**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**45 CFR Chapter XIII**

**RIN 0970-AC63**

**Head Start Performance Standards**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule modernizes the Head Start Program Performance Standards, last revised in 1998. In the Improving Head Start for School Readiness Act of 2007, Congress instructed the Office of Head Start to update its performance standards and to ensure any such revisions to the standards do not eliminate or reduce quality, scope, or types of health, educational, parental involvement, nutritional, social, or other services programs provide. This rule responds to public comment, incorporates extensive findings from research and from consultation with experts, reflects best practices, lessons from program input and innovation, integrates recommendations from the Secretary's Advisory Committee Final Report on Head Start Research and Evaluation, and reflects the Obama Administration's deep commitment to improve the school readiness of young children. These performance standards will improve program quality, reduce burden on programs, and improve regulatory clarity and transparency. They provide a clear road map for current and prospective grantees to support high-quality Head Start services and to strengthen the outcomes of the children and families Head Start serves.

**DATES:** Effective Date: Provisions of this final rule become effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Compliance Date(s): To allow programs reasonable time to implement certain performance standards, we phase in compliance dates over several years after this final rule becomes effective. In the **SUPPLEMENTARY INFORMATION** section below, we provide a table, Table 1: Compliance Table, which lists dates by which programs must implement specific standards.

**FOR FURTHER INFORMATION CONTACT:** Colleen Rathgeb, Division Director of Early Childhood Policy and Budget, Office of Early Childhood Development, at OHS_Final_Rule@acf.hhs.gov or (202) 401-1195 (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:**

**Table of Contents**

**I. Executive Summary**

**II. Tables**

Table 1: Compliance Table

Table 2: Redesignation Table

**III. Background**

a. Statutory authority

b. Purpose of this rule

c. Rulemaking and comment processes

d. Overview of major changes from the NPRM

**IV. Discussion of General Comments on the Final Rule**

**V. Discussion of Section by Section Comments on the Final Rule**

a. Program Governance

b. Program Operations

1. Subpart A Eligibility, Recruitment, Selection, Enrollment and Attendance

2. Subpart B Program Structure

3. Subpart C Education and Child Development Program Services

4. Subpart D Health Program Services

5. Subpart E Family and Community Engagement Program Services

6. Subpart F Additional Services for Children With Disabilities

7. Subpart G Transition Services

8. Subpart H Services to Enrolled Pregnant Women

9. Subpart I Human Resources Management

10. Subpart J Program Management and Quality Improvement

c. Financial and Administrative Requirements

1. Subpart A Financial Requirements

2. Subpart B Administrative Requirements

3. Subpart C Protections for the Privacy of Child Records

4. Subpart D Delegation of Program Operations

5. Subpart E Facilities

6. Subpart F Transportation

d. Federal Administrative Procedures

1. Subpart A Monitoring, Suspension, Termination, Denial of Refunding, Reduction in Funding and their Appeals

2. Subpart B Designation Renewal

3. Subpart C Selection of Grantees through Competition

4. Subpart D Replacement of American Indian and Alaska Native Grantee

5. Subpart E Head Start Fellows Program

e. Definitions

**VIII. Regulatory Process Matters**

a. Regulatory Flexibility Act

b. Regulatory Planning and Review Executive Order 12866

1. Need for Regulatory Action: Increasing the Benefits to Society of Head Start.

2. Cost and Savings Analysis

i. Structural Program Option Provisions

ii. Educator Quality Provisions

iii. Curriculum and Assessment Provisions

iv. Administrative/Managerial Provisions

3. Benefit Analysis

4. Accounting Statement

5. Distributional Effects

6. Regulatory Alternatives

c. Unfunded Mandates Reform Act

d. Treasury and General Government Appropriations Act of 1999

e. Federalism Assessment Executive Order 13132

f. Congressional Review

g. Paperwork Reduction Act of 1995

**Tribal Consultation Statement**

---

## I. Executive Summary

Head Start currently provides comprehensive early learning services to more than 1 million children from birth to age five each year through more than 60,000 classes, home visitors, and family child care partners nationwide.[1] Since its inception in 1965, Head Start has been a leader in helping children from low-income families enter kindergarten more prepared to succeed in school and in life. Head Start is a central part of this Administration's effort to ensure all children have access to high-quality early learning opportunities and to eliminate the education achievement gap. This regulation is intended to improve the quality of Head Start services so that programs have a stronger impact on children's learning and development. It also is necessary to streamline and reorganize the regulatory structure to improve regulatory clarity and transparency so that existing grantees can more easily run a high-quality Head Start program and so that Head Start's operational requirements will be more transparent and seem less onerous to prospective grantees. In addition, this regulation is necessary to reduce the burden on local programs that can interfere with high-quality service delivery. We believe these regulatory changes will help ensure every child and family in Head Start receives high-quality services that will lead to greater success in school and in life.

[1] U.S. Department of Health and Human Services, Administration for Children and Families (2015). *Office of Head Start Program Information Report, 2014-2015*. Washington, DC: Author.

In 2007, Congress mandated the Secretary to revise the program performance standards and update and raise the education standards.[2] Congress also prohibited elimination of, or any reduction in, the quality, scope, or types of services in the revisions.[3] Thus, these regulatory revisions are additionally intended to meet the statutory requirements Congress put forth in the bipartisan reauthorization of Head Start in 2007.

The Head Start Program Performance Standards are the foundation on which programs design and deliver comprehensive, high-quality individualized services to support the school readiness of children from low-income families. The first set of Head Start Program Performance Standards was published in the 1970s. Since then, they have been revised following subsequent Congressional reauthorizations and were last revised in 1998. The program performance standards set forth the requirements local grantees must meet to support the cognitive, social, emotional, and healthy development of children from birth to age five. They encompass requirements to provide education, health, mental health, nutrition, and family and community engagement services, as well as rules for local program governance and aspects of federal administration of the program.

This final rule builds upon extensive consultation with researchers, practitioners, recommendations from the Secretary's Advisory Committee Final Report on Head Start Research and Evaluation,[4] and other experts, public comment, as well as internal analysis of program data and years of program input. In addition, program monitoring has also provided invaluable experience regarding the strengths and weaknesses of the previous program performance

[2] *See* https://www.congress.gov/congressional-report/110th-congress/house-report/439/1 and 42 U.S.C. 9836A(a)(1)(B).

[3] 42 U.S.C. 9836A(a)(2)(C)(ii).

[4] *Advisory Committee on Head Start Research and Evaluation: Final Report*. (2012). Washington, DC: Office of Head Start, Administration for Children and Families, U.S. Department of Health and Human Services. *See* https://www.acf.hhs.gov/sites/default/files/opre/eval_final.pdf

standards. Moreover, research and practice in the field of early childhood education has expanded exponentially in the 15 years since the program performance standards governing service delivery were last revised, providing a multitude of new insights on how to support improved child outcomes.

The Secretary's Advisory Committee, which consisted of expert researchers and practitioners chartered to provide "recommendations for improving Head Start program effectiveness" concluded early education programs, including Head Start, are capable of reducing the achievement gap, but that Head Start is not reaching its potential.[5] As part of their work, the Committee provided recommendations for interpreting the results of both the Head Start Impact Study (HSIS),[6] a randomized control trial study of children in Head Start in 2002 and 2003 through third grade, and the Early Head Start Research and Evaluation Project (EHSREP),[7] which was initiated in 1996 and followed children who were eligible to participate in Early Head Start. The Committee concluded that these findings should be interpreted in the context of the larger body of research that demonstrates Head Start and Early Head Start "are improving family well-being and improving school readiness of children at or below the poverty line in the U.S. today." [8] The Committee agreed the initial impact both Head Start and Early Head Start have demonstrated "are in line with the magnitude of findings from other scaled-up programs for infants and toddlers . . .and center-based programs for preschoolers . . ." but also

---

[5] *Ibid*, (p.1).

[6] Puma, M., Bell, S., Cook, R., Heid, C., Broene, P., Jenkins, F., & Downer, J. (2012). *Third grade follow-up to the Head Start impact study final report*. U.S. Department of Health and Human Services Office of Planning, Research and Evaluation.

[7] Cohen, R. C., Vogel, C. A., Xue, Y., Moiduddin, E. M., Carlson, B. L., Twin Peaks Partners, L. L. C., & Kisker, E. E. (2010). *Early Head Start Children in Grade 5: Long-Term Follow-Up of the Early Head Start Research and Evaluation Project Study Sample*. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Planning, Research, and Evaluation, (6933).

[8] *Advisory Committee on Head Start Research and Evaluation: Final Report*. (2012). Washington, DC: Office of Head Start, Administration for Children and Families, U.S. Department of Health and Human Services. *See* https://www.acf.hhs.gov/sites/default/files/opre/eval_final.pdf (p. 30).

acknowledged "larger impacts may be possible, *e.g.,* by increasing dosage in [Early Head Start] and Head Start or improving instructional factors in Head Start."[9] The Committee also addressed the finding that these impacts do not seem to persist into elementary school, stating the larger body of research on Head Start provides "evidence of long-term positive outcomes for those who participated in Head Start in terms of high school completion, avoidance of problem behaviors, avoidance of entry into the criminal justice system, too-early family formation, avoidance of special education, and workforce attachment." Overall, the report determined a key factor for Head Start to realize its potential is "making quality and other improvements and optimizing dosage within Head Start [and Early Head Start]." The final rule aims to capitalize on the advancements in research, available data, program input, public comment, and these recommendations in order to accomplish the critical goal of helping Head Start reach its full potential so more children reach kindergarten ready to succeed.

This final rule reorganizes previous program performance standards to make it easier for grantees to implement them and for the public to understand the broad range of Head Start program services. Our previous program performance standards consisted of 1,400 provisions organized in 11 different sections that were amended in a partial or topical fashion over the past 40 years. This approach resulted in a somewhat opaque set of requirements that were unnecessarily challenging to interpret and overburdened grantees with process-laden rules.

This rule has four distinct sections: (1) *Program Governance,* which outlines the requirements imposed by the Head Start Act (the "Act") on Governing Bodies and Policy Councils to ensure well-governed Head Start programs; (2) *Program Operations,* which outlines all of the operational requirements for serving children and families, from the universe of eligible children and the services they must be provided in education, health, and family and community

[9] *Ibid,* (p.30).

engagement, to the way programs must use data to improve the services they provide; (3) *Financial and Administrative Requirements,* which lays out the federal requirements Head Start programs must adhere to because of overarching federal requirements or specific provisions imposed in the Act; and (4) *Federal Administrative Procedures,* which governs the procedures the responsible HHS official takes to determine the results of competition for all grantees, any actions against a grantee, whether a grantee needs to compete for renewed funding, and other transparency-related procedures required in the Act.

We also reorganized specific sections and streamlined provisions to make Head Start requirements easier to understand for all interested parties—grantees, potential grantees, other early education programs, and members of the general public. We reorganized subparts and their sections to eliminate redundancy, and we grouped together related requirements. Additionally, we systematically addressed the fact that many of our most critical provisions were buried in subparts that made them difficult to find and interpret, and did not reflect their centrality to the provision of high-quality services. For example, we created new subparts or sections to highlight and expand, where necessary, upon these important requirements.

We also streamlined requirements and minimized administrative burden on local programs. In total, we significantly reduced the number of regulatory requirements without compromising quality. We give programs greater flexibility to determine how best to achieve their goals and administer a high-quality Head Start program without reducing expectations for children and families. We anticipate these changes will help move Head Start away from a compliance-oriented culture to an outcomes-focused one. Furthermore, we believe this approach will support better collaboration with other programs and funding streams. We recognize that grantees deliver services through a variety of modalities including child care and state pre-

kindergarten programs. Additionally, we removed other overly prescriptive requirements related to governing bodies, appeals, and audits.

We include several provisions to support local flexibility to meet community needs and to promote innovation and research. We give Head Start programs additional flexibility in the structural requirements of program models, such as group size and ratios. Further, we permit local variations for effective and innovative curriculum and professional development models, giving flexibility from some of these requirements if the Head Start program works with research experts and evaluates the effectiveness of their model. We also support local innovation through a process to waive individual eligibility verification requirements, which will allow better coordination with local early education programs without reducing quality. Collectively, these changes will allow for the development of innovative program models, alleviate paperwork burdens, and support mixed income settings.

We believe the benefits of these changes will be significant for the children and families Head Start serves. Strengthening Head Start standards will improve child outcomes and promote greater success in school as well as produce higher returns on taxpayer investment. Reorganizing, streamlining, and reducing the requirements in the regulation will make Head Start less burdensome for existing grantees and more approachable for potential grantees, which may result in more organizations competing for Head Start grants. These changes are central to the Administration's belief that every child deserves an opportunity to succeed.

## II. Tables

Table 1: Compliance Table

| PERFORMANCE STANDARD | COMPLIANCE DATE |
|---|---|
| **Early Head Start center-based service duration** | |

| | |
|---|---|
| (unless granted a waiver under §1302.24)<br><br>**§1302.21(c)(1):** By August 1, 2018, a program must provide 1,380 annual hours of planned class operations for all enrolled children.<br><br>A program that is designed to meet the needs of young parents enrolled in public school settings may meet the service duration requirements in §1302.21(c)(1)(i) if it operates a center-based program schedule during the school year aligned with its local education agency requirements and provides regular home-based services during the summer break. | **August 1, 2018** |
| **Head Start center-based service duration:**<br>**50 percent at 1,020 annual hours**<br>(unless granted a waiver under §1302.24)<br><br>**§1302.21(c)(2)(iii) and (v):** By August 1, 2019, a program must provide 1,020 annual hours of planned class operations over the course of at least eight months per year for at least 50 percent of its Head Start center-based funded enrollment.<br><br>A Head Start program providing fewer than 1,020 annual hours of planned class operations or fewer than eight months of service is considered to meet the requirements described in paragraphs §1302.21(c)(2)(iii) and (iv) if its program schedule aligns with the annual hours required by its local education agency for grade one and such alignment is necessary to support partnerships for service delivery. | **August 1, 2019** |
| **Head Start center-based service duration:**<br>**100 percent at 1,020 annual hours**<br>(unless granted a waiver under §1302.24)<br><br>**§1302.21(c)(2)(iv):** By August 1, 2021, a program must provide 1,020 annual hours of planned class operations over the course of at least eight months per year for all of its Head Start center-based funded enrollment. | **August 1, 2021** |
| **Early Head Start home-based service duration**<br>(unless granted a waiver under §1302.24)<br><br>**§1302.22(c)(1):** By August 1, 2017, an Early Head Start home-based program must provide one home visit per week per family that lasts at least an hour and a half and provide a minimum of 46 visits per year; and, provide, at a minimum, 22 group socialization activities distributed over the course of the program year. | **August 1, 2017** |
| **Curricula for center-based and family child care programs**<br><br>**§1302.32(a)(1)(ii) and (iii):** Implement curricula that are aligned with the Head Start Early Learning Outcomes Framework: Ages Birth to Five and, as appropriate, state early learning and development standards; and are sufficiently content-rich to promote measurable progress toward development | |

| | |
|---|---|
| and learning outlined in the Framework; and, have an organized developmental scope and sequence that include plans and materials for learning experiences based on developmental progressions and how children learn.<br><br>**§1302.32(a)(2):** A program must support staff to effectively implement curricula and at a minimum monitor curriculum implementation and fidelity, and provide support, feedback, and supervision for continuous improvement of its implementation through the system of training and professional development.<br><br>**§1302.32(b):** A program that chooses to make significant adaptations to a curriculum or a curriculum enhancement described in §1302.32(a)(1) to better meet the needs of one or more specific populations must use an external early childhood education curriculum or content area expert to develop such significant adaptations. A program must assess whether the adaptation adequately facilitates progress toward meeting school readiness goals, consistent with the process described in §1302.102(b) and (c). | **August 1, 2017** |
| **Assessment**<br><br>**§1302.33(b)(1) through (3):**<br>A program must conduct standardized and structured assessments, which may be observation-based or direct, for each child that provide ongoing information to evaluate the child's developmental level and progress in outcomes aligned to the goals described in the Head Start Early Learning Outcomes Framework: Ages Birth to Five. Such assessments must result in usable information for teachers, home visitors, and parents and be conducted with sufficient frequency to allow for individualization within the program year.<br><br>A program must regularly use information from §1302.33(b)(1) along with informal teacher observations and additional information from family and staff, as relevant, to determine a child's strengths and needs, inform and adjust strategies to better support individualized learning and improve teaching practices in center-based and family child care settings, and improve home visit strategies in home-based models.<br><br>If warranted from the information gathered from §1302.33(b)(1) and (2) and with direct guidance from a mental health or child development professional and a parent's consent, a program must refer the child to the local agency responsible for implementing IDEA for a formal evaluation to assess a child's eligibility for services under IDEA.<br><br>**§1302.33(c)(2) and (3):** If a program serves a child who speaks a language other than English a program must use qualified bilingual staff, contractor, or consultant to: | **August 1, 2017** |

| | |
|---|---|
| • Assess language skills in English and in the child's home language, to assess both the child's progress in the home language and in English language acquisition;<br>• Conduct screenings and assessments for domains other than language skills in the language or languages that best capture the child's development and skills in the specific domain; and,<br>• Ensure those conducting the screening or assessment know and understand the child's language and culture and have sufficient skill level in the child's home language to accurately administer the screening or assessment and to record and understand the child's responses, interactions, and communications.<br><br>If a program serves a child who speaks a language other than English and qualified bilingual staff, contractors, or consultants are not able conduct screenings and assessments, a program must use an interpreter in conjunction with a qualified staff person to conduct screenings and assessments as described in §1302.33(c)(2)(i) through (iii). | |
| **Curriculum for home-based programs**<br><br>**§1302.35(d)(1) through (3):** A program that operates the home-based option must:<br>• Ensure home-visiting and group socializations implement a developmentally appropriate research-based early childhood home-based curriculum that:<br>o Promotes the parent's role as the child's teacher through experiences focused on the parent-child relationship and, as appropriate, the family's traditions, culture, values, and beliefs;<br>o Aligns with the Head Start Early Learning Outcomes Framework: Ages Birth to Five and, as appropriate, state early learning standards, and, is sufficiently content-rich within the Framework to promote measurable progress toward goals outlined in the Framework; and,<br>o Has an organized developmental scope and sequence that includes plans and materials for learning experiences based on developmental progressions and how children learn.<br>• Support staff in the effective implementation of the curriculum and at a minimum monitor curriculum implementation and fidelity, and provide support, feedback, and supervision for continuous improvement of its implementation through the system of training and professional development.<br>o If a program chooses to make significant adaptations to a curriculum or curriculum enhancement to better meet the needs of one or more specific populations, a program must partner with early childhood education curriculum or content experts; and, assess whether the adaptation adequately | **August 1, 2017** |

| | |
|---|---|
| facilitates progress toward meeting school readiness goals consistent with the process described in §1302.102(b) and (c). | |
| **Quality Rating and Improvement Systems (QRIS) and Data systems**<br><br>**§1302.53(b)(2):** A program, with the exception of American Indian and Alaska Native programs, must participate in its state or local Quality Rating and Improvement System (QRIS) if:<br>• Its state or local QRIS accepts Head Start monitoring data to document quality indicators included in the state's tiered system;<br>• Participation would not impact a program's ability to comply with the Head Start Program Performance Standards; and,<br>• The program has not provided the Office of Head Start with a compelling reason not to comply with this requirement.<br><br>**§1302.53(b)(3): Data systems.** A program, with the exception of American Indian and Alaska Native programs unless they would like to and to the extent practicable, should integrate and share relevant data with state education data systems, to the extent practicable, if the program can receive similar support and benefits as other participating early childhood programs. | **August 1, 2017** |
| **Complete background check procedures**<br><br>**§1302.90(b)(2):** A program has 90 days after an employee is hired to complete the background check process by obtaining whichever check listed in §1302.90(b)(1) was not obtained prior to the date of hire; and, child abuse and neglect state registry check, if available.<br><br>**§1302.90(b)(4):** A program must ensure a newly hired employee, consultant, or contractor does not have unsupervised access to children until the complete background check process described in §1302.90(b)(1) through (3) is complete.<br><br>**§1302.90(b)(5):** A program must conduct the complete background check for each employee, consultant, or contractor at least once every five years which must include each of the four checks listed in §1302.90(b)(1) and (2), and review and make employment decisions based on the information as described in §1302.90(b)(3), unless the program can demonstrate to the responsible HHS official that it has a more stringent system in place that will ensure child safety. | **August 1, 2017** |
| **Child Development Specialist staff qualification**<br><br>**§1302.91(e)(4)(ii):** By August 1, 2018, a child development specialist, as required for family child care in §1302.23(e), must have, at a minimum, a baccalaureate degree in child development, early childhood education, or a related field. | **August 1, 2018** |

| | |
|---|---|
| **Home visitor staff qualifications**<br><br>**§1302.91(e)(6)(i):** A program must ensure home visitors providing home-based education services have a minimum of a home-based CDA credential or comparable credential, or equivalent coursework as part of an associate's or bachelor's degree. | **August 1, 2018** |
| **Coordinated coaching strategy and coaching staff qualifications**<br><br>**§1302.92(c):** A program must ensure coaches meet staff qualifications in §1302.91(f) and must implement a research-based, coordinated coaching strategy for education staff as described in §1302.92(c). | **August 1, 2017** |
| **Management of program data**<br><br>**§1302.101(b)(4):** At the beginning of each program year, and on an ongoing basis throughout the year, a program must design and implement program-wide coordinated approaches that ensure the management of program data to effectively support the availability, usability, integrity, and security of data. A program must establish procedures on data management, and have them approved by the governing body and policy council, in areas such as quality of data and effective use and sharing of data, while protecting the privacy of child records in accordance with subpart C of part 1303 and applicable federal, state, local, and tribal laws. | **August 1, 2017** |

Table 2: Redesignation Table

This final rule reorganizes and redesignates the Head Start Program Performance Standards under subchapter B at 45 CFR chapter XIII. We believe our efforts provide current and prospective grantees an organized road map on how to provide high-quality Head Start services.

To help the public readily locate sections and provisions from the previous performance standards that are reorganized and redesignated, we included redesignation and distribution tables in the NPRM. The redesignation table listed the previous section and identified the

section we proposed would replace it. The distribution table in the NPRM listed previous provisions and showed whether we removed, revised, or redesignated them. We believe the public may continue to find the redesignation table useful here, so we included an updated version of it below.

