. If applicants do not sign the consent form the Head Start program may not contact that entity and the applicant remains responsible for providing appropriate documentation. When programs contact third parties, they should limit the information discussed and questions posed to the third party to the information necessary to obtain the required eligibility information. Programs should be especially sensitive to any potential domestic violence issues prior to seeking verification of the required eligibility information.

(f) *Verification of categorical eligibility.* (1) Before a pregnant woman or child is determined to be eligible on the basis of categorical eligibility, the pregnant woman or the child's parent, guardian, or other person(s) seeking services for the child who has knowledge of the family's situation must submit information to the program concerning the family's categorical eligibility. Verification of categorical eligibility by the program must include examination of the following documents:

(i) A copy of official documents demonstrating that the pregnant woman or the child, child's parent, or guardian, is eligible, or in the absence of child care, would potentially be eligible for public assistance;

(ii) A copy of the court order or other legal or government-issued document or statement of a government child welfare official demonstrating the child is in foster care; or

(iii) A copy of any other source document that establishes categorical eligibility.

(2) In place of the foregoing documents, the program can substitute

a written statement of a program staff member certifying that the staff member has made reasonable efforts to confirm a child is homeless, as defined in § 1305.2(i). The lack of documentation of homelessness should not be a barrier to enrollment. When appropriate, in cases in which no documentation regarding the eligibility of the pregnant woman or child has been received by the agency, or when it is either more efficient or reliable to do so rather than to search for eligibility documentation, programs may seek information from third parties who have first-hand knowledge about the pregnant woman's or child's eligibility, and document the names, titles, and relationship to the applicant in the participant's record. Programs also may seek third party information in cases where documents are not submitted to prove a claim that a pregnant woman or family has no income. If programs plan to seek third party verification from one or more entities regarding an applicant's eligibility, staff must inform the applicant about each entity that they intend to contact and the applicant must sign a consent form permitting the program to contact each of the specified third parties; this provides applicants the opportunity to withhold their consent for third party verification related to each entity the program would like to contact. If applicants do not sign the consent form the Head Start program may not contact that entity and the applicant remains responsible for providing appropriate documentation. When programs contact third parties, they should limit the information discussed and questions posed to the third party to the information necessary to obtain the required eligibility information. Programs should be especially sensitive to any potential domestic violence issues prior to seeking verification of the required eligibility information.

(g) *Records and Certification.* A Head Start or Early Head Start program must keep an eligibility determination record for each pregnant woman or child as part of the record maintained by the agency on that individual, which must include:

(1) Copies of all documents submitted by a pregnant woman or persons seeking services on behalf of a child to the program by such persons or other persons relating to the pregnant woman's or child's eligibility for services and any staff member's notes recording any other information related to eligibility received from any source;

(2) A copy of the statements and documents required under paragraphs (e) and (f) of this section;

(3) A signed and dated statement by the person seeking services certifying that the documents and information that the person provided concerning eligibility are accurate to the best of the person's knowledge;

(4) Documentation establishing that an agency staff member has sought to verify the accuracy of the information on eligibility provided to the agency by:

(i) Conducting an in-person interview with the pregnant woman or the child's parent, guardian, or other person(s), seeking services for the child who has knowledge of the family's situation; and

(ii) When appropriate, in cases in which no documentation regarding the income eligibility of the pregnant woman or the child's family or regarding the categorical eligibility of the pregnant woman or child has been received by the agency, or when it is either more efficient or reliable to do so rather than to search for eligibility documentation, seeking information from third parties who have first-hand knowledge about the pregnant woman's or child's eligibility, whose names, titles, and affiliations will be documented in the record, and the applicant's signed consent form permitting the program to contact each particular third party, as required under paragraphs (e) and (f) of this section;

(5) A record of the eligibility criterion under which the pregnant woman or child was determined eligible as:

(i) Having income below the income guideline for the family size, with the family size used documented;

(ii) Being eligible or, in the absence of child care, being potentially eligible for public assistance;