*Table: Redesignation Table*

| **Previous Section** | **New Section** |
|---|---|
| 1301.1 | 1303.2 |
| 1301.20 | 1305 |
| 1301.10 | 1303.3 |
| 1301.11 | 1303.12 |
| 1301.20 | 1303.4 |
| 1301.21 | 1303.4 |
| 1301.30 | 1303.10 |
| 1301.31 | 1302.90, 1302.102 |
| 1301.32 | 1303.5 |
| 1301.33 | 1303.31 |
| 1301.34 | 1304.5, 1304.7 |
| 1302.1 | 1304.1 |
| 1302.2 | 1305 |
| 1302.5 | 1304.2, 1304.3, 1304.4 |
| 1302.10 | 1304.20 |
| 1302.11 | 1304.20 |
| 1302.30 | 1304.30 |
| 1302.31 | 1304.31 |
| 1302.32 | 1304.32 |
| 1303.1 | 1304.1, 1303.30 |
| 1303.2 | 1305 |
| 1303.10 | 1304.1 |
| 1303.11 | 1304.3 |
| 1303.12 | 1304.4 |
| 1303.14 | 1304.5 |
| 1303.21 | 1304.6 |
| 1303.22 | 1304.6 |
| 1304.1 | 1302.1 |
| 1304.3 | 1305 |
| 1304.20 | 1302.42, 1302.33, 1302.41, 1302.61, 1302.46, 1302.63 |
| 1304.21 | 1302.30, 1302.31, 1302, 1302.35, 1302.60, 1302.90, 1302.34, 1302.33, 1302.46, 1302.21 |
| 1304.22 | 1302.47, 1302.92, 1302.15, 1302.90, 1302.41, 1302.42, 1302.46 |
| 1304.23 | 1302.42, 1302.44, 1302.31, , 1302.90, , 1302.46 |

| | |
|---|---|
| 1304.24 | 1302.46, 1302.45 |
| 1304.40 | 1302.50, 1302.52, 1302.80, 1302.18, 1302.34, 1302.51, 1302.30, 1302.18, 1302.81, 1302.46, 1302.52, 1302.70, 1302.71, 1302.72, 1302.22, 1302.82 |
| 1304.41 | 1302.53, 1302.63, 1302.70, 1302.71 |
| 1304.50 | 1301.1, 1301.3 1302.102, , 1301.4 |
| 1304.51 | 1302.101, 1302.90, 1303.23, 1302.102, 1301.3, 1303.32 |
| 1304.52 | 1302.101, 1302.91, 1302.90, 1302.91, 1302.21, 1303.3, 1302.93, 1302.94, 1302.92, 1301.5 |
| 1304.53 | 1302.31, 1302.21, 1302.47, 1302.22, 1302.23 |
| 1304.60 | 1302.102, 1304.2 |
| 1305.1 | 1302.10 |
| 1305.2 | 1305 |
| 1305.3 | 1302.11, 1302.102, 1302.20 |
| 1305.4 | 1302.12 |
| 1305.5 | 1302.13, 1302.14, |
| 1305.6 | 1302.14 |
| 1305.7 | 1302.12, 1302.15, 1302.70 |
| 1305.8 | 1302.16 |
| 1305.9 | 1302.18 |
| 1305.10 | 1304.4 |
| 1306.3 | 1305 |
| 1306.20 | 1302.101, 1302.21, 1302.90, 1302.23, 1302.20 |
| 1306.21 | 1302.91 |
| 1306.23 | 1302.92 |
| 1306.30 | 1302.20, 1302.21, 1302.22, 1302.23 |
| 1306.31 | 1302.20 |
| 1306.32 | 1302.21, 1302.24, 1302.17, 1302.102, 1302.34, 1302.18 |
| 1306.33 | 1302.22, 1302.101 , 1302.91, 1302.35, 1302.44, 1302.23, 1302.31, 1301.4, 1302.47, 1302.45, 1302.24 |
| 1307.1 | 1304.10 |
| 1307.2 | 1305 |
| 1307.3 | 1304.11 |
| 1307.4 | 1304.12 |
| 1307.5 | 1304.13 |
| 1307.6 | 1304.14 |
| 1307.7 | 1304.15 |
| 1307.8 | 1304.16 |
| 1308.1 | 1302.60 |
| 1308.3 | 1305 |
| 1308.4 | 1302.101, 1302.61, 1302.63, 1303.75 |
| 1308.5 | 1302.12, 1302.13 |
| 1308.6 | 1302.33, 1302.42, 1302.34, 1302.33 |
| 1308.18 | 1302.47 |
| 1308.21 | 1302.61, 1302.62, 1302.34 |

| | |
|---|---|
| 1309.1 | 1303.40 |
| 1309.2 | 1303.41 |
| 1309.3 | 1305 |
| 1309.4 | 1303.42, 1303.44, 1303.45, 1303.48, 1303.50 |
| 1309.21 | 1305, 1303.51, 1303.48, 1303.50, 1303.46, 1303.47, 1303.48, 1303.55, 1303.3 |
| 1309.22 | 1303.49, 1303.51 |
| 1309.31 | 1303.44, 1303.47 |
| 1309.33 | 1303.56 |
| 1309.40 | 1303.53 |
| 1309.41 | 1303.54 |
| 1309.43 | 1303.43 |
| 1309.52 | 1303.55 |
| 1309.53 | 1303.56 |
| 1310.2 | 1303.70 |
| 1310.3 | 1305 |
| 1310.10 | 1303.70, 1303.71, 1303.72 |
| 1310.14 | 1303.71 |
| 1310.15 | 1303.72 |
| 1310.16 | 1303.72 |
| 1310.17 | 1303.72 |
| 1310.20 | 1303.73 |
| 1310.21 | 1303.74 |
| 1310.22 | 1303.75 |
| 1310.23 | 1303.70 |

## III. Background

a. Statutory authority

This final rule is published under the authority granted to the Secretary of the Department of Health and Human Services under sections 640, 641A, 642, 644, 645, 645A, 646, 648A, and 649 of the Head Start Act, Pub. L. 97-35, 95 Stat. 499 (42 U.S.C. 9835, 9836a, 9837, 9839, 9840, 9840a, 9841, 9843a, and 9844), as amended by the Improving Head Start for School Readiness Act of 2007, Pub. L. 110-134, 121 Stat. 1363. In these sections, the Secretary is required to establish performance standards for Head Start and Early Head Start programs, as well as federal administrative procedures. Specifically, the Act requires the Secretary to "…

modify, as necessary, program performance standards by regulation applicable to Head Start agencies and programs…" and explicitly directs a number of modifications, including "scientifically based and developmentally appropriate education performance standards related to school readiness that are based on the Head Start Child Outcomes Framework" and to "consult with experts in the fields of child development, early childhood education, child health care, family services …, administration, and financial management, and with persons with experience in the operation of Head Start programs."[10] Not only did the Act mandate such significant revisions, there was also bipartisan and bicameral agreement in Congress that its central purpose was to update and raise the education standards and practices in Head Start programs.[11,12] As such, these program performance standards substantially build upon and improve the standards related to the education of children in Head Start programs.

b. Purpose of this rule

This rule meets the statutory requirements Congress put forth in its 2007 bipartisan reauthorization of Head Start and addresses Congress's mandate that called for the Secretary to review and revise the Head Start Program Performance Standards.[13] Program performance standards are the foundation upon which Head Start programs design and deliver comprehensive, high-quality individualized services to support the school readiness of children from low-income families. They set forth requirements local grantees must meet to support the cognitive, social, emotional, and healthy development of children from birth to age five. They encompass requirements to provide education, health, mental health, nutrition, and family and community engagement services, as well as rules for local program governance and aspects of federal

[10] *See* section 42 U.S.C. 9836A (a)(1) and (2).
[11] *See* http://beta.congress.gov/crec/2007/11/14/CREC-2007-11-14-pt1-PgH13876- 4.pdf
[12] *See* http://beta.congress.gov/crec/2007/11/14/CREC-2007-11-14-pt1-PgS14375-2.pdf
[13] *See http://beta.congress.gov/crec/2007/11/14/CREC-2007-11-14-pt1-PgS14375-2.pdf*

administration of the program. Program performance standards in this final rule build upon field knowledge and experience to codify best practices and ensure Head Start programs deliver high-quality services to the children and families they serve.

This final rule strengthens program standards so that all children and families receive high-quality services that will have a stronger impact on child development and outcomes and family well-being. The program performance standards set higher standards for curriculum, staff development, and program duration, all based on research and effective practice, while maintaining Head Start's core values of family engagement, parent leadership, and providing important comprehensive services to our nation's neediest children. At the same time, the final rule makes program requirements easier for current and future program leaders to understand and reduces administrative burden so that Head Start directors can focus on delivering high-quality early learning programs that help put children onto a path of success.

c. Rulemaking and comment processes

We sought extensive input to develop this final rule. We began the rulemaking process with consultations, listening sessions, and focus groups with Head Start staff, parents, and program administrators, along with child development and subject matter experts, early childhood education program leaders, and representatives from Indian tribes, migrant and seasonal communities, and other constituent groups. We heard from tribal leaders at our annual tribal consultations. We studied the final report of the Secretary's Advisory Committee on Head Start Research. We consulted with national organizations and agencies with particular expertise and longstanding interests in early childhood education. In addition, we analyzed the types of technical assistance requested by and provided to Head Start agencies and programs. We reviewed findings from monitoring reports and gathered information from programs and families

about the circumstances of populations Head Start serves. We considered advances in research-based practices with respect to early childhood education and development, and the projected needs of expanding Head Start services. We also drew upon the expertise of federal agencies and staff responsible for related programs in order to obtain relevant data and advice on how to promote quality across all Head Start settings and program options. We reviewed the studies on developmental outcomes and assessments for young children and on the workforce by the National Academy of Sciences.[14,15] We also reviewed the standards and performance criteria established by state Quality Rating and Improvement Systems, national organizations, and policy experts in early childhood development, health, safety, maternal health, and related fields.

We published a notice of proposed rulemaking (NPRM) on June 19, 2015 to solicit comments from the public. We extended the notice of proposed rulemaking comment period 30 days past our original deadline to September 17, 2015, to allow for more feedback from parents, grantees, and the Head Start community in general. We received, analyzed, and considered approximately 1,000 public comments to develop this final rule. Commenters included Head Start parents, staff, and management; national, regional, and state Head Start associations; researchers; early childhood, health, and parent organizations; policy think tanks; philanthropic foundations; Members of Congress; and other interested parties.

d. Overview of major changes from the NPRM

The public comments addressed a wide range of issues. We made many changes to the program performance standards in response to those comments, which range from minor to significant. The most significant changes fall under several categories: service duration, the

[14] National Academy of Sciences (October, 2008) *Early Childhood Assessment: Who, What, How.* Washington, DC.
[15] National Academy of Sciences (April, 2015) *Transforming the Workforce for Children Birth through Age 8: A Unifying Foundation.* Washington, DC.

central and critical role of parents in Head Start, staff qualifications to support high-quality, comprehensive service delivery, and health promotion.

First, we made changes to this final rule in response to the many public comments we received on the proposal to increase the duration of services children receive in Head Start. The changes to the service duration requirements in the final rule reflect concerns about local flexibility and access to Head Start for low-income children and their families. Instead of requiring all Head Start center-based programs to operate for at least 6 hours per day and 180 days per year as proposed in the NPRM, we changed the requirement to a minimum of 1,020 annual hours of planned class operations, which grantees will phase in for all of their center-based slots over five years. Similarly for Early Head Start, we changed the requirement in the NPRM for center-based programs to operate at least 6 hours per day and 230 days per year to 1,380 annual hours in this rule, and allow two years for programs to plan and implement this increase in service duration. These requirements balance the importance of increasing service duration with allowing greater local flexibility and more time for communities to adapt and potential funding to be secured.

Research supports the importance of longer preschool duration in achieving meaningful child outcomes and preparing children for success in school.[16,17,18,19,20,21,22,23] Shorter preschool programs may not have as much time to adequately support strong early learning outcomes for children and provide necessary comprehensive services.[24,25,26] In addition, the long summer break in most Head Start programs likely results in summer learning loss that undermines gains children make during the program year.[27,28,29] Furthermore, part-day programs can undermine parents' job search, job training, and employment opportunities.

---

[16] Robin, K. B., Frede, E. C., Barnett, W. S. (2006.) *NIEER Working Paper - Is More Better? The Effects of Full-Day vs Half-Day Preschool on Early School Achievement*. NIEER.

[17] Votruba-Drzal, E., Li-Grining, C. P., & Maldonado-Carreno, C. (2008). A developmental perspective on full- versus part-day kindergarten and children's academic trajectories through fifth grade. *Child Development, 79*, 957-978.

[18] Lee, V. E., Burkam, D. T., Ready, D. D., Honigman, J., & Meisels, S. J. (2006). Full-day vs. half-day kindergarten: In which program do children learn more? *American Journal of Education, 112*, 163-208.

[19] Li, W. (2012). *Effects of Head Start hours on children's cognitive, pre-academic, and behavioral outcomes: An instrumental variable analysis*. Presented at Fall 2012 Conference of the Association for Public Policy Analysis and Management.

[20] Heckman, J. J., Moon, S. H., Pinto, R., Savelyev, P. A., & Yavitz, A. (2010). The rate of return to the HighScope Perry Preschool Program. *Journal of Public Economics, 94*, 114-128.

[21] Walters, C. R. (2015). Inputs in the Production of Early Childhood Human Capital: Evidence from Head Start, *American Economic Journal: Applied Economics, 7*(4), 76–102.

[22] Wasik, B. & Snell, E. (2015). *Synthesis of Preschool Dosage: Unpacking How Quantity, Quality and Content Impacts Child Outcomes*. Temple University, Philadelphia, PA.

[23] Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M.R., Espinosa, L.M., Gormley, W.T., Ludwig, J., Magnuson, K.A., Phillips, D., & Zaslow, M.J. (2013). *Investing in Our Future: The Evidence Base on Preschool Education.* Policy Brief. Foundation for Child Development.

[24] DeCicca, P. (2007). Does full-day kindergarten matter? Evidence from the first two years of schooling. *Economics of Education Review, 26*(1), 67-82.; Cryan, J. R., Sheehan, R., Wiechel, J., & Bandy-Hedden, I. G. (1992). Success outcomes of full-day kindergarten: More positive behavior and increased achievement in the years after. *Early Childhood Research Quarterly, 7(2),* 187-203.

[25] Lee, V. E., Burkam, D. T., Ready, D. D., Honigman, J., & Meisels, S. J. (2006). Full-Day versus Half-Day Kindergarten: In Which Program Do Children Learn More? *American Journal of Education, 112(2),* 163-208.

[26] Walston, J.T., and West, J. (2004). *Full-day and Half-day Kindergarten in the United States: Findings from the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99 (NCES 2004–078)*. U.S. Department of Education, National Center for Education Statistics. Washington, DC: U.S. Government Printing Office.

[27] Allington, R.L. & McGill-Franzen, A. (2003). The Impact of Summer Setback on the Reading Achievement Gap. *The Phi Delta Kappan, 85(1),* 68-75.; Fairchild, R. & Noam, G. (Eds.) (2007). *Summertime: Confronting Risks, Exploring Solutions.* San Francisco: Jossey-Bass/Wiley.

[28] Downey, D.B., von Hippel, P.T. & Broh, B.A. (2004). Are Schools the Great Equalizer? Cognitive Inequality During the Summer Months and the School Year. *American Sociological Review, 69*(5), 613–635.

[29] Benson, J., & Borman, G.D. (2010). Family, Neighborhood, and School Settings Across Seasons: When Do Socioeconomic Context and Racial Composition Matter for the Reading Achievement Growth of Young Children? *Teacher's College Record, 112*(5), 1338–1390.

In the NPRM, we proposed to increase the positive impact of Head Start programs serving three- to five-year-olds by increasing the minimum hours and days of operation and to codify long-standing interpretation of continuous services for programs that serve infants and toddlers, in concert with increasing standards for educational quality. Specifically, the NPRM proposed to require programs to serve three- to five-year-olds for at least 6 hours per day and 180 days per year and to require programs to serve infants and toddlers for a minimum of 6 hours per day and 230 days per year. Our proposal was consistent with research demonstrating the necessity of adequate instructional time to improve child outcomes and aligned with recommendations from the Secretary's Advisory Committee.[30,31,32,33,34,35] However, though the research is clear that longer duration matters, there is no clarity on an exact threshold or combination of hours and days needed to achieve positive child outcomes. Therefore, in response to a significant number of public comments on the NPRM, including comments from the national, state, and regional Head Start associations, the final rule defines full school day and full school year services as 1,020 annual hours for Head Start programs and defines continuous services as 1,380 annual hours for Early Head Start programs, instead of setting a minimum number of hours per day and days per year for each program. These adjusted requirements will

[30] *Advisory Committee on Head Start Research and Evaluation: Final Report.* (2012). Washington, DC: Office of Head Start, Administration for Children and Families, U.S. Department of Health and Human Services.

[31] Curenton, S.M., Justice, L.M., Zucker, T.A., & McGinty, A.S. (2014). Language and literacy curriculum and instruction. Chapter 15 in in *Handbook of Response to Intervention in Early Childhood*, Buysee, V., & Peisner-Feinberg, E. (Eds.). Baltimore: Paul H. Brookes Publishing.

[32] Ginsburg, H.P., Ertle, B., & Presser, A.L. (2014). Math curriculum and instruction for young children. Chapter 16 in *Handbook of Response to Intervention in Early Childhood*, Buysee, V., & Peisner-Feinberg, E. (Eds.). Baltimore: Paul H. Brookes Publishing.

[33] Justice, L.M., Mcginty, A., Cabell, S.Q., Kilday, C.R., Knighton, K., & Huffman, G. (2010). Language and literacy curriculum supplement for preschoolers who are academically at risk: A feasibility study. *Language, Speech, and Hearing Services in Schools, 41,* 161-178.

[34] Ginsburg, H.P., Ertle, B., & Presser, A.L. (2014). Math curriculum and instruction for young children. Chapter 16 in *Handbook of Response to Intervention in Early Childhood*, Buysee, V., & Peisner-Feinberg, E. (Eds.). Baltimore: Paul H. Brookes Publishing.

[35] Clements, D.H., & Sarama, J., (2008). Experimental evaluation of the effects of a research-based preschool mathematics curriculum. *American Educational Research Journal, 45*(2), 443-494.

give programs more flexibility to design their program schedules to better meet children and community needs as well as align with local school district calendars, where appropriate.

To further address the comments about service duration and ensure a smooth transition for children and families, the final rule also includes a staggered approach to increasing service duration for Head Start preschoolers over the next five years. This gradual transition will allow programs more time to plan and implement changes while also increasing families' access to full school day Head Start services and ensuring more children receive the high-quality early learning services to help them arrive at kindergarten ready to succeed. The final rule also gives the Secretary the authority to reduce the proportion of each grantee's center-based slots required to operate for a full school day and full school year if the Secretary determines that such a reduction is needed to avert a substantial reduction in slots. We believe the requirements in the final rule strike an appropriate balance between setting the policy research demonstrates will best support positive outcomes for children and families, while minimizing reduction in the number of children and families Head Start can serve.

Second, we received comments that expressed concern that the proposed changes to family engagement services and governance would result in a reduction in emphasis on family engagement processes, parent leadership, and parent influence on program policy. This was not our intent. The intent of the NPRM was for the family engagement standards to incorporate the changes made to governance in the 2007 reauthorization and align with the groundbreaking work Head Start has led through the development of the Parent, Family, and Community Engagement Framework. Family engagement has always been at the foundation of Head Start, and as such, the final rule retains many of the proposed improvements to family services that integrate research-based practices and provide greater local flexibility to help programs better meet family

needs. However, given the perception that the changes would limit the role of parents and families in Head Start, the final rule includes several changes to more effectively reflect and maintain the important role of Head Start parents in leading Head Start programs, as well as the importance of family engagement to the growth and success of Head Start children. Specifically, we restore a requirement for parent committees, maintain and strengthen family partnership services (including goal setting), and strengthen the requirements for impasse procedures to make it clear that the policy council plays a leadership role in the administration of programs, rather than functioning in an advisory capacity. It is our expectation that the revisions to the final rule will ensure all grantees, programs, and parents understand the foundational role parents of Head Start children play in shaping the program at the local and national level.

Third, this final rule includes several changes in response to comments that suggested Head Start should use the revision of the program performance standards to set a higher bar for the delivery of quality comprehensive services. Specifically, this final rule includes a greater emphasis on staff qualifications and competencies for health, disabilities, and family services managers, as well as staff who work directly with children and families in the family partnership process. The qualification requirements represent minimum credentials we believe are critical to ensuring high-quality services. However, because we also recognize the important role of experience and community connections for such staff, these requirements are only for newly hired staff and, in some cases, give programs the flexibility to support staff in obtaining the credentials within 18 months of hire.

In response to public comments that the NPRM was not strong enough in addressing some serious public health issues, this final rule includes changes that place a greater emphasis on certain health concerns, including childhood obesity prevention, health and developmental

consequences of tobacco products and exposure to lead and support for mental health and social and emotional well-being. Given the prevalence of childhood obesity across the nation, especially among low-income children, we maintained important health and nutrition requirements and made specific changes to ensure Head Start actively engage in its prevention in the classroom and through the family partnership process. Given the serious health and developmental consequences of children's exposure to tobacco products, including second and third hand smoke, and to lead, we have explicitly required that programs offer parents opportunities to learn about these health risks and safety practices they can employ in their homes. We significantly strengthened the breadth and clarity on the requirements for programs to use mental health consultants to ensure Head Start programs are supporting children's mental health and social and emotional well-being. The final rule includes new provisions in the requirements for health, education, and family engagement services that elevate the role of Head Start programs in addressing these public health problems.

Additionally, through ongoing tribal consultations and the public comment process, we received important feedback from the American Indian and Alaska Native community. We made a number of changes specifically related to American Indian and Alaska Native programs based on these public comments and the unique and important sovereign relations with tribal governments. We added a new provision that for the first time makes it explicit that programs serving American Indian and Alaska Native children may integrate efforts to preserve, revitalize, restore, or maintain tribal language into their education services. We also clarified that, due to tribal sovereignty, American Indian and Alaska Native programs only need to consider whether or not they will participate in early childhood systems and activities in the state in which they operate.

In addition to these changes, the final rule maintains numerous changes proposed in the NPRM to strengthen program performance standards so all children and families receive high-quality services that will improve child outcomes and family well-being. We maintained and made important changes to strengthen service delivery. For example, we updated the prioritization criteria for selection and recruitment; made improvements to promote attendance; prohibited expulsion for challenging behaviors; strengthened services for children who are dual language learners (DLLs); and ensured critical supports for children experiencing homelessness or in foster care. Throughout the final rule we have made changes in response to public comments to make language clearer or more focused on outcomes rather than processes.

## IV. Discussion of General Comments on the Final Rule

We received approximately 1,000 public comments on the NPRM with many commenters supporting our overall approach to revising the Head Start Program Performance Standards. Commenters appreciated our reorganization and streamlining, and agreed this made the standards more transparent and easier to understand. Commenters generally supported our approach to systems-based standards that are more focused on outcomes and less prescriptive and process-laden. They did note that how OHS monitored these standards would affect their implementation and impact. Commenters also appreciated our research-based approach. They noted our education and child development standards focused on the elements most important for supporting strong child outcomes. Commenters supported standards in the NPRM to improve services to children who are DLLs and their families. Commenters also supported our emphasis on reducing barriers and improving services to children experiencing homelessness and children in foster care. Overall, commenters agreed our proposal would improve program quality, clarify expectations, and reduce burden on programs.

We received a range of comments on our proposal to increase the minimum service duration for Head Start and Early Head Start programs. Some commenters supported the proposal to increase duration, citing the research base and its importance to achieving strong child outcomes. Many commenters stated that without sufficient funds, this would lead to a reduction in the number of children and families Head Start served and this would be an unacceptable outcome. Other commenters raised concern or opposition for a variety of other reasons. We discuss and respond to these concerns in detail our discussion of part 1302, subpart B.

Many commenters were concerned that the NPRM overall reflected a reduced commitment to the role of parents in Head Start. They also pointed to specific proposals in different subparts and sections, which they stated contributed to a diminished role for parents. It was not our intent to diminish the role of parents in the Head Start program, and we have revised provisions in the final rule to ensure our intent for parent engagement is appropriately conveyed. We believe parent engagement is foundational to Head Start and essential to achieving Head Start's mission to help children succeed in school and beyond. We address specific comments on parent involvement and engagement and our responses in the discussions of the relevant sections.

Many commenters believed there were excessive references to the Act. They asked that the final regulation translate the references to the Act with specific language or brief excerpts from the Act. We maintained the same approach as we proposed in the NPRM to reference the provisions in the Act so that the regulation will not become obsolete if the provisions in the Act change. However, we intend to issue a training and technical assistance document that integrates

language from the Act into the same document as the program performance standards to address commenters' interest in having a single document.

We also received other general comments or comments not tied to a specific section or provision of the rule. For example, some commenters offered general support for the Head Start program and noted it was important for Head Start to continue. One commenter thought we should have included examples of excellent Head Start programs. Commenters stated their overall opposition to the Head Start program or the NPRM as a whole, and others did not want Head Start program to continue to receive funding. Commenters stated that services for DLLs were emphasized too heavily in the regulation or that the standards for DLLs were too prescriptive. We believe DLLs are an appropriate priority in the regulation because the provisions reflect requirements in the Act and because it is important programs effectively serve DLLs because they are a rapidly growing part of both Head Start and the broader United States population. Commenters also offered specific suggestions on ways to clarify, enhance, or add language relevant to serving culturally and linguistically diverse children and families, including children who are DLLs throughout the NPRM. We incorporated some of the suggestions into the final rule but felt some were already adequately covered while others were not feasible to include in regulation. We discuss these comments as appropriate in the relevant sections of the preamble.

Commenters also pointed out technical problems, such as incorrect cross references, typographical errors, or small inconsistencies in related provisions. We corrected these errors and made other needed technical changes, including edits to ensure descriptive titles throughout the final rule. Commenters also requested that we update existing data collections to account for changes in the program performance standards. As we make changes to the Head Start Program

Information Report (PIR) and other data collections we sponsor, we will consider the final rule, but this is not a regulatory issue.

## V. Discussion of Section by Section Comments on the Final Rule

We received many comments about changes we proposed to specific sections in the regulation. Below, we identify each section, summarize the comments, and respond to them accordingly.

### PROGRAM GOVERNANCE; Part 1301

This part describes program governance requirements for Head Start agencies. Program governance in Head Start refers to the formal structure in place "for the oversight of quality services for Head Start children and families and for making decisions related to program design and implementation" as outlined in section 642(c) of the Act. The Act requires this structure include a governing body and a policy council, or a policy committee at the delegate level. These groups have a critical role in oversight, design and implementation of Head Start and Early Head Start programs. The governing body is the entity legally and fiscally responsible for the program. The policy council is responsible for the direction of the program and must be made up primarily of parents of currently enrolled children. Parent involvement in program governance reflects the fundamental belief, present since the inception of Project Head Start in 1965, that parents must be involved in decision-making about the nature and operation of the program for Head Start to be successful in bringing about substantial change.[36]

[36] *See* Federal Register, 40 FR 27562, June 30, 1975.

We revised previous program governance requirements primarily to conform to the Act. We received many comments on part 1301. Below we discuss these comments and our rationale for any changes to the regulatory text in this subpart.

*General Comments.*

Comment: Many commenters offered reactions to part 1301. Commenters expressed general support for the requirements, indicating they reflect the statutory requirements, improve transparency, maintain the important role of parents, and increase local flexibility.

Other commenters stated this part was unnecessarily complicated for parents, policy council members, and staff to follow as presented in the NPRM. Many commenters suggested all governance requirements be clearly stated in the rule rather than referenced with statutory citation in order to improve clarity and reduce burden for programs, parents, and others.

Response: As noted previously, we maintained the approach to cross reference to the Act so that the regulations will not become obsolete if the provisions in the Act change. However, we plan to issue a training and technical assistance document that incorporates the language from the Act with the regulatory language.

Comment: Some commenters suggested we failed to address the role of shared governance in the Head Start program, and that we relied too heavily on the Act, which is vague and ambiguous, and leaves grantees wondering about the proper balance between the role and responsibility of the governing body and the policy council. These commenters ask that we include more specificity about shared governance in the final rule.

Response: We continue to believe the best approach is to align the governance requirements in the rule with the language and requirements specified in the Act. The statutory

language has directed the governance of Head Start programs since it was passed in 2007 and there have not been any significant problems with this approach.

Comment: Commenters asked that we include "Tribal Council" wherever the phrase "governing body" occurs.

Response: We do not believe this is necessary, since the tribal council is acting as the governing body.

*§1301.1 Purpose.*

This section reiterates the requirement in section 642(c) of the Act regarding the structure and purpose of program governance. The structure as outlined in the Act includes a governing body, a policy council, and, for a delegate agency, a policy committee. We restored the requirement from the previous performance standards that programs also have parent committees as part of the governance structure, and we discuss this requirement in more detail in §1301.4. This section emphasizes that the governing body has legal and fiscal responsibility to administer and oversee the program, and the policy council is responsible for the direction of the program including program design and operations and long- and short-term planning goals and objectives.

Comment: Commenters recommended that we revise the language in this section to state clearly that each agency must establish a policy council.

Response: We proposed in the NPRM to use the term "policy group" to encompass the policy council and the policy committee more concisely. We defined "policy group" to mean "the policy council and policy committee at the delegate level." After further consideration and in response to comments, we reverted to using "policy council and policy committee at the delegate level." It is lengthier but clearer. Instead of introducing a new term, we are remaining consistent with the Act.

Comment: Some commenters raised concerns with the policy council being responsible for the direction of the Head Start program. Commenters stated it was unclear how the policy council could be effective in that role. Others said both the governing body and the policy council should be responsible for the direction of the program or that this responsibility should rest solely with the governing body.

Response: We maintained the language proposed in the NPRM because it is the statutory requirement in the Act that the policy council is responsible for the direction of the Head Start and Early Head Start programs.

*§1301.2 Governing body.*

In the NPRM, this section described training requirements; however, we moved training requirements to §1301.5 and this section now pertains to the governing body.

This section includes requirements for the composition of the governing body and its duties and responsibilities. It aligns with the Act's detailed requirements for the composition and responsibilities of the governing body. This section requires governing body members use ongoing monitoring results, data from school readiness goals, the information specified in section 642(d)(2) of the Act, and the information in §1302.102 to conduct their responsibilities. Paragraph (c) permits a governing body, at its own discretion, to establish advisory committees to oversee key responsibilities related to program governance, consistent with section 642(c)(1)(E)(iv)(XI) of the Act. Below we address comments and requests for clarification.

Comment: We received some comments on the governing body's duties and responsibilities that addressed the duties and responsibilities of both the governing body and the policy council together. Some commenters requested we provide a clear illustration of the responsibilities and powers of the governing body and policy council by including a chart or

diagram. Commenters also provided specific suggestions for revisions, such as: add language from the previous performance standards on the duties and responsibilities of the governing body and policy council; remove language specific to ongoing monitoring and school readiness goals, as this is addressed in another section; and require that program goals inform the governing body and policy council.

Response: We did not include a diagram or chart in this rule because we believe the governance provisions in the rule and in the Act are clear. In response to comments, we added to paragraph (b)(2) a cross-reference to the requirement in §1302.102 related to establishing and achieving program goals. By adding this cross reference, we are requiring governing bodies to use this information to conduct their responsibilities.

Comment: Some commenters offered support and raised concerns about the governing body's duties and responsibilities as laid out in paragraph (b). Some commenters supported the requirement that the governing body use ongoing monitoring results and school readiness goals to conducts it responsibilities, in addition to what is required in section 642(d)(2) of the Act. Some commenters suggested we enhance or clarify language about when programs needed to report to the responsible HHS official. Commenters also requested clarification about the governing body's responsibility to establish, adopt, and update Standards of Conduct, including reporting any violations to the regional office and about self-reporting requirements for immediate deficiencies.

Response: The Act specifies that the governing body is responsible for establishing, adopting, and periodically updating written standards of conduct, so we believe this is addressed because we incorporated this requirement from the Act. We revised §1302.90(a) to clarify the role of the governing body in standards of conduct, which we had inadvertently left out of that

standard. We did not revise the requirement about self-reporting because it is addressed in §1302.102.

Comment: Many commenters stated the proposed rule was unclear about conflicts of interest. Commenters requested clarification about this provision and recommended adding language that mirrors the IRS Form 1023 Instructions, Appendix A, Sample Conflicts of Interest Policy.

Response: We did not make changes to this language. There is guidance in the nonprofit community about the various ways to structure and apply a conflict of interest policy. If an agency wants to adopt the IRS rules, that would be one option, but it might not be the right option for all programs. Additionally, the governing body is required to develop a written conflict of interest policy, which can provide greater clarity than the overarching federal requirements.

Comment: We received comments on advisory committees described in paragraph (c). Some commenters requested additional clarification, including who the advisory board is and what groups should be included and whether the governing body may establish more than one advisory committee. Others commenters suggested revisions to the advisory committee's role advisory committee with respect to the governing body. For example, commenters stated that all areas of program governance, especially supervision of program management, should be left in the hands of the Board of Directors or the established governing body. Some commenters noted that advisory committees should not make decisions about program governance because that is not advisory in nature. Other commenters made specific suggestions for the language related to advisory committees, such as eliminating the composition requirements, eliminating the

requirement that advisory committees be established in writing, and differentiating between advisory committees that act as sub-boards versus other advisory committees.

Response: To improve clarity, we revised and streamlined paragraph (c). We clarified that governing bodies may establish one or more advisory committees. We removed some of the more prescriptive requirements, such as written procedures or composition requirements, and explicitly required that when the advisory committee is overseeing key responsibilities related to program governance, it is the responsibility of the governing body to establish the structure, communication and oversight in a way that assures the governing body retains its legal and fiscal responsibility for the Head Start agency. This allows the governing body flexibility to structure their advisory committee but requires that they retain legal and fiscal responsibility for the Head Start agency. We also require the governing body to notify the responsible HHS official of its intent to establish such an advisory committee.

§1301.3 Policy council and policy committee.

In this section, we retain a number of requirements from the previous program standards and included requirements to conform to the Act. In paragraph (a), we retain the requirement for agencies to establish and maintain a policy council at the agency level and a policy committee at the delegate level, consistent with section 642(c)(2) and (3) of the Act. Paragraph (b) outlines the composition of policy councils, and policy committees at the delegate level, consistent with the Act. Paragraph (c) outlines the duties and responsibilities for the policy council and the policy committee to conform to the Act and is largely unchanged from the NPRM. Paragraph (d) addresses the term of service for policy council and policy committee members.

Comment: Commenters recommended we include all of the statutory language from section 642(c)(2)(A) of the Act in this section, rather than summarizing that the policy council

has responsibility for the direction of the program. Another recommended the policy committee at the delegate level be renamed to "Policy Action Committee" to eliminate programs from using "PC" for both policy council and policy committee.

Response: We did not revise the concise reference to the policy council having responsibility for the direction of the program, although the Act's more expansive language is still part of the requirement. We maintain the terminology as it exists in the Act and did not rename "policy committee" at the delegate level.

Comment: Commenters supported the standard in paragraph (b) to require proportional representation on the policy council by program option but also recommended revisions and asked for additional clarification. For example, commenters requested clarification on what proportional representation means and how to implement it within different program types.

Other commenters expressed support for the requirement that the majority of policy council members be parents but requested that language be added to the rule, rather than just citing the Act. Others requested clarification on how appropriate composition will be maintained and consistent with the Act when parents drop out.

Response: We revised paragraph (b) to clarify that parents of children currently enrolled in "each" program option must be proportionately represented on the policy council or the policy committee. We believe programs should have the flexibility to specify in their policies and procedures how the composition requirements will be maintained when parents drop out and did not make revisions to address this.

Comment: Commenters expressed disagreement with language in the preamble to the NPRM stating, "We propose to remove current §1304.50(b)(6) which excludes staff from serving on policy councils or policy committees with some exceptions…". Commenters

expressed confusion and stated this language has been interpreted to mean staff would be allowed to participate as a policy council or policy committee member. Though one commenter expressed support for allowing staff to serve on the policy council because they have field experience and skills to make informed decision, the commenters generally stated it is a conflict of interest and could inhibit parent driven decision-making.

Response: In the NPRM, we proposed to remove §1304.50(b)(6), which excludes staff from serving on policy councils or policy committees with some exceptions, because it is superseded by the Act. In other words, the conflict of interest language in the Act, as well as the Act's clarity on who can serve on the policy council, means we no longer need the prohibition on staff serving on policy council or policy committee. However, commenters noted the exception related to substitute teachers is helpful and clarifying for programs. Therefore, we added the majority of the language on this topic from the previous performance standards back into paragraph (b)(2) to ensure clarity.

Comment: Commenters stated the Act gives the policy council responsibilities outside its scope of authority, and that the final rule should be modified to include language from the previous regulation related to duties and responsibilities. Commenters recommended we instead should focus the responsibilities of the policy council on program issues.

Response: In the final rule, we maintained the alignment with the Act with respect to the duties and responsibilities of the policy council. We did not add the requested language from the previous regulation because it has been superseded by the Act.

Comment: Some commenters requested that we clarify in the final rule the role of the policy council in hiring and terminating staff.

Response: We did not include a specific provision on the role of policy council in hiring and terminating program staff because we rely on the language in section 642(c)(2)(D)(vi) of the Act.

Comment: Many commenters supported allowing programs to establish in their bylaws five one-year terms for policy council members as opposed to three. Commenters said the change would support continuity, increase understanding of the complexities of the Head Start program and regulation, and promote investment in the policy council.

Some commenters opposed the option of extending policy council terms from three one-year terms to five. They stated that five years is too long, that parents may not have children in the program for five years, and that a shorter term would allow for more new members.

Response: We did not revise this provision. This rule provides programs the discretion to establish in their bylaws the number of one-year terms of policy council members up to five one-year terms. Programs have the discretion of setting a lower limit.

Comment: We received comments about the term "reasonable expenses" in paragraph (e). Commenters recommended we add a definition of "reasonable expenses," allow that all participants on the policy council/committee be reimbursed for "reasonable expenses," and allow agencies to develop their own policies and procedures to determine eligibility based on the need of their communities.

Response: We did not clarify the definition of "reasonable" but allow programs to make a determination. We clarified that eligibility for the reimbursement is only for low-income members.

§1301.4 Parent committees.

Comment: We received many comments about our proposal to remove the requirement for the parent committee. Some commenters supported the proposal to remove the parent committee requirement. They emphasized that there are more meaningful and inclusive ways to engage parents that could allow for individual program flexibility and innovation. These commenters suggested that the focus should instead be on providing opportunities for parents to learn about their children and engage them in teaching and learning and on family engagement outcomes.

Some commenters supported the removal of the parent committee requirement with reservations, but were concerned about the challenges it would pose for electing policy council representatives, about the loss of the benefits to parents previously derived from participation in parent committees, and about the perceived erosion of a core philosophy of Head Start. Others asked that the revised requirement ensure a structure for representing parent views and offering parents other opportunities for engagement.

Many commenters opposed the removal of parent committees. Commenters urged that we reinstate the parent committee requirement as it existed in the previous standards. These commenters stressed that parents are foundational to Head Start and that parent committees are a long-standing cornerstone of the program. They stated removing the requirement for parent committees would weaken Head Start parent engagement and diminish parents' role. Commenters noted that parent committees stimulate parent participation in the program, help parents develop leadership, advocacy and other useful skills, and are critical to developing membership for policy council. Commenters disagreed with our statement in the NPRM that parent committees do not work in all models, such as Early Head Start – Child Care Partnership (EHS-CCP) grantees, and suggested we help these grantees learn how to incorporate this

valuable experience for parents in order to infuse a higher level of quality into child care settings. Commenters were also concerned that the removal of parent committee would result in the loss of in-kind contributions from parent involvement.

Some commenters opposed the removal of the parent committee requirement and asked that we make modifications or recommended alternative language in the final rule if the parent committee requirement is removed. These commenters stated similar concerns to those who requested that we reinstate the requirement, but made suggestions for the final rule, such as to allow individual programs to determine the design and structure of parent committees, or to support flexibility in local design of parent committees and proposals for alternate mechanisms to engage families. Some of these commenters believed that parent committees are not for all parents. These commenters asked that programs be required to have a process in place that ensures all parents of enrolled children have local site opportunities to actively share their ideas, that parents understand the process for elections or nominations to serve on the policy council, and that a communication system exist to share information between parents attending local sites and the policy council and governing body.

Response: We restored a requirement for a parent committee in this part and in a new §1301.4. We also note that a parent committee is part of the formal governance structure in §1301.1. This section clearly outlines the requirements for a program in establishing a parent committee and the minimum requirements for parent committees, which are consistent with all of the substantive requirements from the previous performance standards. We maintain the requirement that a program must establish a parent committee comprised exclusively of parents of currently enrolled children as early in the program year as possible and that the parent committee must be at the center level for center-based programs and at the local program level

for other program options. In addition, in response to comments, we require programs to ensure parents of currently enrolled children understand the process for elections to policy council or policy committee or other leadership roles. Also as suggested by commenters, we allow programs flexibility within the structure of parent committees to determine the best methods and strategies to engage families that are most effective in their communities as long as the parent committee carries out specific minimum responsibilities. It requires that parent committees (1) advise staff in developing and implementing local program policies, activities, and services to ensure they meet the needs of children and families, and (2) participate in the recruitment and screening of Early Head Start and Head Start employees, both of which are retained from the previous performance standards. In response to comments we have added a requirement that the parent committee have a process for communication with the policy council and policy committee at the delegate level.

§1301.5 Training.

This section describes the training requirements for the governing body, advisory committee members, and the policy council. It reflects section 642(d)(3) of the Act that requires governing body and policy council members to have appropriate training and technical assistance to ensure they understand the information they received and can oversee and participate in the agency's programs effectively. We moved this section from §1301.2 in the NPRM to this placement in the final rule to improve overall clarity of part 1301. We discuss comments and our responses below.

Comment: We received comments that requested clarification or suggested ways to improve clarity. We also received comments that expressed opposition for the requirement. For example, commenters requested clarification on what is considered “appropriate” training and

what is included in training. One commenter requested clarification on the inclusion of advisory committee members in the training. Commenters recommended we move this section out of §1301.2, and others recommended we improve clarity by cross-referencing training requirements in another section. Some commenters opposed our requirement that governing bodies be trained on the standards because they thought it was unrealistic to expect Boards to have knowledge of all the operating standards and it detracted from getting input from governing bodies on program outcomes.

Response: We retained this requirement because it is required by the Act and because we believe governing bodies cannot effectively fulfill their program management responsibilities unless they have an understanding of the broader program requirements. Since governing bodies can choose to establish advisory committees, we included advisory committee members, who may be different individuals than governing body members, in this requirement.

To improve clarity, we moved these standards from §1301.2 to this section so that it follows sections with the requirements for all components of an agency's formal governance structure. We revised the section to include a cross reference to training requirements in §1302.12.

§1301.6 Impasse procedures.

This section on impasse procedures was found in §1301.5 in the NPRM and is now §1301.6 in the final rule. It describes procedural requirements for resolving disputes between an agency's governing body and policy council. We received many comments on our proposed impasse procedures. Many commenters believed our proposed impasse procedures weakened the role of parents in the Head Start program. They stated that we relegated the policy council, the majority of which is comprised of parents, to an advisory role by allowing the governing

body the final decision when an impasse remained unresolved. In response to comments, we revised the impasse procedures. A discussion of the comments and our response is below.

Comment: Many commenters opposed our proposal for the dispute resolution and impasse procedures. Commenters stated our impasse procedure proposal contributed to a broader weakening of the role of parents in Head Start because it tilted the power balance toward the governing body and away from the policy council. They also stated that the standards conflicted with other program performance standards in this section and requirements in the Act. For example, they stated the proposal conflicted with the requirement for "meaningful consultation and collaboration about decisions of the governing body and policy council." Commenters stated that conflicts often result from issues related to the direction of the program, which is the responsibility of the policy council. These commenters suggested that the proposed requirements amount to capitulation to the will of the governing body and are not actually impasse procedures, in contradiction with the Act's requirement. Others commenters noted further contradiction given the standards would require the governing body and policy council to work together yet exclude the policy council and allow the governing body to make the final decision. Some commenters stated that they embrace shared governance and provided examples of how the voice of parents has been critical to their decision-making during, for example, sequestration or previous impasses. Commenters made recommendations, such as adding formal mediation, strengthening the language related to "meaningful consultation and collaboration about decisions of the governing body and the policy council," referring to the impasse procedures as a consensus-building process, and establishing an independent arbitrator or third party to resolve disputes between the governing body and policy council.