(iii) Being a homeless child, including the specific provision of § 1305.2(i) under which the child was determined to be homeless;

(iv) Being a child in foster care;

(v) Being a pregnant woman or child in the area served who would benefit from such programs but who is not otherwise eligible for services (total enrollment in this category not to exceed 10 percent of the enrollment slots);

(vi) Being a pregnant woman or child from a family with income over 100 percent but below 130 percent of the income guidelines (total enrollment in this category not to exceed 35 percent of the enrollment slots, in addition to any slots filled under paragraph (b)(2) of this section; or

(vii) Meeting alternative eligibility criteria as permitted under paragraph (d) of this section or section 645(a)(2) of the Head Start Act; and

(6) A signed and dated statement by the program staff person who made the

eligibility determination certifying that the information on eligibility in the file is accurate to the best of the person's knowledge, and based on that information, the person has determined the pregnant woman or child to be eligible for services.

(7) Retention and access practices for the eligibility determination record for each pregnant woman or child described under this paragraph must be consistent with section 647 of the Head Start Act and the uniform administrative requirement regulations regarding HHS grant awards implemented at 45 CFR 74.53 for awards and subawards to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations and 45 CFR 92.42 for grants and cooperative agreements to State, local, and Tribal governments.

(h) *Establishment of agency policies regarding violation of eligibility determination regulations, policies and procedures.* All Head Start and Early Head Start agencies must establish policies and procedures describing the actions that will be taken against agency staff who commit intentional violations of Federal and agency eligibility determination regulations, policies and procedures, including enrolling pregnant women and children who staff have not documented as eligible to participate in the program.

(i) *Training.* Head Start and Early Head Start agencies must train all governing body, policy council, management and those staff members who have the responsibility to make participant eligibility determinations on Federal and agency eligibility determination regulations, policies and procedures, including verification, certification, and documentation requirements within 30 days following the effective date of this rule, and within 30 days of hiring or beginning of tenure of new governing body, policy council, management and those staff members who have the responsibility to make participant eligibility determinations. Agencies must develop policies regarding how often such training will be provided after the initial training is conducted to ensure that governing body, policy council, management and those staff members who have the responsibility to make participant eligibility determinations are aware of all current eligibility determination regulations, policies and procedures. Agencies shall maintain ongoing records of training. The training must include:

(1) Explanation of the legal consequences for individuals and

agencies that commit fraud related to eligibility determination; and

(2) Information on methods and strategies for obtaining facts necessary for complete and accurate eligibility determinations. Such methods and strategies must address treating families with dignity and respect and give due regard for possible issues of domestic violence, stigma, and privacy.

[FR Doc. 2011-6326 Filed 3-17-11; 8:45 am]

**BILLING CODE P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[MB Docket No. 11-29, RM-11622; DA 11-335]

**Television Broadcasting Services; Nashville, TN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has before it a petition for rulemaking filed by NewsChannel 5 Network, LLC, the licensee of station WTVF(TV), channel 5, Nashville, Tennessee, requesting the substitution of channel 25 for channel 5 at Nashville. NewsChannel 5 lost service to many of its analog viewers when the station transitioned to digital operations and now requests this channel substitution in order to permanently resume service to these viewers.

**DATES:** Comments must be filed on or before April 18, 2011, and reply comments on or before May 2, 2011.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Christopher G. Tygh, Esq., Covington & Burling LLP, 1201 Pennsylvania Avenue, Washington, DC 20004-2401.

**FOR FURTHER INFORMATION CONTACT:** Joyce L. Bernstein, [joyce.bernstein@fcc.gov](mailto:joyce.bernstein@fcc.gov), Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 11-29, adopted February 18, 2011, and released February 23, 2011. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC, 20554. This document

will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television, Television broadcasting. Federal Communications Commission. **Kevin R. Harding**, Associate Chief, Video Division, Media Bureau.

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

**PART 73—RADIO BROADCAST SERVICES**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336, and 339.