We also received comments supporting the impasse procedures proposed in the NPRM. Some of these commenters stated that it is appropriate for the governing body, since they bear legal and fiscal responsibility, to make the ultimate decisions on issues related to the Head Start program after taking into consideration the recommendations of the policy council and policy committee, if applicable. Further, commenters asked for additional clarification about our proposed requirements, including the timeline for resolution.

Response: For clarity, we included the statutory language that requires "meaningful consultation and collaboration about decisions of the governing body and policy council," and we maintained requirements from the previous performance standards about these bodies jointly establishing written procedures for resolving internal disputes. We revised the requirements in this section to clarify the role of policy councils in the governance of Head Start programs, including processes to resolve conflicts with the governing body in a timely manner, and we included more specificity about what impasse procedures must include in order to better articulate the balanced process. In paragraph (b), we included a new standard that requires that in the event the decision-making process does not result in a resolution of the impasse, the governing body and policy council must select a mutually agreeable third party mediator and participate in a formal process that leads to a resolution. In paragraph (c), we require the governing body and policy council to select a mutually agreeable arbitrator, whose decision will be final, if no resolution resulted from mediation. Due to tribal sovereignty, we excluded American Indian and Alaska Native programs from the requirement in paragraph (c) to use an arbitrator.

**PROGRAM OPERATIONS; PART 1302**
**Overview**

In §1302.1, we made a technical change to remove paragraph (a) because the content of this paragraph was already included in the statutory authority for this rule and for this part and is therefore unnecessary to repeat here. Therefore what was paragraph (b) in the NPRM is an undesignated paragraph in the final rule.

**Eligibility, Recruitment. Selection, Enrollment and Attendance; Subpart A**

In this subpart, we combined all previous requirements related to child and family eligibility, and program requirements for the recruitment, selection, and enrollment of eligible families. We updated these standards to reflect new priorities in the Act, including a stronger focus on children experiencing homelessness and children in foster care. We added new standards to reflect the importance of attendance for achieving strong child outcomes. Further, we included new standards to clarify requirements for children with persistent and disruptive behavioral issues as well as new standards to support programs serving children from diverse economic backgrounds, when appropriate. Commenters supported our reorganization of these requirements and our emphasis on special populations. Commenters were particularly appreciative of the standards throughout the section that were designed to reduce barriers to the participation of children experiencing homelessness. We made technical changes for improved clarity. We discuss additional comments and our responses below.

*General Comments.*

Comment: Commenters recommended adding language that specifically encouraged the recruitment and enrollment of children who are culturally and linguistically diverse, and/or prioritizing linguistically diverse children for enrollment.

Response: We do not think it is necessary to explicitly encourage recruitment or prioritization of culturally and linguistically diverse children. Twenty-nine percent of Head Start

children come from homes where a language other than English is the primary language.[37] Additionally, as described in §1302.11(b)(1)(i), the community assessment requires programs to examine the eligible population in their service area, including race, ethnicity, and languages spoken. A program must then use this information when it establishes selection criteria and prioritization of participants, as described in §1302.14(a)(1).

*§1302.10 Purpose.*

This section provides a general overview of the content in this subpart. We received no comments directly for this section but made changes to be consistent with revisions in §1302.11.

*§1302.11 Determining community strengths, needs, and resources.*

This section includes the requirements for how programs define a service area for their grant application and the requirements for a community assessment. We streamlined the standards to improve clarity and reduce bureaucracy. In addition, we eliminated a prohibition on overlapping service areas, added new data as required by the Act for consideration in the community assessment to ensure community needs are met, and aligned the community assessment to a program's five-year grant cycle. We also required that programs consider whether they could serve children from diverse economic backgrounds in addition to the program's eligible funded enrollment in order to support mixed-income service delivery, which research suggests benefits children's early learning.[38,39] Below, we summarize and respond to the comments we received.

---

[37] U.S. Department of Health and Human Services, Administration for Children and Families (2015). *Office of Head Start Program Information Report, 2014-2015*. Washington, DC: Author.

[38] Mashburn, A.J., Justice, L., M., Downer, J.T., & Pianta, R.C. (2009). Peer effects on children's language achievement during pre-kindergarten. *Child Development, 80*(3), 686-702.

[39] Henry, G.T., & Rickman, D.K., (2007). Do peers influence children's skill development in preschool? *Economics of Education Review, 26*(1), 100-112.

Comment: Many commenters opposed or expressed concern about our proposal to eliminate the prohibition on overlapping service areas. For example, commenters stated that overlapping service areas will be confusing and will cause conflict because of competition between grantees. Many commenters suggested we include a process for mediation when there are disputes. Commenters supported our decision to remove the prohibition on overlapping service areas.

Response: We believe removing the prohibition on overlapping service areas gives greater flexibility to local programs in a manner that will benefit the children and families they serve. Grantees may request additional guidance through the system of training and technical assistance. Therefore, we did not reinstate the prohibition on overlapping service areas in this rule.

Comment: We received a few different recommendations for additional criteria for defining service area. For example, many commenters recommended we include parents' job locations as part of the service area.

Response: While the service area is based on children's residence, this rule, as well as the previous regulation, is silent on whether a program can enroll a child that lives outside of the service area if their parents work in that area. We believe programs already have the flexibility to determine whether a child should be enrolled at a program closer to a parent's workplace and will clarify any existing sub-regulatory guidance to reflect this flexibility. We made no changes to this provision.

Comment: We received suggestions for paragraph (b)(1) to more explicitly address the purpose and the goal of the community needs assessment, to add additional or change criteria to

the data (either on the five-year cycle or annually), and to provide more guidance on how programs should obtain data for the community needs assessment.

Response: We made changes to the section title and clarified that the community assessment should be strengths-based. We think these changes, together with using the full name of the community assessment – "community wide strategic planning and needs assessment" – better reflect the purpose of the assessment. We revised paragraph (b)(1) to clarify that this list is not exhaustive, and reorganized the list to make it more logically flow. We also revised paragraph (b)(1)(ii) to also include prevalent social or economic factors that impact their well-being. We did not believe additional data requirements were necessary because programs already have the flexibility to include other relevant data in their community assessments. We clarified in paragraph (b)(1)(ii) that homelessness data should be obtained in collaboration with McKinney-Vento liaisons to the extent possible, but it is important that all programs consider the prevalence of homelessness in their community, however possible. The U.S. Interagency Council on Homelessness has identified data gaps in tribal communities on young children experiencing homelessness, so we recognize tribal programs may need to utilize alternative methods to ensure they fully consider the prevalence of homelessness in their communities.

Comment: We received comments about our proposal in paragraph (b)(1) to change the community assessment from a three-year to a five-year timeline that would align with a program's five-year grant cycle. Some commenters supported this change because it removed unnecessary burden on programs. Commenters expressed concern that communities change rapidly and that five years is not frequent enough to review community needs.

Response: We think we strike the right balance between ensuring programs regularly assess and work to meet their community needs through an annual re-evaluation of particular

criteria described in paragraph (b)(2) and §1302.20(a)(2) and reduction of undue burden through alignment of the community assessment to the five-year grant cycle. We made no revisions to this timeline.

Comment: Many commenters recommended we change the requirement in paragraph (b)(2) that programs must annually review and update the community assessment to reflect any significant changes to the availability of publicly-funded full-day pre-kindergarten. These commenters expressed concern that public pre-kindergarten programs may not meet the needs of at-risk families because they do not offer a full spectrum of comprehensive services. Commenters offered specific suggestions for other community demographics to be considered in the annual review.

Response: Since the requirement to conduct community assessments was changed from every three years to every five years, this provision was intended to ensure programs annually capture what may be quickly changing demographic and policy landscape characteristics in their community. Emergence or expansion of publicly funded pre-kindergarten may offer new opportunities for partnerships and collaborations or it may offer new opportunities to extend the hours children receive services. We retained the standard that programs review and update the annual assessment to reflect any increase in the availability of publicly-funded pre-kindergarten including but not limited to "full-day" programs. In addition, we clarify that this review and update should take into account whether the pre-kindergarten available meets the needs of the population of the grantee serves. We revised paragraph (b)(2) to also include significant shifts in community resources, because community demographics was too narrow.

Comment: We received some comments in support of our proposed standard in paragraph (b)(3) for programs to consider whether characteristics of the community allow them

to operate classes with children from diverse economic backgrounds. These commenters noted research demonstrates participation in mixed-income classes is beneficial to children from low-income families and stated the standard would support a broader notion of innovative funding models. We also received many comments requesting additional guidance to ensure this standard did not result in fewer services for income eligible children.

Response: The intent of this requirement is for Head Start programs to consider whether it is feasible to implement a mixed-income delivery model. Research finds such models to be beneficial to the educational outcomes of children from low-income families.[40, 41] However, we revised this paragraph to clarify programs must not enroll children from diverse economic backgrounds if it would result in them serving less than their eligible funded enrollment. In addition, to both support consideration of innovative funding models and clarify our intent that children funded through other sources must not receive services instead of children eligible for Head Start, we revised paragraph (b)(3), and §§1302.15(d) and 1302.18(b)(2).

*§1302.12 Determining, verifying, and documenting eligibility.*

This section includes the process for programs to determine, verify, and document child and family eligibility for Head Start programs. We reorganized these requirements to clarify and better reflect best practices in the field. We also made technical and structural changes to standards that caused confusion in the field after publication in February 2015 of the final rule on eligibility, to eliminate duplication, and to update terms such as replacing "land-base" with "service area."

[40] Mashburn, A. J., Justice, L. M., Downer, J. T., & Pianta, R. C. (2009). Peer effects on children's language achievement during pre-kindergarten. *Child Development*, *80*(3), 686-702.

[41] Henry, G. T., & Rickman, D. K. (2007). Do peers influence children's skill development in preschool? *Economics of Education Review*, *26*(1), 100-112.

Comment: Commenters suggested changes to paragraph (a), which provides an overview of the process to determine, verify, and document eligibility. Suggestions included a recommendation to delineate more specific conditions under which alternative methods for eligibility determination would be approved and when in-person interviews would always be required.

Response: We made one revision to paragraph (a). We noted that telephone interviews could be permitted when it was more convenient for the family and eliminated the need to document the reason. Otherwise we made no revisions as we think paragraph (a)(3) is broad enough to provide flexibility and encourage innovation at the local level.

Comment: Many commenters expressed concern about the age provisions in paragraph (b). For example, some supported children transitioning to Head Start as soon as they turn three years old, whereas others suggested children stay in Early Head Start until the next program year. Others suggested that transitions should be based on developmental needs rather than birthdays. Many commenters were concerned about how the standards in this paragraph and paragraph (j) interacted with the allocation of funds for Early Head Start-Child Care Partnerships (EHS-CC Partnerships). Specifically, commenters were concerned that EHS-CC Partnerships can serve children up to 48 months of age for family child care, and paragraph (b)(1) states a "child must be an infant or a toddler younger than three years old."

Response: The ages children are eligible for Early Head Start are defined by the Act and not subject to regulatory change. The rule sets forth reasonable flexibility for transitioning children to Head Start or other early learning programs when they turn three years of age. Additional standards for this transition are in subpart G. Thus, we made no changes to provisions in this section regarding children turning three years of age. Further, the EHS-CC

Partnerships appropriation explicitly allowed serving children up to 48 months old for family child care, which supersedes regulatory language.

Comment: Commenters noted Head Start eligibility in paragraph (b) should not be tied to compulsory school attendance because in some states that would mean Head Start would have to serve children up to age six or seven.

Response: It is clear from program data that standard practice is that Head Start programs serve children until they are eligible for kindergarten. However, the Act explicitly references eligibility up to compulsory school age. In addition, we think the final rule allows flexibility in the very rare circumstances it is needed. We made no revisions to these provisions.

Comment: We received many comments on eligibility requirements in paragraphs (c), (d), (e), (f), and (g). For example, commenters recommended changes for income eligibility, continuous eligibility between Early Head Start and Head Start programs, new groups for categorical eligibility, and flexibility to reallocate funds at program discretion between Early Head Start and Head Start programs. Commenters also recommended changes in paragraph (j) of this section to address continuous eligibility. Commenters recommended we change prioritization requirements. Commenters also requested additional clarification for some of the proposed criteria, including on the definition of public assistance and absence of child care.

Response: Most suggestions for amendments to eligibility would require legislative action by Congress and cannot be changed through regulation. For other suggestions, we want to allow local programs the flexibility in their selection process to determine which children and families are most in need. Therefore, we made no revisions to income eligibility, groups for categorical eligibility, or prioritization requirements. We made technical changes in this section to clarify that categorical eligibility is not a separate term used for eligibility. In addition, we

made changes in paragraph (c)(1)(ii) to clarify that families are eligible if the child is receiving a Temporary Assistance for Needy Families (TANF) child-only payment. Finally we made technical changes in paragraph (d)(1) to correct the wording that implied individuals were ineligible at 100-130% of poverty. Programs may request additional guidance through the system of training and technical assistance.

Comment: Commenters recommended modifying standards to allow programs to participate in a community wide and/or statewide recruitment and intake processes.

Response: Programs already have the flexibility to participate in such systems and are expected to collaborate with community partners to ensure they are serving the children most in need. No revisions were made regarding this issue.

Comment: We received some comments about verification standards for public assistance described in paragraph (i). Some commenters supported the standards, noting they would ensure uniform practices across programs. Others opposed them or expressed concerns, with some stating they would be costly, and would delay enrollment. Commenters requested additional clarification for standards in this paragraph, including what was meant by "all" tax forms.

Response: We agree that the verification standards for public assistance will ensure uniform practices across programs and believe this is important to program integrity even if it may cause some delays, so we have not changed this language. We added language to the standard in paragraph (i)(1)(i) to include proof of income from individuals who are self-employed. This is meant to clarify that income sources from informal work, such as day laborers, should be included for income eligibility. Additionally we removed "all" before tax forms. We realize that programs want to be conscientious about proper eligibility verification so

we will continue to provide guidance and support about the implementation of these standards as requested.

Comment: As noted previously, some commenters submitted suggestions about eligibility duration standards in paragraph (j). Some commenters recommended changes that would facilitate eligibility from Early Head Start to Head Start. Commenters noted that the standard in paragraph (j)(4) can complicate a program's enrollment of over-income slots if an eligible family becomes more self-sufficient during their time in Head Start.

Response: The Act sets forth the requirements for the re-determination of eligibility for Head Start after Early Head Start so we do not have authority to change these standards. We believe programs have enough flexibility in their prioritization criteria in paragraph (j)(4), so we did not make changes.

Comment: Commenters requested clarification of the standards in paragraph (m) about eligibility training. For example, commenters were confused by outdated language in paragraph (m)(3).

Response: To improve clarity of this paragraph, technical changes were made to eliminate language in paragraph (m)(3), which was unnecessary and confusing because it noted an outdated timeline tied to the final eligibility rule published in February 2015.

*§1302.13 Recruitment of children.*

This section maintained and streamlined standards from the previous rule about the goal of recruitment efforts and some specific efforts a program must make.

Comment: We received some comments on this section, including requests for clarification and recommendations for additional emphasis on recruitment of certain populations.

Response: Programs are required to serve children with disabilities as at least 10 percent of their funded enrollment. Therefore, requiring active recruitment for this specific population is appropriate. We added that programs should also actively recruit other vulnerable populations, including homeless children and children in foster care, and provided programs with the flexibility to define these populations based on their community assessment.

*§1302.14 Selection process.*

This section describes the selection process and specific criteria programs must use to weigh the selection of eligible children. It includes a new requirement for programs to prioritize serving younger children if they operate in a service area with high-quality publicly funded pre-kindergarten. This section also included standards to conform with provisions from the Act that require at least 10 percent of a program's total enrollment to be children eligible for services under the Individuals with Disabilities Education Act (IDEA). Commenters appreciated the emphasis on a priority for children experiencing homelessness and children in foster care. We address these and other suggestions below.

Comment: For a number of reasons, many commenters opposed the standard in paragraph (a)(3) that would require programs to prioritize serving younger children if publicly-funded pre-kindergarten is available for a full school day. For example, commenters were concerned this requirement would limit families with 4-year-olds from receiving the full range of comprehensive services and supports offered by Head Start. They were also concerned it would interfere with or even unravel partnerships with publicly-funded pre-kindergarten programs. Some commenters stated this provision interfered with tribal sovereignty. Some commenters supported greater priority for younger children and some recommended we include additional

standards to further this goal. Commenters also recommended that American Indian and Alaska Native programs be exempt from this requirement.

Response: We have maintained this requirement because we believe programs should be serving more 3-year-olds and infants and toddlers in areas where there is high-quality, accessible pre-kindergarten for 4-year-olds. We revised this standard to reflect that the high-quality publicly funded pre-kindergarten must be accessible for the requirement to apply and clarified that this priority is part of the selection criteria programs establish as described in paragraph (a)(1). This, for example, would give programs flexibility to weigh other criteria that would not disrupt programs serving siblings or a child with a disability if it was determined this was the best placement. We also clarified that this prioritization would not be required if it interfered with partnerships with local educational agencies. Finally, we revised this requirement to clarify that American Indian and Alaska Native and Migrant and Seasonal Head Start programs must only consider this prioritization.

Comment: We received some comments about the requirement in paragraph (b) for 10 percent of a program's funded enrollment to be composed of children eligible for services under IDEA. Some commenters supported this standard. Some commenters stated it was a difficult standard to meet in rural communities, and others recommended it be calculated across a grantee's Early Head Start and Head Start enrollment. Some commenters requested additional clarification, and some commenters requested we add specific criteria for the waiver for this standard and requested children with disabilities be given the first priority on any waiting list until the 10 percent requirement is met.

Response: This standard is required by the Act. Therefore, we cannot revise its calculation. We slightly revised the language in paragraph (b)(1) to better clarify the 10 percent

is calculated from a program's total funded enrollment. Our current waiver process evaluates whether programs are making reasonable efforts to comply with the 10 percent requirement. Nationally, more than 12 percent of Head Start enrollment is comprised of children with disabilities, so we do not believe a change is necessary.[42]

Comment: Some commenters recommended changes to waiting list requirements in paragraph (c). Some recommended less focus on a waitlist and some recommended more focus and specificity.

Response: We believe the standard in paragraph (c) is appropriate to ensure any openings during the program year get filled promptly. We made no revisions.

*§1302.15 Enrollment.*

This section reorganized and revised previous standards about enrollment. It includes requirements about how quickly programs must fill vacancies and efforts they must undertake to maintain enrollment of eligible children for subsequent years. It includes standards to reduce barriers to enroll children experiencing homelessness. This section includes new standards about reserving slots for pregnant women, children experiencing homelessness, and children in foster care. This section also includes a new standard to allow the enrollment of children who are funded through non-Head Start sources, including private pay. Further, this section includes a standard that clarified current policy that required programs to follow their state immunization enrollment and attendance requirements. We moved the standard from §1302.17(c) in the NPRM to paragraph (f) to improve clarity. We received many comments on this section, which we discuss below.

[42] U.S. Department of Health and Human Services, Administration for Children and Families (2015). *Office of Head Start Program Information Report, 2014-2015*. Washington, DC: Author.

Comment: We received comments opposed to our proposal in paragraph (a) that programs must fill any vacancy within 30 days because the previous performance standards did not require programs to fill a vacancy within 60 days of the end of the program year. Commenters expressed a variety of reasons for their opposition, such as difficulty meeting all of the comprehensive service requirements in the allotted time period.

Response: We retained this provision with minor technical changes because we believe the provision of comprehensive services is beneficial to children – even during a period of 60 days or less. In addition, in some programs, 60 days represents one-quarter of the program year and allowing such a long period of vacancy represents lost opportunity and wasted funds. Furthermore, enrollment within the last 60 days of the program year will facilitate service delivery for the following program year.

Comment: We received comments that the standard proposed on eligibility duration that appeared in paragraph (b)(2) of the NPRM was redundant and unnecessary because of standards in §1302.12(j)(2) and (3).

Response: We agree and have struck the provision that was paragraph (b)(2) in the NPRM.

Comment: We received many comments recommending changes to the standard in paragraph (b)(2) (formerly paragraph (b)(3) of the NPRM) that allows a program to maintain a child's enrollment for a third year under exceptional circumstances as long as family income is re-verified. For example, some commenters recommended we strike this provision because it was inconsistent with §1302.12(b)(2) and the Act. Other commenters requested we define "exceptional circumstances" for better clarity. Many commenters recommended the standard be

clarified to apply specifically to Head Start and include services for five-year-olds in states where compulsory education does not begin until age six.

Response: This standard is not new and we do not believe it has caused significant confusion in the past. However, we made revisions to clarify this requirement is specific to Head Start. Programs may request additional guidance, if needed.

Comment: Some commenters recommended we revise paragraph (b) to establish continuous eligibility for children from the time they enroll in Early Head Start until they enter kindergarten.

Response: As previously noted, eligibility is set by statute. Such a change is outside the scope of this rule.

Comment: We received many comments that supported the provision in paragraph (b)(3) (formerly paragraph (b)(4) in the NPRM) that programs maintain enrollment for children who are homeless or in foster care. Some commenters expressed concern about the proposed standard. Commenters supporting the provision noted its importance to support stability and continuity for children experiencing homelessness and children in foster care. Some commenters stated the standard should be made stronger. Some commenters were concerned about the provision and recommended it be struck because maintaining enrollment would be too costly.

Response: We retained this provision with no revisions. Programs may request technical assistance to support their efforts to maintain enrollment for these children.

Comment: We received comments that supported the provision in paragraph (c) to require a program to use their community assessment to determine if there are families experiencing homelessness or children in foster care in the area who could benefit from services and allowing programs flexibility to reserve up to three percent of slots for special populations.

Commenters noted its importance in Head Start serving vulnerable children. Others supported the standard but recommended we expand it in a variety of ways. Others recommended changes, such as making the slot reservation a requirement instead of an allowance, adding additional subgroups for whom slots could be reserved, or allowing up to six percent of slots be reserved. Some commenters requested additional guidance on implementation.

Response: We believe we have achieved an appropriate balance between reserving slots for particularly vulnerable children while maintaining availability for other eligible children who need Head Start services. Reserved enrollment slots will not be counted as under-enrollment. Programs may request additional guidance on implementation as necessary. We made no revisions to this standard.

Comment: Some commenters expressed concern about the flexibility to reserve slots for the specified populations and concerns about the timeline allowed for such reservation, as described in paragraph (c). Some commenters were concerned the slots would remain unused throughout the year and some were concerned that it was unrealistic to fill the slots within 30 days. Others were concerned that the record keeping would be too burdensome.

Response: The rule is clear that if the reserved enrollment slot is not filled within 30 days, the slot becomes vacant and then must be filled within an additional 30 days. We believe we have achieved an appropriate balance between reserving slots for particularly vulnerable children for an appropriate length of time while maintaining availability for other eligible children. We believe this provision will foster enrollment of particularly vulnerable children and do not agree that it is too burdensome. We note that programs are allowed but not required to reserve such slots.

Comment: We received comments in support of and opposed to the standard proposed in paragraph (d) for programs to consider the feasibility to enroll children from diverse economic backgrounds who would be funded from other sources. Commenters were concerned this standard could lead to serving fewer Head Start eligible children. Other commenters requested clarifications.

Response: As noted previously, we revised a related standard in §1302.11(b)(3) to better clarify that programs must consider the feasibility of operating mixed-income programs but that they must not enroll children from diverse economic backgrounds if it would result in a program serving less than their eligible funded enrollment. We believe this additional clarification addresses commenters' concerns that the proposed standard would mean fewer eligible Head Start children would be served. To further clarify our intent, we revised the standard in paragraph (d) to reduce redundancy and make it clear that children from diverse economic backgrounds who are funded with other sources are not considered part of a program's eligible funded enrollment. We think §1302.11, which addressed how a program should consider their community assessment, is the more appropriate placement for consideration of the feasibility of mixed-income groups.

*§1302.16 Attendance.*

This section included provisions to support attendance. Research finds that attendance is essential for children to benefit from program experiences that promote success in preschool and beyond.[43, 44, 45] Therefore, in addition to provisions from the Act to address systemic issues of a program's low monthly average daily attendance, we included new proposals to emphasize the

[43] Ehrlich, S. B., Gwynne, J. A., Pareja, A. S., & Allensworth, E. M. (2013). Preschool Attendance in Chicago Public Schools. *Research Summary*. University of Chicago Consortium on Chicago School Research.

[44] Community Action Project Tulsa County. (2012). *Attendance Works Peer Learning Network Webinar*.

[45] Connolly, F., & Olson, L. S. (2012). Early Elementary Performance and Attendance in Baltimore City Schools' Pre-Kindergarten and Kindergarten. *Baltimore Education Research Consortium*.

importance of regular attendance for each child. Commenters generally supported the new emphasis and some commenters noted it would help programs identify family needs. However, many commenters opposed or expressed concern about the specific proposals and offered alternative suggestions. We discuss these comments below.

Comment: We received many comments about the requirement in paragraph (a)(1) that programs contact parents if a child is unexpectedly absent and the parent has not contacted the program within one hour. Many commenters opposed the requirement, and stated it was too prescriptive and cumbersome. Some commenters also found the provision unclear and objected to the one-hour timeline. Some commenters supported the one-hour timeline because it promoted child safety and reduced the risk of a child being left in a car or on a bus.

Response: We believe it is critically important that programs contact parents in a very timely manner to ensure children's well-being. We revised the requirements in paragraphs (a)(1) and (2) to be more systems-focused and have clarified that the program must "attempt to" contact the parent because it may not always be possible to reach the parent. However, we believe it is important for programs to ensure children's well-being by contacting parents when children are unexpectedly absent and parents have not contacted the program within one hour of program start time, so we have maintained this requirement.

Comment: We received many comments on the provision in paragraph (a)(2) about steps a program must take to improve attendance for children who have four or more consecutive unexcused absences or are frequently absent. Some commenters were generally supportive of this provision. Many commenters expressed concerns that the requirements were too prescriptive or too costly for programs. Some commenters were concerned that since low attendance was often linked to family crises, home visits would pose significant challenges.

Many commenters stated the emphasis on attendance should be more systems-focused. Commenters recommended alternative language. Some commenters requested additional guidance for implementation.

Response: We believe regular and consistent attendance is essential for programs to support children's early learning. We also think that inconsistent attendance often indicates a program needs to make more efforts to engage with and support families. We think it is very important for programs to realize the importance of regular attendance and work with families when appropriate to foster regular attendance. Therefore, we retained a strong focus on supporting attendance in the final rule. To further strengthen this requirement and clarify when frequent absences must be addressed, we revised paragraph (a)(2)(iii) to reflect that programs must conduct a home visit or other direct contact with parents if children experience multiple unexplained absences, such as two or more consecutive unexplained absences. Unexplained absences would not include days a child is sick if the parent let the program know that the child was out because of an illness. We also added paragraph (a)(2)(iv) to require programs to use individual child attendance data to identify children with patterns of absence that put them at risk of missing ten percent of program days per year and develop appropriate strategies to improve individual attendance among identified children, such as direct contact with parents or intensive case management as necessary. Programs may request technical assistance to address the causes of absenteeism.

Comment: Some commenters stated the requirement about program-wide attendance in paragraph (b) should be triggered at a lower percentage for infants and toddlers.

Response: We believe the 85 percent threshold is appropriate for Early Head Start and Head Start programs and has been the long-standing threshold in the previous Head Start regulation. We retained this provision as proposed.

Comment: We received many comments about the provision in paragraph (c)(1), which provides flexibility to support the attendance of children experiencing homelessness. Many commenters were concerned about the reference to birth certificates in our proposal for fear it implied programs can require birth certificates for enrollment. Many commenters supported the flexibility but were concerned about how to satisfy federal and state requirements when they are in conflict. Some commenters were concerned this standard would pose a public health concern.

Response: Birth certificates are not required for enrollment. We have revised paragraph (c) to eliminate confusion. Additionally, in order to address the conflict between the program performance standards and state licensing requirements and any public health concerns, we have clarified that programs must defer to state licensing requirements. However, since it is important that children without proper immunizations get up to date and attend Head Start as soon as possible, we also strengthened the standard to require programs to work with families to get children immunized as soon as possible.

Comment: Some commenters stated the provision in paragraph (c)(2) about providing transportation for children experiencing homelessness where possible was too stringent. Some commenters stated it was not strong enough and recommended requirements that mirror those in the McKinney-Vento Act. Some commenters requested additional clarification about using program funds if community resources are unavailable.

Response: A program may use program funds to provide transportation to all children in the program or to a subset, such as homeless children. However, approximately 40 percent of

programs provide transportation services. We believe the requirement for programs to use community resources if available to transport homeless children while allowing but not requiring the use of program funds to do so is the appropriate approach, and have not changed this provision.

*§1302.17 Suspension and expulsion.*

This section outlines the program performance standards pertaining to the suspension and expulsion of Head Start children. These standards codify long-standing practice to prohibit expulsion of Head Start children. However, given recent research that indicates suspensions and expulsions occur at high rates in preschool settings,[46,47,48] we explicitly require all programs to prohibit expulsion and limit suspension in Head Start and Early Head Start settings and further require programs to take steps, based on best practices, to support the social, emotional and other development of children who demonstrate serious behavioral issues.

In general, many commenters were supportive of the standards described in this section. However, some commenters expressed concern about the implementation of these standards if, for example, parents refuse mental health consultation, programs lack specialized staff, and alternative placements for children are not available. Below, we summarize and respond to these and other comments on this section.

Comment: Commenters recommended we define "suspension" and "expulsion."

Response: We did not add definitions for these terms. We note that other Federal laws contain requirements and safeguards when children with disabilities are suspended or expelled.

[46] Gilliam, W. S. (2005). Prekindergarteners left behind: Expulsion rates in state prekindergarten systems. New York, NY: Foundation for Child Development.

[47] Gilliam, W.S., & Shahar, G. (2006). Preschool and child care expulsion and suspension: Rates and predictors in one state. *Infants & Young Children, 19*, 228–245.

[48] Lamont, J. H., Devore, C. D., Allison, M., Ancona, R., Barnett, S. E., Gunther, R., & Young, T. (2013). Out-of-school suspension and expulsion. *Pediatrics, 131*(3), e1000-e1007.

IDEA's discipline procedures apply to children with disabilities as defined in section 602(3) of IDEA in Head Start Programs. See IDEA section 615(k), 20 U.S.C. 1415(k) and 34 CFR 300.530 through 300.536.

There are other safeguards for children who are not served under IDEA but who are protected under Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794, and Title II of the Americans with Disabilities Act (Title II), 42 U.S.C. 12131 *et seq*., because they satisfy the definition of disability in those Acts. Those statutes, IDEA, Section 504, and Title II also do not contain definitions for the terms "suspension" or "expulsion." We expect programs to consider their ordinary and customary meanings. However, we think this section makes clear our expectations about supporting children instead of suspending and expelling them.

Comment: Some commenters suggested we revise the suspension requirements in paragraph (a) to provide more support for children who may be temporarily suspended for challenging behavior. Others recommended we completely prohibit suspension instead of requiring programs to severely limit the use of suspension. Some commenters suggested we require programs document the support services provided to each child during a temporary suspension and upon their return. Commenters also recommended we require programs to conduct home visits during any temporary suspension. Other commenters requested we require specific interventions, such as early childhood mental health consultation before a temporary suspension is permitted.

Response: We agree that instances where temporary suspensions are appropriate should be considered extremely rare. Young children with challenging behaviors should be supported and not excluded. Therefore, the provision in paragraph (a)(1) requires the program to prohibit or severely limit the use of suspension. We agree that our requirements for limitation on

suspension did not appropriately focus enough on preventive and support services. We revised paragraphs (a)(3) and (4) to ensure appropriate support services in the extremely rare circumstances where programs consider suspension for the safety of children or staff. We revised paragraph (a)(3) to require programs to engage with mental health consultants and parents before a program decides on a temporary suspension. In addition, we revised paragraph (a)(4) to engage with a mental health consultant and parents and provide supportive services such as home visits, and written plans of action, to support a child during a temporary suspension to facilitate their full participation in all program activities.

Comment: Many commenters generally supported our requirements, described in paragraph (b), to prohibit expulsion. Many commenters appreciated our focus on positive interventions instead of punishment, indicated that they already prohibit expulsion in their programs, or wanted clarification that expulsion would not be permitted under any circumstances. Some commenters suggested that Head Start programs do not suspend or expel children often enough to warrant federal requirements, and questioned why such requirements were necessary.

Some commenters were concerned about an outright prohibition on expulsion in paragraph (b). Commenters were worried it limited their options and raised concerns about how to effectively and safely implement this in their programs. Commenters raised a number of different issues, including parents refusing mental health consultation or disagreeing that their child needs additional services; danger to other children and staff; liabilities to programs; programs not having the specialized staff or access to appropriate services; and potential conflicts with state licensing. Some commenters suggested that expulsion should be allowed as a last resort for programs, that in some instances the threat of expulsion prevents parents from

being disruptive to programs, and suggested that keeping children in the program may not be in their best interest. Finally, some commenters requested additional guidance on how to effectively and appropriately implement these requirements, some expressing concern about losing funding if programs are "forced" to suspend a child.

Commenters also offered recommendations they felt made the requirement stronger, including requiring programs to provide staff with access to in-service training to prevent child suspension and expulsion, implementing specific strategies to address challenging behaviors such as trauma assessments, and providing extra funding to hire additional trained staff. Some commenters suggested we add a requirement for parents to consent to mental health consultation to address their concern.

Response: We do not think young children should be expelled from Head Start because of their behavior. Though we do not believe it to be a widespread problem in Head Start, recent research finds that preschool children are being expelled at alarming rates nationwide.[49] Stark racial and gender disparities exist in these practices. Young boys of color are suspended and expelled at much higher rates than other children in early learning programs and African American girls are suspended at much higher rates than other girls.[50] Suspension and expulsion in the preschool early years is related to less educational achievement later and negative long-term outcomes.[51,52] For these reasons, HHS has recommended this problem receive immediate attention from the early childhood and education fields.[53] It is Head Start's mission to provide

[49] Gilliam, W. S., & Shahar, G. (2006) Preschool and Child Care Expulsion and Suspension: Rates and Predictors in One State. *Infants and Young Children, 19*(3), 228-245.

[50] U.S. Department of Education, Civil Rights Data Collection (2016). Retrieved from: http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf

[51] Lamont, J. H., Devore, C. D., Allison, M., Ancona, R., Barnett, S. E., Gunther, R., & Young, T. (2013). Out-of-school suspension and expulsion. *Pediatrics, 131*(3), e1000-e1007.

[52] American Psychological Association, Zero Tolerance Task Force Report (2008). An evidentiary review and recommendations.

[53] https://www.acf.hhs.gov/sites/default/files/ecd/expulsion_suspension_final.pdf

high-quality early education to vulnerable children and therefore, it is especially critical that Head Start ensure children with challenging behaviors are supported, rather than expelled.

We understand commenters' concerns but believe we struck the appropriate balance. Children and staff will be best supported by our firm stance against expulsion; our requirements for best practice for prevention and intervention for children's mental health and social and emotional well-being in §1302.45; requirements in paragraph (a)(2) that permit a program to temporarily suspend a child if there is a serious safety threat that cannot be addressed through the provision of reasonable modifications; and our requirements in paragraph (b)(2) for supportive best practices when a child exhibits persistent and serious challenging behaviors. As a last resort, as described in paragraph (b)(3), a program may transition a child directly to a more appropriate placement if it has explored and documented all possible steps and collaborated with all parties involved in the child's care. Programs should provide children with the accommodations they need based on screenings and evaluations while they are awaiting a more appropriate placement.

We believe it is critical to support parents from the time their children enroll in Head Start and to partner with them to address challenging behaviors. We understand that some parents may be reluctant to engage in mental health consultations. Programs must work to support a program-wide culture that promotes child mental health and social and emotional well-being as described in §1302.45 and as part of that process, take steps to normalize the mental health consultation process. We revised §1302.45(a)(3) to require programs obtain parental consent for mental health consultation services when they enroll children in the program. This should facilitate mental health consultation and help remove stigma around behavioral supports.

Finally, we agree it is important for programs to have the tools necessary to address behavioral problems in children without the use of suspension and expulsion. Programs are required under §1302.92(c)(4) to implement a system of professional development that supports teachers' ability to address challenging behaviors. Finally, Head Start has a long-standing history of preventing suspension and expulsion practices, and as such, programs should be able to budget accordingly.

Comment: Some commenters suggested revisions to the requirements in paragraphs (b)(2) and (3) that detailed specific steps programs must take to support a child when they exhibit persistent and serious challenging behaviors. For example, commenters stated it was unrealistic to require programs consult with a child's physician since programs cannot compel physicians to participate in a consultation process. Some commenters also stated the phrase "exhaustive steps" was too subjective and requested clarification.

Response: We agree and made revisions accordingly. We revised both paragraphs to require consultation with a child's teacher instead of their physician, and revised paragraph (b)(2) to include consideration of the appropriateness of providing needed services and supports under Section 504 of the Rehabilitation Act. We also revised both paragraphs to replace "exhaustive steps" with "explore all possible steps and document all steps taken." We think this reflects best practice, clarifies our intent, and gives programs appropriate flexibility to implement best practices that are most appropriate for a particular child.

Comment: Many commenters stated we needed to revise our expulsion requirements to allow programs to transfer children with behavioral problems to the home-based option. Some commenters stated a classroom setting was not developmentally appropriate for some children.

Response: We believe programs must make significant efforts to support the full integration of all children into every program option. Effective implementation of the requirements to support children's mental health and social and emotional well-being, described in §1302.45 will support positive learning environments, integrate preventive efforts to address problem behaviors, and engage mental health consultants to support families and staff when challenging behaviors arise. These types of comprehensive services are foundational to Head Start. If a child exhibits problem behaviors in the classroom, the child may be eligible for appropriate special education and related services, to be included in an Individualized Education Program (IEP) developed in accordance with section 614(d) of the IDEA or an Individualized Family Service Plan (IFSP) developed in accordance with section 635 of the IDEA, or it may be appropriate to provide the child needed supports under Section 504 if the child satisfies the definition of disability in section 705(9)(b) of the Rehabilitation Act. We think moving a child to a home-based option without first exploring all the possible steps described in paragraph (b)(2) is a form of expulsion. If a child is exhibiting persistent and serious challenging behaviors in the classroom setting, programs must implement the process described in paragraphs (b)(2) and (3) to facilitate the child's safe participation in the program. Only as a last resort, and after exploring all possible steps and documenting all steps taken, programs may determine if a child needs an alternate placement such as on-going participation in a home-based program model.

Comment: Some commenters recommended we explicitly prohibit suspension or expulsion of children for poor attendance or because they are picked up late from the program.

Response: We agree children should not be suspended or expelled for poor attendance or parental tardiness. In §1302.16(a)(1) and (2), we already describe steps programs must take if a

child is unexpectedly absent, has multiple consecutive unexpected absences, or is frequently absent.

Comment: Many commenters stated our requirement in paragraph (c) that states parent participation is voluntary and not required as a condition of a child's enrollment was too vague.

Response: This requirement was also in the previous Head Start Program Performance Standards. We moved this provision to §1302.15(f) to improve clarity.

*§1302.18 Fees.*

This section describes our policy on fees. We maintain the overarching policy that programs are prohibited from charging parents of eligible children a fee for their child's participation in a Head Start program. We made revisions to improve clarity.

Comment: Some commenters requested clarification of the requirement in paragraph (b)(1). For example, some commenters requested clarity on how long the program day could be, and how long the additional funded hours could be. Additionally, some commenters expressed concern about whether they would be able to assess fees for the pre-k funded portion of the day.

Response: Hours per day, and thereby additional funded hours, depend on the length of the day the program is operating Head Start. Programs may assess fees only for additional hours beyond the Head Start day. The ability to assess fees for hours beyond the Head Start day is subject to state and local requirements. We revised this provision to improve clarity.

Comment: Commenters requested clarity about the impact that paragraph (b)(2) would have on cost allocation. Specifically, some commenters expressed concern that programs should not be able to "double dip" in funding, stating that we would need to ensure additional funds go to additional services. Other commenters asked whether collected fees would supplant current

funding. Some commenters requested clarity about whether private pay children would be considered Head Start children or would be counted as part of enrollment.

Response: All grantees receiving Head Start funds are required to comply with the provisions of 45 CFR part 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements. Part 75 includes regulations requiring that all costs be allocated among multiple funding sources in accordance with relative benefits received. These regulations assure that programs cannot "double dip" or charge the same expense to more than one funding source. Head Start is designed to increase the number of low-income children receiving high-quality, comprehensive early education services that help facilitate healthy development, including physical and social and emotional development, and prepare them for school success. To meet this goal, it is critical that Head Start funds do not supplant existing services. Existing laws and regulations addressing cost allocation and non-supplantation are not re-stated in the proposed regulation. However, to improve clarity, we revised paragraphs (b)(1) and (2) to better articulate when fees may be charged to enrolled and non-enrolled families.

Comment: Some commenters supported the standard in paragraph (b)(2) to encourage mixed income settings and the ability of Head Start programs to charge a fee to private pay or otherwise funded children. Other commenters expressed concern about these provisions or explicitly opposed the requirement in paragraph (b)(2) that allowed programs to charge fees to children who are not Head Start eligible to encourage mixed-income settings. For example, some commenters were concerned this would put Head Start in competition with other private pay providers in the community or were concerned about unintended consequences for eligible children in terms of access.

Response: Research on peer influences suggests that low-income children achieve better learning outcomes in mixed-income settings.[54,55] We do not believe that allowing Head Start programs to operate mixed-income classes will have a negative impact on other private pay providers in a community. This requirement does not allow programs to serve fewer eligible children than their Head Start funded enrollment. However, to further clarify our intent mixed-income settings must in no way displace Head Start eligible children, we revised §§1302.11(b)(3), 1302.15(d), and paragraph (b)(2) in this section.

Comment: Some commenters asked for clarification or suggested revisions for additional specificity in paragraph (b)(2). For example, commenters requested clarity about the definition of "diverse economic backgrounds" and whether over-income tuition could be applied to non-federal match requirements. Some commenters asked for clarity about whether paragraph (b)(2) allows programs to charge fees to Head Start eligible children during the non-Head Start portion of the day. Additionally, commenters requested clarity about whether Head Start children can be expelled if their parents do not pay the fees for non-Head Start hours. Some commenters suggested that expulsion should be possible, because otherwise it would be impossible to hold parents accountable for paying fees. Other commenters suggested that we ensure Head Start children cannot be turned away if the portion of day funded by child subsidies requires fee and the parents cannot pay.

Response: We believe that it is important for programs to have local flexibility to define what economic diversity means in their own communities so did not include a definition. Any non-federal match must support services to Head Start eligible children during the Head Start

[54] Mashburn, A. J., Justice, L. M., Downer, J. T., & Pianta, R. C. (2009). Peer effects on children's language achievement during pre-kindergarten. *Child Development, 80(3),* 686-702.

[55] Henry, G. T., & Rickman, D. K. (2007). Do peers influence children's skill development in preschool? *Economics of Education Review, 26(1),* 100-112.

day. Programs can charge fees to Head Start eligible children during the non-Head Start portion of the day. However, programs cannot predicate a child's participation in the Head Start portion of the day on enrollment in the non-Head Start portion of the day or payment of any fees.

Comment: Some commenters requested clarification about the proposed regulations covering fees for services under Part C of IDEA in paragraph (b)(3). Commenters noted the provision referenced Part B of IDEA, not Part C.

Response: We agree with commenters that the reference to IDEA in paragraph (b)(3) was incorrect and unnecessary. We removed this requirement.

Comment: Commenters noted that both standard fees and "de facto fees" should be prohibited, including requiring parents to provide diapers, formula, or food and asked whether fees for special events like field trips were included.

Response: We have codified the requirement to provide diapers and formula in Head Start programs in §1302.42(e)(1) of the standards and clarified here that fees are not allowed for activities, such as field trips, that are part of the Head Start day.

**Program Structure; Subpart B**

In this subpart, we combined all previous performance standards related to program options into one coherent section and indicated different requirements for Head Start and Early Head Start when necessary. We set standards for how programs should choose a program option; defined the requirements for ratios, group size, and service duration for each of the program options; and outlined the waiver requirements to operate locally designed program options. The majority of the comments submitted on the NPRM provided input on this subpart. In particular, most commenters raised concerns with the proposal to increase the service duration

for Head Start children to a full school day and full school year. We discuss the comments and our rationale for any changes other than technical changes to the regulatory text below.

*§1302.20 Determining program structure.*

This section describes how programs must select a program option and develop a program calendar. The provisions in this section also require that all program options provide comprehensive services, outline the process for conversion of Head Start slots to Early Head Start slots, allow American Indian and Alaska Native programs to reallocate funding, and clarify what are considered Head Start and Early Head Start hours of service.

Comment: Commenters expressed some concerns about the proposed provision in paragraph (a)(1) that programs annually consider whether local needs would be better met through conversion of existing part-day to full-day slots or full-day to full working day slots. Some stated that annual consideration was too often and too burdensome and suggested less frequent alternatives. In addition, the proposals in paragraphs (a)(2) and (3) created some confusion. Some commenters opposed the provision that programs consider conversion to a full year program and others found the language unclear in regards to whether this conversion was mandatory and whether full year meant calendar or academic year. Commenters requested clarification on the proposal in paragraph (a)(3) that requires programs to try to identify alternate funding sources before using program resources to cover extended hours because they found the term "extended hours" confusing and were unsure how meeting this requirement would be evaluated.

Response: We revised paragraphs (a)(1) and (2) and struck paragraph (a)(3) from the NPRM to improve clarity of what is required of programs. The requirement for programs to annually consider whether they should convert to a full year program was not meant to require

actual conversion but rather for programs to annually consider whether such a conversion would better meet the needs of their community. Paragraph (a)(2) now makes clear that consideration of conversion and ways to promote continuity of care should take place as part of the annual review of the community assessment described in §1302.11(b)(2). In addition, we replaced the term "extended hours" in what was paragraph (a)(3) in the NPRM with "full working day services" for improved clarity in paragraph (a)(2) in the final rule. We believe annual reconsideration of whether a program's model is meeting local needs is appropriate.

Comment: We received comments on provisions in paragraphs (a)(1) and (3) of the NPRM regarding conversion to Early Head Start. Some commenters strongly supported these provisions. Some stated that annual consideration was too often and too burdensome and suggested less frequent alternatives. Some commenters requested that additional clarification be added to the regulation, such as noting that conversion was allowable for grantees who did not currently operate Early Head Start and that regional offices should approve or deny conversion requests within a stated timeline. Other commenters suggested the standards should explicitly allow a reduction in funded enrollment for programs that choose to convert Head Start slots to Early Head Start slots.

Response: No changes were made to the provisions regarding conversion of slots to Early Head Start, which we believe are appropriately addressed in paragraph (c), with the exception of a technical correction that the policy council would also need to approve the request and a clarification that programs should update their school readiness goals to reflect the ages of children they serve. There are no statutory or regulatory prohibitions to prevent grantees that do not currently operate Early Head Start from converting slots. We agree that a reduction in funded enrollment is a likely outcome of conversion because of the higher relative costs of

serving infants and toddlers, but this does not need to be included in the regulation. We understand there is concern about the time required to process conversion requests but note that the process follows the clear requirements set forth in statute and further clarified in this rule.

Comment: Some commenters asked for clarification about whether a blended or braided funding model would be allowed to achieve the full school day requirement. Some sought additional clarification about which Head Start standards would need to be met during hours of operation not funded by Head Start. Some commenters also sought additional clarification about which hours must meet Head Start standards and noted that they would not be able to meet Head Start standards for before and after care. Similarly, commenters asked for clarification about whether the ratio and group size requirements only referred to program hours funded by Early Head Start or Head Start.

Response: The NPRM intended to convey that hours of service that meet Head Start standards would be counted toward calculation of Head Start service duration, regardless of whether those hours were funded by federal Head Start funding or another source. We understand the need for innovative funding models to leverage funds to more efficiently meet the needs of children and families. To eliminate confusion about whether these funding models are an allowable approach to meet the service duration minimum requirements, we added paragraph (d) to clearly state that programs may consider hours of service that meet the Head Start Program Performance Standards, regardless of the source of funding, as hours of planned class operations. We encourage programs to continue to seek innovative ways to fund their program models while meeting high-quality standards throughout the day. However, we acknowledge that ratio requirements, as well as all Head Start program performance standards, apply only during the hours of planned class operations for Head Start and Early Head Start.

*§1302.21 Center-based option.*

This section defines the setting for the center-based program option and sets requirements for ratios, group size, service duration, calendar planning, licensing, and square footage. Most comments addressed the service duration proposal for Head Start center-based programs.

Comment: The NPRM proposed to increase the minimum hours and days of program operation for Head Start preschoolers in the center-based option. The majority of comments addressed this proposal. The NPRM also proposed making the double session model only available as a locally designed program option, instead of as a standard program model. Some commenters supported the proposed increase in the hours per day and days per year, regardless of available funding. Some specifically supported the move to full school day (minimum of 6 hours per day) or full school year (minimum of 180 days per year), and still others supported both provisions as the standard option for Head Start. Reasons for their support included: significant increases in school readiness; the strong research base; alignment with state pre-K and K-12 systems; increases in the employment rates of low-income parents; child needs for more time to reach learning goals; doubling the amount of time Head Start children would be exposed to high-quality instruction and services; and better meeting parent needs. Others recommended we re-calculate the cost per child needed for each grantee to move to the proposed standard dosage for center-based services.

Some commenters supported the proposal to increase program duration for Head Start preschoolers, but only if funding is available to support the changes. These commenters noted the research base and potential improvement for children's outcomes, but stated that they would not support the policy without adequate funding because it would deprive many children of early learning opportunities due to a decrease in available Head Start slots. Some commenters

generally agreed we should increase program duration for Head Start preschoolers, but they also raised concerns. We discuss those concerns in more detail below.

Some commenters suggested alternative minimums to the 180 days per year and 6 hours per day proposed in the NPRM. Some suggested that the requirements for the length of day and year be shorter than those proposed in the NPRM, but longer than previous standards. Commenters suggested taking an annual hours approach to program duration, such as 1,020 or 1,080 hours per year for Head Start preschoolers, to allow programs greater flexibility to design what works best for their community. Other commenters suggested requiring a specific percent of slots for each grantee, such as 50 or 75 percent, meet an increased duration requirement and allowing the remaining slots to be more flexible. Other commenters suggested that the minimum duration requirements should vary based on child age. Some suggested that the increase in duration should be encouraged, or optional, but not required. Some commenters asked if programs currently operating at a lower dosage would be "grandfathered in" and allowed to continue operating under the old program performance standards. Others suggested that the required hours per day should be less than what would trigger a nap requirement under local licensing rules. Some commenters recommended allowing programs to offer a "menu" of varied program models based on community assessments with an ability to shift slots between models over the course of the grant to meet changing needs. Some other commenters suggested that the increased duration requirements for Head Start (180 days) should align with the requirements for Early Head Start (230 days). Some commenters asked why duration requirements are not higher than those proposed in the NPRM, given the research on summer learning loss and evidence that children benefit from longer duration, and the need for a longer day to accommodate working families.

Many commenters raised concerns about the impact of these changes on partnerships and collaborations with public schools. Commenters proposed alternative minimums or suggested that programs be allowed to align their calendar with the local school district or state requirements for K-12, to facilitate partnerships with schools. Some noted that their school district or state tracks time in hours per year and suggested that this same flexibility be applied to Head Start. Commenters also raised concerns about the challenges of operating longer than their local schools. Specific concerns included disruptions to transportation, facility space, and food service; the ways service days are calculated; and union agreements. Some commenters stated that double sessions are sometimes the best option when working with school districts due to space limitations and transportation. Others stated that attendance is low when Head Start is in session but the school district is not.

The majority of commenters either opposed or expressed significant concerns with the provisions to increase the program day and year for Head Start preschoolers, with many citing multiple reasons for their concerns or opposition. Some of these commenters were generally against the proposal to increase program duration, without going into specific reasons for their opposition. Many commenters were concerned or opposed due to the loss of Head Start slots that would occur without appropriate funding. In this context, some were specifically concerned with the elimination of double sessions and only being able to serve half the number of children in their community. Some commenters agreed that children would benefit from the increased exposure to Head Start, but they felt that this benefit was not worth other children and families no longer receiving Head Start services. Some suggested that the reduction in the number of slots could cause additional instability in already fragile communities and that there are no other high-quality early childhood education options available in some communities. Some

commenters suggested delaying implementation of the new requirements until sufficient funding is in place to prevent enrollment reduction. Others expressed that any additional money should be used to increase access to Head Start, as opposed to program duration.

Some commenters stated that the increased duration was not developmentally appropriate for preschoolers. Some noted that transportation in rural areas would make the day even longer for children. Some suggested that a 6-hour day may not be appropriate for certain groups of children, such as 3-year-olds, children with challenging behaviors or special needs, or DLLs. Some commenters asserted that a longer year is not appropriate for preschoolers. Others specifically stated that moving to a program that operates five days per week (as opposed to 4 days) is not appropriate for children this age.

Many commenters expressed concern or opposition to the proposed operation minimums for preschoolers because they would limit the ability of programs to address the unique needs of the local communities and families they serve and/or because the proposed requirements do not take into account parental choice or preferences. Commenters stated the proposed requirements would prevent creative and innovative program designs that would be more responsive to community needs. Some commenters said that it does not support the cultural values of all families, such as American Indian and Alaska Native or immigrant families.

Some commenters opposed or expressed concerns about the proposed increase in service duration for Head Start because of the logistical challenges programs would face, including significant disruptions to community collaborations. Some commenters stated that collaborations they use for transportation would be severely disrupted. Others noted they would lose access to facilities because their community partnership would not be able to provide full-day space. Many of these commenters raised concerns about the lack of adequate or reasonably

priced facilities in their area. Some commenters were concerned with the challenges they would face finding enough high-quality teachers for new classes. Some commenters raised concerns about negative impacts on partnerships with child care providers and family eligibility for child care subsidies to provide families with care for a full working day. Some commenters noted that children who currently receive full day services through the combination of a half-day of Head Start and half-day of state pre-k could be negatively impacted by the duration proposal.

Some commenters opposed or expressed concerns about the proposed increase in duration for Head Start preschoolers because of the potential impact on teachers and other staff. Some commenters were concerned about the loss of staff jobs that would result without adequate funding to support the increased duration, noting this would have a negative impact on the economy and local community. Commenters were concerned about how the move to a longer school day or longer school year would increase the burden on teachers and reduce time for other necessary activities, which would undermine program quality. Some suggested that this would increase teacher stress, burnout, and turnover. These issues were of particular concern to some programs that believed they would have to move from a 4-day per week to a 5-day per week schedule. Commenters were also concerned that the proposed model would make it more difficult to recruit and retain highly qualified staff. Commenters noted the need to pay teachers more in order to offset the workload associated with the increased program duration. Some commenters were concerned about the loss of staff jobs that would result without adequate funding to support the increased duration and stated this would have a negative impact on the economy and local community.

Some commenters stated that the research cited in the NPRM was not adequate or appropriate to justify the longer day and/or year for Head Start preschoolers. Some commenters

stated that longer duration is not necessarily an indicator of higher program quality. Some commenters stated that moving to full school day services would not increase instructional time because of time that would need to be devoted to naps, meals, and transitions. Some commenters expressed concern with increasing duration for Head Start preschoolers because their state or municipality still has part-day, part-week, or optional kindergarten, or part-day state-funded preschool. Some commenters expressed concern about state licensing laws that would become applicable with a longer program day. Some commenters raised concerns about the impact on their non-federal share match if they served fewer families.

Response: We made significant changes in paragraph (c) to the requirements for service duration for preschoolers in Head Start center-based settings. We believe, and research indicates, that strong child outcomes are best fostered through high-quality early education programs that provide at least a full school day and full school year of services and that children are best served if Head Start programs continue to move toward this goal. We do not agree that the increased service duration is developmentally inappropriate for preschoolers, including three-year-olds, or that the research we cited is inadequate to justify these proposals. While the research does not identify a specific threshold, there is ample research that points to increased

duration in achieving positive child outcomes.[56,57,58,59,60,61,62,63,64,65,66] Many Head Start programs, as well as State funded preschool programs already operate for a full school day and a full school year.

However, we agree with commenters about the negative effects of implementing this model in such a way that could lead to significant reductions in the number of children and families served by Head Start programs, and recognize the need to allow programs and communities sufficient time to thoughtfully plan and adjust their operations. Therefore, we made significant changes to the service duration minimums in subpart B for Head Start preschoolers in center-based settings that we believe strike the right balance of giving more children access to a program with full school day and full school year services, while allowing

[56] Lee, V. E., Burkam, D. T., Ready, D. D., Honigman, J., & Meisels, S. J. (2006). Full-Day versus Half-Day Kindergarten: In Which Program Do Children Learn More? *American Journal of Education, 112(2),* 163-208.

[57] Walston, J.T., and West, J. (2004). *Full-day and Half-day Kindergarten in the United States: Findings from the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99 (NCES 2004–078)*. U.S. Department of Education, National Center for Education Statistics. Washington, DC: U.S. Government Printing Office.

[58] Sloan McCombs, J. et al., (2011). Making Summer Count. How Summer Programs Can Boost Children's Learning. Santa Monica, Calif.: RAND Corporation.

[59] Downey, D.B., von Hippel, P.T. & Broh, B.A. (2004). Are Schools the Great Equalizer? Cognitive Inequality During the Summer Months and the School Year. American Sociological Review, 69(5), 613–635.

[60] Ehrlich, S.B., Gwynne, J.A…,..Sorice, E. (2014). *Preschool Attendance in Chicago Public Schools: Relationships with Learning Outcomes and Reasons for Absences.* University of Chicago Consortium on Chicago School Research. Research Report.

[61] Peisner-Feinberg, E. S., Schaaf, J. M., LaForett, D. R., Hildebrandt, L.M., & Sideris, J. (2014). *Effects of Georgia's Pre-K Program on children's school readiness skills: Findings from the 2012–2013 evaluation study.* Chapel Hill: The University of North Carolina, FPG Child Development Institute.

[62] Barnett, W.S., Jung, K., Youn, M.J., and Frede, E.C. (2013). *Abbott Preschool Program Longitudinal Effects Study: Fifth Grade Follow-Up.* National Institute for Early Education Research Rutgers—The State University of New Jersey.

[63] Gormley, G.T., Gayer, T., Phillips, D., & Dawson, B. (2005). The effects of universal pre-k on cognitive development. *Developmental Psychology, 4*(6), 872-884.

[64] Weiland, C., & Yoshikawa, H. (2013). Impacts of a prekindergarten program on children's mathematics, language, literacy, executive function, and emotional skills. *Child Development, 84,* 2112–2130.

[65] Walters, C. R. (2015). Inputs in the Production of Early Childhood Human Capital: Evidence from Head Start, *American Economic Journal: Applied Economics, 7*(4), 76–102.

[66] Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M.R., Espinosa, L.M., Gormley, W.T., Ludwig, J., Magnuson, K.A., Phillips, D., & Zaslow, M.J. (2013). *Investing in Our Future: The Evidence Base on Preschool Education.* Policy Brief. Foundation for Child Development.

greater local flexibility and more time for communities to adapt and potential funding to be appropriated.

Revisions in paragraph (c)(2) specify a timeline, process, and requirements for programs to phase in full school day and full school year services for all preschool children served in center-based settings. In this rule, we require that each program offer full school day and full school year services, defined as 1,020 annual hours, for at least 50 percent of its Head Start center-based funded enrollment by August 1, 2019, and for all of its Head Start center-based funded enrollment by August 1, 2021. Exceptions to these requirements may be granted through a simplified waiver process, described in §1302.24 and discussed in further detail in that section below. Paragraph (c)(2)(i) specifies that until the new requirement in paragraph (c)(2)(iv) or (v) is effective, programs that operate five days per week must provide at least 160 days per year of planned class operations for a minimum of 3.5 hours per day and programs that operate 4 days per week must provide at least 128 days per year of planned class operations for a minimum of 3.5 hours per day. In paragraph (c)(2)(ii) double session variations are in effect permitted until July 31, 2021, which gives grantees operating double session slots ample time to plan for full implementation of the new duration standards. Until this time, double session programs must operate for the same minimums described above. These service duration minimums in paragraphs (c)(2)(i) and (ii) are consistent with the previous program performance standards.

Paragraphs (c)(2)(iii) and (iv) set forth an incremental timeline and process for grantees to shift their programs to provide at least a full school day and a full school year of services to all preschoolers in center-based settings. We made this service duration requirement less burdensome by changing the requirement to a total of 1,020 hours annually, as opposed to a minimum number of days per year and hours per day as proposed in the NPRM. This annual

hours approach will allow more local flexibility and is consistent with how the majority of states set minimum requirements for how local education agencies set their calendars. In Head Start, it will provide programs greater flexibility to design schedules that meet the unique needs of their communities while maintaining high standards for the amount of instructional time children receive. As stated in paragraph (c)(2)(iii), each grantee will have until August 1, 2019 to provide at least 1,020 annual hours of planned class operations over the course of a minimum of 8 months to at least 50 percent of its Head Start center-based funded enrollment. As noted later, "hours of planned class operations" is defined in part 1305 to clarify that only the hours when children are scheduled to attend count towards the 1,020 annual hours requirement. Paragraph (c)(2)(iv) states that by August 1, 2021 programs must provide at least 1,020 annual hours of planned class operations over the course of at least 8 months for all of their Head Start center-based funded enrollment.

Programs may design a variety of different schedules within the minimum requirements that meet the specific needs of their families, communities, and staff. For example, programs may choose to operate for four or five days a week for either an 8-month program year or year-round, depending on the length of the day they select, as long as they meet the 1,020 annual hour minimum. This flexibility will allow programs to address many of the concerns that were raised in the comments, such as alignment of the summer break with the local education agency's calendar, the availability of facilities, the continuation of partnerships, and state licensing requirements. We clarify in §1302.20(d) that all hours of service that meet the program performance standards may be considered Head Start hours regardless of their source of funding.

We believe the flexibility of the annual hours requirement will also allow programs to design schedules to minimize additional staff burden that would exacerbate challenges with

attracting and retaining qualified staff. There are a variety of successful Head Start models across the country where programs currently provide full school day and full school year services. To address anticipated challenges, programs may choose to develop budgets that increase staff salaries to reflect the additional workload and to design innovative schedules that build adequate time for teacher planning and other activities into each week.

Although some commenters were concerned that instructional time would not increase under increased duration minimums due to time required for naps, meals, and transitions, we believe having the chance to nap during the Head Start day can be very beneficial to consolidate learning and improve overall health.[67,68,69] If a program feels their children would be best served by a day without a nap at Head Start, we designed a flexible enough requirement for programs to design a schedule that would not necessitate a nap under state licensing requirements.

Some commenters believed parents do not want or need Head Start services for a longer program day and year. If parents in a particular community truly do not want full school day or full school year services and a program can demonstrate its model effectively supports child learning, then the program can apply for a waiver in accordance with the requirements described in §1302.24.

Paragraph (c)(3) provides the Secretary the discretion to lower the required percentage of funded enrollment slots for which grantees must offer 1,020 annual hours of planned class operations to the percentage the Secretary estimates available appropriations can support. This provision will allow the Secretary the flexibility to balance the important policy goal of providing all preschoolers with a full school day and a full school year of services in Head Start

[67] Bates, J. E., Viken, R. J., Alexander, D. B., Beyers, J., & Stockton, L. (2002). Sleep and adjustment in preschool children: Sleep diary reports by mothers relate to behavior reports by teachers. *Child Development*, *73*(1), 62-75.

[68] Lam, J. C., Mahone, E. M., Mason, T. B., & Scharf, S. M. (2011). The effects of napping on cognitive function in preschoolers. *Journal of Developmental and Behavioral Pediatrics*, *32*(2), 90.

[69] Kurdziel, L., Duclos, K., & Spencer, R. M. (2013). Sleep spindles in midday naps enhance learning in preschool children. *Proceedings of the National Academy of Sciences*, *110*(43), 17267-17272.

with the disruption and potential slot loss such a policy might create in the absence of sufficient funding.

In response to concerns about service duration requirements disrupting partnerships with local education agencies, and to reduce burden on programs that would need to seek waivers in these types of situations, paragraph (c)(2)(v) clarifies that a program providing fewer than 1,020 annual hours of planned class operations or fewer than 8 months of service will be considered to meet the service duration requirements if their program schedule aligns with the annual hours provided by their local education agency's requirements for first grade and such alignment is necessary to support partnerships for service delivery.

Additionally, commenters were concerned about the availability of adequate facilities to serve children for a full school day and a full school year. Congress appropriated $294 million in fiscal year (FY) 2016 for grantees to increase service duration. Our cost estimates included in the Regulatory Impact Analysis are for annual operating costs, and we anticipate that a portion of the first annual awards will be available for the purchase or renovation of facilities before programs begin serving children at the higher duration. We also encourage programs to consider partnerships with school districts and child care centers to use existing facilities, which have proven to be successful models for many current Head Start and Early Head Start-Child Care Partnership grantees.

Comment: In addition to proposing to increase service duration for preschoolers, the NPRM proposed to codify long-standing interpretation for Early Head Start in the Act, which describes it as a "continuous" program. We have long interpreted this to mean a minimum of a full school day and full-year of services for infants and toddlers, and defined this in the NPRM as a minimum of 230 days of service per year for a minimum of 6 hours per day. Some

commenters wrote in support of the proposal. Others expressed concerns or opposed the proposal for multiple reasons, including concern about a long day for infants, parents would not want services for this long, and program quality would decrease because teachers would have less preparation and professional development time. Some commenters suggested slightly lower minimums, using annual hours or weeks instead of number of days, and/or recommended changing the requirement to allow time for activities like professional development, parent-teacher conferences, and holidays.

Response: We believe it is important to retain the continuous service model for Early Head Start that has existed since the program's inception. However, to provide greater local flexibility and alignment with the policy decision made for Head Start preschoolers, we changed the NPRM requirement from a minimum number of hours per day and days per year to a total number of annual hours of planned class operations. This requirement of 1,380 annual hours can be found in paragraph (c)(1) and must be met by August 1, 2018. Based on our latest data,[70] approximately three-quarters of children attending Early Head Start center-based programs already receive services for 1,380 hours. In paragraph (c)(1)(ii), we also consider Early Head Start center-based programs that are designed to meet the needs of young parents enrolled in public school settings to meet the annual hours requirement if their program schedule aligns with the schedule of their local education agency (LEA), and they provide regular home-based services over the summer break. This specifically supports the innovative models local programs develop to support teen parents and their children.

Comment: Commenters requested clarification on the definition of days (or hours) of planned class operation and whether it would include activities such as professional development, transportation time, and other types of activities or emergencies. Some

[70] Submitted by grantees through the FY 2015 Grant Application Budget Instrument.

commenters recommended that the required duration be inclusive of these types of activities. Some commenters were also confused about the definition of "full year" services, interpreting the requirement as a full calendar year without a summer break. Others were unclear about whether programs would still be allowed to operate 4 days per week under the increased minimums.

Response: As noted above, we added a definition to part 1305 for "hours of planned class operations" to clarify that these are hours when children are scheduled to attend and to specify what activities are and are not included in this calculation. Activities such as professional development, teacher planning, parent-teacher conferences, classroom sanitation, and transportation do not count toward the hours of planned class operations. Programs can choose to structure their calendar year to include a summer, holiday, and other breaks to be responsive to their community's cultural traditions and family needs while still meeting the minimum service duration requirements described in paragraph (c). Similarly, programs can choose to operate 4 days per week as long as they meet the service duration minimums. We made additional minor changes to the calendar planning provisions in paragraph (c)(5) to further simplify and clarify the process.

Comment: Commenters wrote in response to the proposed teacher:child ratios and group size for the center-based option described in this section. Some commended the proposal for maintaining strong ratios and group size because it demonstrated commitment to quality and allowed individualization and good classroom management. Others expressed concern that the ratios were too high for all ages and should be lowered. Others recommended greater flexibility. Some commenters requested more flexibility to set ratios for infants that would still meet high standards but align with their state licensing requirements. Some commenters asked for

clarification or flexibility on ratios during naptime and other program hours. For example, some were specifically concerned about or seeking flexibility to allow ratios to be met by persons other than teachers. Some commenters were confused about whether class size and group size had the same meaning. We received comments both in support of and against our proposal for how programs should determine the age of the majority of children in a class to set ratios and group size.

Response: We believe this provision allows for the right balance of flexibility while also recognizing the importance of continuity of care. However, in paragraph (b)(2), we added new regulatory language to allow a group size of nine without needing a waiver for infant and toddler classes when the teacher to child ratio is 1:3 or lower. In paragraph (b)(1)(i), we clarify that brief absences of a teaching staff member that cause the group to be out of ratio for less than five minutes are acceptable. In paragraph (b)(1)(ii), we clarify that during naptime, one teaching staff member may be replaced by an adult who does not meet the teaching qualifications required. Thus, while the adult to child ratio requirement remains unchanged during naptime, additional flexibility is granted in how a program must meet that ratio. We believe this provides reasonable flexibility while maintaining high standards. Teachers that are present or staff that are substituted during nap times must have completed the safety training required for their role as staff in §1302.47(b)(4)(i), including safe sleep practices. Ratios and group size requirements for double sessions are also now included in paragraph (b), as double sessions are now permitted as a standard option until the year 2021, and after but only as a locally designed option. These requirements are consistent with the previous regulation for double sessions. We did not make any changes to the provision in paragraph (b)(1) regarding determination of the primary age of the class. Throughout subpart B, we substituted the word “group” or “class” for “classroom” and

replaced “class size” with the more commonly used “group size” to eliminate confusion. Because of this change, and to make clear that the importance of the learning environment as described in §1302.31 applies to all groups regardless of the characteristics of the physical space, we have added a new paragraph (d)(3) to clarify appropriate ways to make divisions among groups when they are not in physically separate classrooms.

Comment: Commenters also wrote about our proposal in paragraph (b)(2) to support continuity of care through consideration of mixed age groups for children under 36 months of age. Some found the mixed age groups concept to suggest developmentally inappropriate practice. Others wrote in support of continuity of care practices because of the benefits to children and their parents. Some offered slight changes to the regulatory language and others recommended we provide guidance on implementation of best practices for continuity of care.

Response: We recognize there was some confusion about what mixed age groups might mean in practice. However, we believe best practices for continuity of care will be best delivered through technical assistance and guidance and not through the regulatory process. The provisions in this section facilitate but do not require continuity of care practices.

Comment: Commenters wrote in regard to the center-based licensing and square footage requirements in paragraph (d). Some commenters expressed concern about licensing requirements in relation to schools, seeking greater clarification and noting that some states do not require public schools to be licensed. Commenters also requested clarity on whether programs have to meet licensing standards, or be licensed. Some comments supported and some opposed the center-based square footage requirements, while some stated they were too strict, others suggested they were not strong enough, and others commended the proposal to exclude square footage requirements from the waiver.

Response: We modified the provision in paragraph (d) to make it clear that programs must meet local or state licensing requirements regardless of whether the licensing entity requires that they be licensed. However, we are not requiring that all center-based programs actually be licensed because some states or local jurisdictions may not be able to license entities, such as schools, that are not required to be licensed by state or local law. We believe this provision ensures quality and child safety while allowing for the appropriate amount of local flexibility and variance in types of grantees. As proposed in the NPRM, licensing and square footage requirements will not be eligible for waivers.

*§1302.22 Home-based option.*

This section defines the setting for the home-based program option for Head Start and Early Head Start and sets requirements for home visitor caseload, service duration, and licensing. We received many comments about our proposal to limit home-based models as a standard option to Early Head Start only. We discuss these and other comments below.

Comment: Some commenters were in favor of removing home-based as a standard option for preschoolers. Commenters stated that home-based models do not meet the educational needs of preschool-age children. Commenters also expressed that, given the significant federal investment in home visiting through the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program, limited available Head Start funding should be targeted towards providing access to center-based programs rather than home-based programs for preschool-age children.

Alternatively, many commenters opposed the removal of the home-based option as a standard option for Head Start preschoolers, citing a number of different reasons. Commenters stated that home-based was the most appropriate delivery model in particular communities, such as rural areas, communities where home schooling is prevalent, and areas with large immigrant

or non-English speaking populations. Some commenters suggested that the home-based option is a more appropriate setting for young children, children with severe special needs, disabilities, health problems, or behavior issues, and parents who request home-based to meet children's individual needs. Some commenters stated that center-based programs may not be what parents want for their child. Further, these commenters suggested that many parents are not familiar with resources in the community, do not speak English, or have other barriers that prevent them from taking their children to center-based care. Some commenters cited research or included data demonstrating that home visiting improves outcomes for preschool children.

Response: We agree that a home-based preschool option for Head Start may be appropriate for certain communities, which is why we proposed programs could apply to operate the model through the waiver process. However, to reduce burden on grantees, we reinstated home-based as a standard option for preschoolers in paragraph (c)(2) of this section. Though research indicates that high quality, full-day and full-year center-based settings produce strong outcomes for preschoolers, we recognize that there may be a small number of situations where the home-based model best meets the needs of the child and family. For example, as commenters suggested, in communities with a high home schooling rate, parents would likely prefer home-based services. We do not believe, however, that this model should be used as a means of excluding children from center-based settings. We also do not believe this model should be the only one available to preschoolers and therefore require that it may not be the only option available for Head Start unless the program seeks and receives a locally designed option within the parameters established in §1302.24. We believe the greater clarity in the community needs provisions in subpart A and the system of program management and quality improvement in subpart J will help programs ensure that the program options they offer truly meet the early

learning needs of children and the local needs of the community. Clear minimum requirements for the number of home visits and group socializations for preschoolers in the home-based option have been added in paragraph (c)(2), along with expectations for meeting those minimums in paragraph (c)(3) and for maximum caseloads per home visitor in paragraph (b). These requirements are consistent with the previous standards.

Comment: Commenters also addressed the proposal to increase the service duration for the Early Head Start home-based model to 46 home visits and 22 group socializations per year. Some supported the proposal to increase the number of home visits or suggested a higher number. Other commenters expressed concerns about or opposition to the proposed minimums. Some cited the need for home visitors to have time for paperwork, professional development, and other duties. Some noted difficulty getting families to complete 46 home visits and described family cancellation of scheduled home visits as a key inhibitor. Some of these commenters requested flexibility to allow for visits cancelled by the family. Further, some commenters suggested that the group socialization minimum was too high. Others suggested that 22 was an acceptable minimum number of socializations but requested flexibility for the number of socializations per month. Some commenters objected to the language that programs not replace home visits with medical or social services visits with the home visitor.

Response: Early Head Start was established by Congress as a continuous program. As with the Early Head Start center-based model, the NPRM proposal codified long-standing interpretation of a "continuous program" for Early Head Start in the home-based model by requiring 46 home visits per year. We retained this requirement in paragraph (c)(1)(i). We believe this level of service delivery is central to a successful home-based model and therefore no changes are being made to allow home visits or group socializations to be replaced by

medical or social service appointments for the purposes of meeting service duration minimums. However, this does not limit the flexibility of programs to use scheduled home visit time to identify needs and schedule necessary medical or social service appointments. Home visitors should have the flexibility to determine how to best meet their families' immediate needs and still reach the minimum visits focused on child development and education. However, we believe greater flexibility for meeting the number of group socializations is appropriate and changed the requirement in paragraph (c)(1)(ii) to clarify that the number of required group socializations are for each family, not each child. In addition, instead of prescribing two group socializations per month, the standards require the group socializations to be distributed over the course of the program year. Although we expect programs to space group socializations relatively evenly throughout the year, we believe this change will maintain high-quality while allowing local flexibility to address shifting and unexpected needs and schedules of the families programs serve. To address the confusion about requirements to make up cancelled visits, paragraph (c)(3) clarifies that a program must make up planned home visits or scheduled group socializations if canceled by the program in order to meet minimum service duration requirements, and that they should attempt to make up planned home visits when cancelled by the family.

Comment: Many commenters questioned the need to require licensing for group socialization sites. Commenters believed this requirement would put an unreasonable burden on programs by limiting the locations for socializations. Many also stated that group socialization sites should only need to be licensed if they occur in Head Start facilities. Further, some commenters wanted clarification on the conflict between paragraph (a) and (d), noting that

community facilities (including libraries and churches), homes, and field trip locations likely would not be licensed.

Response: The language to require licensing for group socialization sites existed in the previous regulation, but we agree this is potentially confusing, unnecessarily limiting, and that not all group socialization sites need to be licensed. However, we do believe it is important that all sites are safe for children and their families. Therefore, to clarify our intent, we removed the proposed licensing requirement for group socialization sites and replaced it with a requirement in paragraph (d) that the areas for learning, playing, sleeping, toileting, preparing food, and eating in facilities used for group socializations meet relevant safety standards.

Comment: Some commenters wrote in reference to the proposal in paragraph (b) that "programs must maintain appropriate ratios during all hours of program operation" and noted this language was unnecessary for the home-based option.

Response: We agree that including ratio requirements for the home-based option was an error and removed that requirement.

*§1302.23 Family child care option.*

This section defines the family child care setting and the relationship between the program and the family child care provider, and sets requirements for ratios, group size, service duration, licensing, and the involvement of a child development specialist. Within this section, commenters asked for clarity regarding the relationship with the family child care providers and the program or the requirements for ratios and group size.

Comment: As described in the preamble for §1302.21, we received many comments on the service duration requirements for center-based and family child care programs, some in favor

and some opposed. The comments typically addressed the service duration proposal generally without explicitly referring to the family child care option.

Response: Because the previous program performance standards required that family child care programs operate for hours that meet the needs of families, nearly all family child care providers already meet the increased duration requirements of 1,020 annual hours for Head Start and 1,380 annual hours for Early Head Start. In fact, most family child care programs provide many more hours than these minimums to meet family needs. Therefore, we removed the service duration requirements in §1302.23(c) proposed in the NPRM, and instead require that family child care programs must operate for sufficient hours to meet the child care needs of families and cannot operate for less than 1,380 hours per year in paragraph (c).

Comment: Some commenters had concerns or questions about requirements specifically related to programs that operate in a family child care setting. Some commenters supported the family child care employment requirements in paragraph (a)(1) because it is important to ensure transparency and a successful partnership. Some commenters suggested the need for greater clarity regarding the ability for programs to either employ or contract with family child care providers. Others opposed the requirement that the program be the employer of the family child care provider, stating that it was overly restrictive and could hinder innovative employment strategies. Some sought additional guidance and other commenters were unclear about, opposed to, or had concerns about the proposed "legally binding agreement" between the program and family child care providers, and recommended we define this phrase.

Some commenters requested general clarity on the family child care option section, including requirements for ratios and group sizes, as well as expectations for identifying alternate sources of funding for extended hours and expectations under paragraph (a)(2) regarding

accessibility and the definition of "as appropriate." A commenter recommended that grantees be required to annually share a list of their family child care contracts with the State Collaboration Office for better collaboration with the subsidy program.

Response: We adjusted the language in paragraph (a)(1) to clarify that a program must either have a legally binding agreement with family child care providers or be the employer of the provider(s). We also considered terminology that could be used in place of "legally binding agreement," such as "legally enforceable agreement or contract," but determined that the original phrase accurately represents the necessary legal relationship and is inclusive of contracts. We also adjusted the language in paragraph (a)(2) to clarify that programs using the family child care option need to be able to accommodate children and families with disabilities. Additionally, we revised paragraph (b) to improve clarity of the ratio and group size requirements for the family child care option. We will not require grantees to share a list of family child care contracts with the State Collaboration Office as we do not believe that this is necessary for successful collaboration with subsidy programs.

Comment: Some commenters asked for clarification about the standard in paragraph (b)(4) that requires family child care programs to maintain appropriate ratios during all hours of operation.

Response: In paragraph (b)(4), we restored standards from the previous rule to clarify how family child care programs maintain appropriate ratios. Specifically, we revised paragraph (b)(4) to require programs to make substitute staff and assistant providers available and required a family child care program to ensure providers have systems to ensure the safety of any child not within view for any period.

*§1302.24 Locally-designed program option variations.*

This section describes the requirements for programs to request a waiver to operate a locally designed program option. The comments we received on this section mainly addressed the timeline and process for approval of waivers.

Comment: Commenters expressed a range of opinions on the proposed locally-designed option waiver process. Some commenters were in favor of requiring a waiver based on evidence of community needs and child progress, and noted these requirements would promote accountability, objectivity, and continuous improvement for grantees in evaluating their program design, but still allow for innovation. Others were concerned about the process being burdensome and time-consuming and recommended alternative periods and processes for approval. Commenters were concerned that the criteria that would be used to approve or deny waivers for locally-designed program options would be inconsistent or unfair and requested clarification about what evidence of outcomes would be sufficient to justify approval of a waiver. Commenters expressed concern about waivers being approved in a timely manner.

Commenters also recommended changes to limit the use of waivers. Some commenters recommended locally-designed options should be standard program options and should not require a waiver. Others recommended retaining all program options from the previous regulation as standard options instead of requiring a waiver, or other structures such as having a number of standard duration options that would include part-day/part-year services.

Some commenters expressed support for requiring approval for a locally-designed option every two years, particularly for programs that would seek to waive the requirements for increased service duration, but others opposed this requirement because it would be too burdensome for programs and suggested longer approval periods. Many of these commenters recommended a five-year period of approval that would align with the community assessment

and the five-year grant cycle and would strike a better balance between accountability and burden. Some commenters recommended that programs be allowed to shift their program options annually or within their five-year grant if local needs warrant a change without requiring a new waiver.

Response: We made a number of changes to the locally-designed program option waiver described in this section. As described in paragraph (b), we have changed the period of approval for locally designed option waivers to the full project period of the grant to align with the new five-year grant cycles. In addition, due to other changes made in subpart B, we believe many fewer programs will seek waivers, which will improve the timeliness of the process to review and make determinations. In order to ensure programs thoughtfully determine the appropriate program design that supports their long-term goals, we revised paragraph (a) to link the waiver request to achieving program goals in subpart J.

We revised paragraph (c) to clarify exactly which requirements may be waived. Paragraph (c) more clearly states that the responsible HHS official may waive one or more of the requirements contained in §1302.21(b), (c)(1)(i), (c)(2)(iii), and (c)(2)(iv); §1302.22(b) and (c); and §1302.23(b) and (c). These requirements include ratios and group size in center-based settings for children 24 months and older, Early Head Start service duration, Head Start service duration requirements for the percentage of each grantee's slots operating at 1,020 hours, caseload and service duration requirements for the home-based option, and ratios, group size, and service duration for the family child care option. However, if a waiver of group size for children over 24 months is permitted, paragraph (c)(2) specifies upper limits that are allowable under a waiver, which are included to ensure program quality and child safety. Additionally, paragraph (c)(1) clarifies that waivers are not allowable for ratios or group size for children

under 24 months, which is discussed in more detail below. Provisions in the NPRM specific to double session requirements under a locally-designed option were struck because double sessions have been retained as a standard option until August 2021. We added additional language in paragraph (c)(3) to clarify the minimum center-based service duration requirements Head Start programs must meet when seeking a waiver from the 1,020 annual hours provisions in §1302.21(c)(2)(iii) and (iv).

We revised paragraph (c)(4) and added paragraph (c)(5) to clarify what programs must demonstrate in order to receive a waiver. Specifically, in paragraph (c)(4) we require programs seeking any waiver under this section to provide evidence that their locally-designed variation effectively supports appropriate development and progress in children's early learning outcomes. In addition, in paragraph (c)(5), we require programs seeking waivers of service duration to also provide supporting evidence that their variation better meets the needs of parents than the options described in §§1302.21 through 1302.23 and to evaluate the effectiveness of the variation in supporting appropriate development and progress in children's early learning outcomes. We believe local flexibility is important but that tax dollars should be spent on program models that are effective in helping close the achievement gap.

Comment: Commenters stated American Indian and Alaska Native programs should not be required to apply for locally-designed option waivers for some of the provisions in subpart B, and specifically requested a tribal exemption from some of the requirements, including extending the length of the day and length of the year.

Response: We provided greater flexibility in subpart B for programs to design their program schedules in a way that best meets their community needs, including the ability to determine the length of summer breaks and the length of the day, while still ensuring American

Indian and Alaska Native children reap the full benefits of greater exposure to high-quality early learning. We think this will allow most programs to accommodate important cultural practices and subsistence activities. However, when this additional flexibility is not adequate to meet community needs, we believe it is appropriate that tribal programs, like all programs, would be able to apply for a locally-designed option.

Comment: Some commenters addressed the standard in paragraph (c)(1) to allow programs to seek waivers from ratio requirements for classes serving children who are at least two years old. Some opposed the proposal to allow programs to apply for a waiver for teacher:child ratios for two-year-olds because such waivers would decrease program quality and lessen children's individualized care. Others supported this waiver because it would allow programs the flexibility to better address extreme unmet need in their communities. Some commenters recommended that we set upper limits for ratios approved by waivers so that flexibility could be sought without compromising quality.

Response: We agree with the need for clear limits to group size and teacher:child ratios in locally-designed options so that high-quality is maintained. Therefore, waiver requirements are clarified in paragraph (c)(2)(i) to specify that even with a waiver, a class serving children 24 to 36 months of age may have no more than ten children. Furthermore, in paragraph (c)(2)(ii), we clarify even with a waiver, a class that serves predominantly three-year-old children must have no more than twenty children and in paragraph (c)(2)(iii), a class that serves predominantly four-year-old children must have no more than twenty-four children. As proposed in the NPRM, ratios and group size may not be waived for children younger than 24 months of age.

Comment: Some commenters opposed the proposal to remove the combination option as a standard option. Some commenters felt combination options met their community and parent

needs better than the proposed center-based or family child care options, which were the only program options for preschoolers included in the NPRM. Some stated they were against the removal of the combination option because it is an essential part of their service delivery for rural, isolated communities with no other services and not enough children for a center-based program.

Response: We acknowledge there may be some instances in which a combination option can effectively serve a community but think these services are best achieved through the locally-designed option variation described in this section. This locally designed waiver process will ensure these more unique program models are specifically designed to respond to community needs while effectively meeting children's developmental and learning needs and that tax dollars are being effectively spent. As noted below, in changing the waiver approval process from two years to five years, we believe we struck the appropriate balance between accountability and flexibility.

Effective Dates of Subpart B Program Structure Provisions

In the NPRM, we specifically requested comment on the effective dates of the service duration requirements throughout subpart B. We received many comments on what the effective dates should be and discuss those comments and our responses below. The effective date of this rule and dates for specific requirements that will go into effective after the remainder of the regulation are included in the compliance table in the Dates section.

Comment: Commenters raised concerns with the timeline for phasing in the increased service duration requirements. Many of these commenters stated that one year after the rule is final is too fast for careful planning and implementation. Some commenters suggested that grantees be allowed to phase the requirements in as part of their five-year grant cycle, to allow

for thoughtful planning among many stakeholders, time to consider funding options, and time to find adequate facilities and qualified teachers. Some commenters suggested that the effective date of the duration provisions should be tied to Congressional appropriation of funds.

Response: We acknowledge the importance of giving grantees sufficient time for thoughtful planning, consideration of community needs, and management of logistics when increasing the duration of their center-based services. Accordingly, we adjusted the effective dates of the increased service duration provisions to better facilitate thoughtful implementation. However, we are also mindful of moving forward to ensure more children receive the higher levels of service duration that we think are important to achieve strong child outcomes.

The requirements for Early Head Start center-based and home-based service duration in §§1302.21(c)(1) and 1302.22(c)(1) are effective August 1, 2018 and August 1, 2017, respectively. The majority of Early Head Start programs already operate in accordance with the service duration requirements we establish in this final rule. Therefore, only a small share of Early Head Start programs must increase their service duration to meet the new requirements. Additionally, funding in FY 2016 is available to support all Early Head Start center-based programs that need to increase their service duration and there should be time and resources for them to meet these minimums by 2018.

The requirement for 50 percent of each grantee's Head Start center-based slots to operate for a full school day and full school year in §1302.21(c)(2)(iii) is effective on August 1, 2019, which is approximately three years following the publication of this final rule. This interim requirement will mean many more families will have access to the educational services for a full school day and full school year within three years. This requirement will increase from 50 percent to 100 percent effective August 1, 2021, as described in §1302.21(c)(2)(iv). This

effective date is approximately five years following the publication of this final rule. The gradual phase-in allows ample time for grantees to plan implementation and align changes with their five-year grant cycle if they choose. The service duration provisions for the Head Start home-based option described in §1302.22(c)(2), which are unchanged from the previous performance standards, do not require a delayed phase-in.

We also revised the service duration requirement for the family child care option described in §1302.23(c) to reflect language from previous standards to state that programs must meet the child care needs of families. Although the provision is not explicit that family child care programs must operate for a minimum of 1,380 annual hours, most family child care programs provide many more hours than this to meet family needs and therefore this provision does not require a delayed phase-in.

We clarify in §1302.24(d) that programs currently approved to operate program models that do not meet the requirements described in subpart B of this rule, such as combination options, may continue to operate in their existing approved program option until July 31, 2018. However, programs must have either an approved waiver to operate a locally designed program option that meets the requirements in §1302.24 or adopt one or more of the standard program options described in §§1302.21 through 1302.23 no later than August 1, 2018.

While we believe the respective August 1, 2018 and August 1, 2019 effective dates of the center-based service duration provisions described in §§1302.21(c)(1) and (c)(2)(iii) should give the vast majority of programs enough time to make changes to their service delivery, there may be unforeseen circumstances that arise which may necessitate additional time to complete the transition without disrupting services to children. Therefore, under §1302.21(c)(4), programs may request a one-year extension of the increased service duration requirements for center-based

Head Start and Early Head Start described in §1302.21(c)(1) and (c)(2)(iii) if necessary to prevent displacement of children enrolled in the program at the time this rule becomes effective.

**Education and Child Development Program Services; Subpart C**

In this subpart, we combined all previous program standards related to education and child development services. We significantly updated and restructured these requirements to reflect the Act, current research, and best practices in teaching and learning, to strengthen curriculum requirements, and to integrate the Head Start Early Learning Outcomes Framework: Ages Birth to Five. We also corrected an imbalance between Early Head Start and Head Start education standards with a unifying birth to five approach.

We received comments on all sections of this subpart. Overall, commenters were supportive and positive about the provisions in subpart C. Commenters noted the subpart provided a much clearer picture of what high-quality early education looks like, reflected research on how children learn, and appreciated our strong focus on practices that promote intentional and effective teaching. Commenters also expressed their support for our focus on intentional teaching practices but recognizing and requiring play and exploration as important to developing school readiness. Commenters supported the curriculum requirements, including the integration of professional development into curriculum implementation. They also agreed with our provisions to use assessments to individualize services. Commenters supported the integration of the Head Start Early Learning Outcomes Framework: Ages Birth to Five through subpart C and appreciated our birth to five approach.

We made some changes in response to public comments that further strengthen this subpart. For example, we modified some language and structure to ensure the subpart consistently and appropriately addressed children from birth to age five. In addition, we made

changes to further strengthen and clarify effective services for DLLs. There were some recommendations we thought were too prescriptive, did not reflect best practice or research, were outside the scope of this regulation, sought guidance more appropriate for technical assistance, or were not consistent with current research-based practices. Therefore, we did not make changes based on these comments. We address additional comments below.

*General Comments.*

Comment: Some commenters recommended adding language throughout this subpart to recognize family child care providers separately from teachers.

Response: While we recognize the unique role of family child care providers, we believe that it is important that family child care providers be recognized as the teachers of the children they serve, and therefore use the term teachers in §§1302.30 through 1302.34 to be inclusive of family child care providers.

Comment: Some commenters expressed concern there were instances throughout this subpart that did not use language appropriate for infants and toddlers.

Response: This subpart addresses Head Start children of all ages. We only included separate standards when developmental differences made it appropriate to do so. We made revisions throughout the subpart, including for example, requirements for responsive care, a broader reference to children's learning experiences as well as activities, and changes discussed in detail below above developmental scope and sequence in curricula. These changes ensure all sections are appropriate for children from birth to age 5.

Comment: Some commenters suggested we specifically include the principles of universal design (UD) and universal design for learning (UDL) in requirements for curriculum objectives, learning materials and spaces, teaching practices, and assessments.

Response: Though we did not revise the regulation to specifically reference UDL, many of its principles are long standing Head Start and Early Head Start requirements that are expanded and enhanced in this final rule. We also did not incorporate the suggestion to require that programs adhere to UD. We agree that UD principles are beneficial for all users of a facility but think we can effectively promote the principles of UD through technical assistance provided for renovation and construction projects.

Comment: Some commenters suggested that we needed to address teacher compensation in order for this subpart to be effectively implemented.

Response: We agree that teacher compensation is vitally important to attracting and retaining effective teachers. However, addressing compensation is outside the scope of this regulation because teacher compensation is determined by Congressional appropriations and local decisions.

Comment: Some commenters stated that the regulation failed to recognize that supporting the home language of DLLs is important in and of itself, separate from the goal of supporting English acquisition.

Response: We believe there is clear language in §1302.31(b)(2) that emphasizes the importance of supporting the home language of DLLs, separate from the goal of English acquisition. The Act requires that Head Start programs support the acquisition of English for children who are DLLs.

*§1302.30 Purpose.*

This section provides an overarching statement of the general purpose and goals for education services in center-based, family child care, and home-based settings for Early Head Start and Head Start programs. We received some suggestions for this section.

Comment: Some commenters recommended the section include a statement that the goal of Head Start is to close the achievement gap.

Response: The purpose of Head Start is stated in the Act and is the foundation for this section, so we made no changes.

*§1302.31 Teaching and the learning environment.*

This section includes the key research-based elements of teaching practices and the learning environment and is central to preparing children to succeed in school. It provides programs with the elements for delivering a more intentional and focused education and learning experience that will better promote skill growth and stronger child outcomes without micromanaging local decision-making and creating undue burden.

Commenters were very supportive and expressed that the section appropriately reflected best practice and effectively elevated the research-based teaching practices that support children's learning and development.[71,72,73,74,75] Commenters supported the alignment with the Framework as well as the explicit recognition of nurturing and responsive interactions as components of effective teaching practices. Commenters noted the benefits of integrating each child's assessment information into teaching practices and supported the focus on development of skills children need to enter kindergarten ready to succeed. Commenters also appreciated the

[71] Hamre, B. K., & Pianta, R. C. (2001). Early teacher–child relationships and the trajectory of children's school outcomes through eighth grade. *Child Development*, *72*(2), 625-638.

[72] Burchinal, M., Howes, C., Pianta, R., Bryant, D., Early, D., Clifford, R., & Barbarin, O. (2008). Predicting child outcomes at the end of kindergarten from the quality of pre-kindergarten teacher–child interactions and instruction. *Applied Development Science*, *12*(3), 140-153.

[73] National Institute of Child Health and Human Development (NICHD) Early Child Care Research Network. (2000). Characteristics and quality of child care for toddlers and preschoolers. *Applied Developmental Science*, *4*(3), 116-135.

[74] Rowe, M. L. (2008). Child-directed speech: relation to socioeconomic status, knowledge of child development and child vocabulary skill. *Journal of Child Language*, *35*(1), 185.

[75] Zimmerman, F. J., Gilkerson, J., Richards, J. A., Christakis, D. A., Xu, D., Gray, S., & Yapanel, U. (2009). Teaching by listening: the importance of adult-child conversations to language development. *Pediatrics*, *124*(1), 342-349.

inclusion of play and exploration as key aspects of effective education programming. Others praised our approach to include meals and daily routines in the education section because it denoted their importance as opportunities for learning experiences and activities. We made some changes in response to comments, including minor structural changes to clarify our intent. Additional comments are addressed below.

Comment: Some commenters thought this section should include additional integration of professional development.

Response: We agree that integration of professional development to support effective teaching practices is a key component of a high-quality early education program. Therefore, we specifically addressed this in paragraph (a) to ensure the system of individualized and ongoing professional development supports teachers and in curriculum requirements in §1302.32. While professional development revisions to this section were limited to those changes, we also increased the standards for the quality of professional development in subpart I.

Comment: Some commenters suggested that paragraph (b)(2) include a focus on "biliteracy" in addition to bilingualism. Commenters noted that the term biliteracy expands on the goals of bilingualism to include a focus on reading, and eventually writing, in the home language.

Response: We agree with this suggestion and we incorporated "biliteracy" into paragraph (b)(2) as well as in the home-based option in §1302.35(c)(4).

Comment: Commenters asked for clarification and raised concerns about paragraphs (b)(2)(i) and (ii) related to finding bilingual staff or interpreters to work with DLLs, such as lack of bilingual staff with appropriate credentials, especially in rural areas; lack of interpreters due to

the rarity of some languages; and a high diversity of languages in the same class. Some commenters suggested this may be particularly challenging with refugee populations.

Response: Based on the best research available, we believe it is critically important to support the development of both English and the home language for children who are DLLs.[76,77,78,79,80] Additionally, we believe that all teachers, including those who only speak English, can support the development of DLLs. However, we also understand that in certain instances, such as when there are multiple non-English languages in the same class, it may be difficult to have program staff or interpreters present that speak all languages. In these instances, we encourage programs to collaborate with outside entities to ensure the presence of multiple languages in the class. Further we require programs to work to identify e volunteers who can be trained to work in the classroom that can provide high-quality input in children's home language(s). We added new language to the final rule under paragraph (b)(2)(iii) to reflect these realities.

Comment: Some commenters recommended we add more specificity to paragraphs (b) and (c), including on the structure of the day, the data teachers use to plan, and the types of learning experiences provided.

Response: We believe it is important to include the key elements of the teaching and learning environment so programs clearly understand the components they need to implement to

[76] Bialystok, E. (2001). *Bilingualism in development: Language, Literacy, & Cognition*. Cambridge: Cambridge University Press.

[77] Genesee, F., Paradis, J., & Crago, M.B. (2004). *Dual language development and disorders: A handbook on bilingualism and second language learning*. Baltimore: Paul H. Brookes.

[78] Castro, D. C. & Espinosa, L. M. (2014). Developmental characteristics of young dual language learners: Implications of policy and practice in infant and toddler care. *Zero To Three*, January, 2014.

[79] Espinosa, L. (2010). *Getting it right for young children from diverse backgrounds: Applying research to improve practice*. Upper Saddle River, NJ: Pearson.

[80] McCAbe, A., Tamis-LeMOnda, C.S., Bornstein, M.H., Cates, C.B., Golinkoff, R., et al. (2013). Multilingual children: Beyond Myths and towards Best Practices. *Society for Research in Child Development: Social Policy Report, 27* (4).

have high-quality education programming. However, flexibility is also needed to allow for innovation, individualization for a class or a child, and effective implementation. Therefore, we did not incorporate the suggested revision.

Comment: Some commenters noted the term "classroom" in paragraph (c) was not inclusive of family child care terminology.

Response: We agree and revised paragraph (c) to reference "learning environments" instead of "classrooms."

Comment: Some commenters opposed or expressed concern about the proposal in paragraph (e)(1) to require an age appropriate approach that accommodates children's need to nap or rest. Some were concerned about logistical challenges such as cost, staffing, and space. Some commenters supported the proposal to promote learning through approaches to rest, noting that adequate rest is closely tied to learning and health.

Response: We made no changes to the requirements to have an intentional and age appropriate approach to children's need to nap or rest except to clarify for programs serving preschoolers, it applied for programs operating 6 or more hours per day. Though maximizing learning time is important, research shows a clear link between adequate sleep and learning.[81,82,83] We believe this provision will support children's health and increase the learning children can gain from other portions of the day. Moreover, most states already require center-based programs to provide naps if they operate for fewer hours than the 6-hour threshold. Therefore, many programs are already subject to a more stringent requirement.

---

[81] Bates, J. E., Viken, R. J., Alexander, D. B., Beyers, J., & Stockton, L. (2002). Sleep and adjustment in preschool children: Sleep diary reports by mothers relate to behavior reports by teachers. *Child Development*, *73*(1), 62-75.

[82] Lam, J. C., Mahone, E. M., Mason, T. B., & Scharf, S. M. (2011). The effects of napping on cognitive function in preschoolers. *Journal of Developmental and Behavioral Pediatrics*, *32*(2), 90.

[83] Kurdziel, L., Duclos, K., & Spencer, R. M. (2013). Sleep spindles in midday naps enhance learning in preschool children. *Proceedings of the National Academy of Sciences*, *110*(43), 17267-17272.

Comment: Some commenters opposed the proposal in paragraph (e)(2) that replaced the requirement for family style meals with an approach that was less prescriptive but retained most of the key characteristics of family style meals and ensured mealtimes were considered part of the learning day. Some commenters felt strongly that family style meals were integral to Head Start's culture. Commenters also raised concerns about eliminating an important research-based requirement because family style meals are important to teach lifelong healthy food habits and they support socialization and conversation during mealtime. Some commenters seemed concerned that family style meals would be prohibited under our proposal or that the proposal conflicted with requirements in the Child and Adult Care Food Program (CACFP).

Some commenters wrote in support of our proposal to replace the family style meal requirement with a less prescriptive proposal that focused on meals as a time for learning, socialization, and conversation. Some commenters stated that our proposal allowed for better collaboration with community partners like schools, while still retaining important parts of family style meals. Others agreed it would support intentional teacher practices, focus on conversations, learning, and socialization, and eliminate overly prescriptive requirements.

Many commenters recommended we change the provision to explicitly encourage family style meals. Some of these commenters noted that the proposal included many central characteristics of family style meals and appreciated our focus on mealtime as a learning activity. They also noted they understood the benefits of our approach since it made it easier to partner with other programs because some of the specifics of family style meals were logistically challenging for some partnerships. However, these commenters strongly recommended we add language to encourage use of family style meal so it would be consistent with CACFP and because the benefits were important.

Response: We believe it is essential that programs structure and implement meals and snacks in ways that support development and learning. Family style meal service is one effective method of accomplishing this goal. Therefore, we revised the provision in paragraph (e)(2) to make clear that programs are encouraged but not required to meet the requirement to support development and learning during meals times through the use family style meals when children are old enough for this to be developmentally appropriate practice. This is consistent with CACFP, which encourages but does not require family style meals. However, we also believe it is appropriate to not be overly prescriptive, to support partnerships, and to allow flexibility in how a program promotes learning during meals.

Comment: Some commenters expressed support for our retention of requirements in paragraph (e)(2) that children be given sufficient time to eat, should not be forced to finish their food, and that food should not be used as a reward or punishment. Some commenters wrote that we should add requirements around food activities, including retaining a requirement from the previous program standards about participating in food activities.

Response: We agree that participating in food activities can be part of good practice but think this is overly prescriptive and did not make these suggested changes.

Comment: Some commenters recommended we add requirements for physical activity, including parameters about how much time children should be physically active. They suggested requirements based on the National Health and Safety Performance Standards: Guidelines for Out-of-Home Childcare, including that we require at least 60 minutes of moderate to vigorous physical activity for children in Early Head Start and at least 90 minutes of moderate to vigorous physical activity for children in Head Start.

Response: We agree that physical activity is important for young children. Not only is it important for children's health, but movement and physical activity are important to children's learning and development.[84,85,86] Developmentally appropriate practice is clear that young children need to move and be physically active. For example, the Office of Head Start's initiative I Am Moving I Am Learning has been well-received by programs and helped institute healthy practices. However, we do not believe we should dictate to local programs the amount of time children should engage in such activities. To ensure that programs recognize the role of physical activity in children's learning and health, we added a new provision in paragraph (e)(4) that reads: "A program must recognize physical activity as important to learning and integrate intentional movement and physical activity into curricular activities and daily routines in ways that support health and learning. A program must not use physical activity as a reward or punishment." We believe this provision will allow local programs to implement policies appropriate to their program design and the needs of their children.

Comment: Some commenters recommended we include new requirements with specific limitations on screen time.

Response: We agree that children should have limited exposure to screen time and believe that if programs are implementing the standards in this section for nurturing, responsive, rich learning environments and experiences that effectively support strong child outcomes, screen time will, by necessity, not be available or will be appropriately limited to interactive educational activities that evidence shows support learning. However, as even the meaning of

[84] Becker, D. R., McClelland, M. M., Loprinzi, P., & Trost, S. G. (2014). Physical activity, self-regulation, and early academic achievement in preschool children. *Early Education & Development*, *25*(1), 56-70.

[85] Timmons, B. W., LeBlanc, A. G., Carson, V., Connor Gorber, S., Dillman, C., Janssen, I., ... & Tremblay, M. S. (2012). Systematic review of physical activity and health in the early years (aged 0–4 years). *Applied Physiology, Nutrition, and Metabolism*, *37*(4), 773-792.

[86] Hodges, E. A., Smith, C., Tidwell, S., & Berry, D. (2013). Promoting physical activity in preschoolers to prevent obesity: a review of the literature. *Journal of Pediatric Nursing*, *28*(1), 3-19.

screen time is currently evolving and the research on technology use and children's learning is an emerging field, we chose not to add any specific requirements.

*§1302.32 Curricula.*

This section includes requirements for the curriculum or curricula programs use. It reflects new requirements from the Act, the current role and use of curricula in the early education field, and a deeper understanding of the curriculum qualities associated with improved child outcomes. This applies to center-based and family child care programs. Curriculum requirements for home-based programs are found in §1302.35. Some commenters were supportive of the curriculum provisions. We also received comments with concerns and suggestions that we discuss below.

Comment: Commenters were generally supportive of our curriculum provisions. They stated the section included important changes that would raise the quality of curriculum and its implementation. Commenters noted the importance of the requirements for content rich curricula, and the benefits of requiring a clear scope and sequence and integration of professional development and support for teachers. They also supported the focus on implementation fidelity and the qualities of an effective curriculum, including alignment with early learning standards.

Response: We believe it is essential that programs intentionally review the curriculum or curricula they are using to ensure it meets each criterion in the final rule and appropriately supports children's development and learning. In some instances, we believe it will be necessary for programs to use curricula enhancements to ensure their programming is sufficiently content rich and to achieve strong child outcomes. We expect programs to be thorough in reviewing their curriculum and the professional development system that supports teachers' implementation

of curriculum. For this reason, as proposed in the NPRM, programs have approximately one year after publication of this rule to implement this standard.

Comment: Some commenters recommended we include a list of acceptable curricula to ensure programs use effective ones and to help guide state pre-kindergarten curriculum choices.

Response: Development of curricula that can effectively impact child outcomes is a growing field. Programs should not just accept the publisher's word that their curriculum meets Head Start standards, but should continuously evaluate its effectiveness as part of the program management approach. We did not include a specific list of acceptable curriculum so programs have the flexibility to implement appropriate curricula for the children they enroll, supplement curricula as needed, and make changes as the field advances.

Comment: Some commenters expressed concerns about the provision in paragraph (a)(1)(iii) that requires curriculum to include an "organized developmental scope and sequence." Others supported this standard. Some commenters were concerned that "scope and sequence" would not be interpreted in a developmentally appropriate manner. Others were concerned its interpretation was not clear for infants and toddlers.

Response: We revised paragraph (a)(1)(iii) to clarify our meaning of developmental scope and sequence. This standard now reads: "has an organized developmental scope and sequence that includes plans and materials for learning experiences based on developmental progressions and how children learn." We made similar changes to the comparable provision for curricula in home-based programs in §1302.35 for the same reasons. As part of this revision, we moved our requirement that curricula be sufficiently content-rich to promote measurable progress to paragraph (a)(1)(ii). This reorganization was for clarity; we did not change the substance.

Comment: Some commenters were concerned the curriculum requirements were not developmentally appropriate. Some were confused about narrative in the NPRM's preamble that noted that research finds that strong child outcomes for children are supported by activities that intentionally engage children in activities like math or language for 15 to 20 minutes multiple times each week.

Response: We are clear in paragraph (a)(1) that programs must implement developmentally appropriate curricula and we do not believe any of the criteria required in paragraph (a)(1) are developmentally inappropriate. Therefore, we do not need to revise this section to address this concern. Neither the proposed rule nor the final rule included any requirements about the specific amount of time teachers should spend on any particular activity. Content-rich curriculum, in which children intentionally engage in a math activity (for example), does not require children sit still or be passive recipients of rote instruction. For example, if implemented correctly, content-rich learning activities are interesting, appropriate, and engaging for children. Developmentally appropriate practice and effective intentional teaching with young children does not mean rote instruction, sitting still for lengthy periods while adults talk at them, or "drill and kill." Such teaching practices would not meet the requirements in this subpart.

Comment: Commenters supported the provisions in what were paragraphs (a)(2) and (3) that addressed professional development support for curriculum implementation and fidelity of implementation. Some commenters offered suggestions for further clarifying and strengthening the goals of these provisions.

Response: We retained the two key concepts of the provisions in paragraph (a)(2) – professional development – and paragraph (a)(3) – curriculum fidelity, but integrated and streamlined them into paragraph (a)(2) to improve clarity and implementation. Our revisions

place more focus on staff support and are less compliance oriented. In paragraph (a)(2), we more clearly articulate the important requirement of supporting all teachers with support, feedback, and supervision in order to continuously improve curriculum implementation. In addition, whereas in the proposed rule, curriculum fidelity kits were likely the main way programs would comply with paragraph (a)(3), we revised paragraph (a)(2) to focus on the requirement not the method. We made similar changes to the comparable provisions for home-based programs in §1302.35 for the same reasons.

Comment: Many commenters expressed concern or sought clarity on the provisions in paragraph (b) that proposed requirements for when programs sought to make significant adaptations to curriculum. Many commenters requested greater flexibility in curriculum requirements in paragraphs (a) and (b) so programs who serve culturally diverse communities for whom curricula have not been designed or validated. Some commenters were not clear how much adaptation would necessitate partnerships with researchers. Others thought the provision was too burdensome and unnecessary. Some supported the requirement and suggested we make it more stringent.

Response: We agree our proposal in paragraph (b) lacked sufficient clarity and flexibility. We revised paragraph (b) to require that programs that need to make significant adaptations to a curriculum or curriculum enhancement, must partner with early childhood education curriculum or content experts. For example, programs would not need to seek external expertise if they are adding a research-based curriculum supplement to an underlying curriculum in order to make it sufficiently content rich. Programs would also not need to seek external expertise if they were supplementing the curriculum's set of picture books if they were replacing them with books that reflect the diversity of culture and languages spoken in the classroom.

However, a program seeking to significantly adapt a curriculum by translating major portions of it to respond to the needs of children learning more than one language would need to seek external review by a curriculum expert to ensure such translation maintained the scientifically valid characteristics of the underlying curriculum. This will ensure programs implement high-quality curricula that meet the requirements in paragraph (a). We eliminated the proposed requirement for a research evaluation of the adaptation to improve flexibility, but still encourage programs to partner with outside evaluators. To ensure accountability, paragraph (b) requires programs to assess whether the adaptation adequately facilitates progress toward meeting school readiness goals as part of the program management process described in subpart J. We believe this provision provides better clarity and strikes the right balance between flexibility and maintaining high standards for curriculum quality. We made similar changes to the comparable provision for home-based programs in §1302.35 for the same reasons. We note that paragraph (a)(1) allows curricular enhancements and does not require the partnerships described in paragraph (b). Likewise, small changes to curricula to make them more culturally appropriate for the children being served do not require the partnerships described in paragraph (b). While not required, we encourage programs to work with a researcher or evaluator to examine their adaptations, if possible. We retain the requirement from the NPRM that programs must report curricula variations to the responsible HHS official.

*§1302.33 Child screenings and assessments.*

This section applies screening and assessment requirements to all program options and includes significant revisions to the previous program performance standards in order to integrate advances from research, reflect best practice, and implement provisions from the Act. It includes

requirements for the appropriate use of developmental screening and ongoing child assessment that are integral to high-quality programs.

Commenters supported many of the changes in this section, including the clear process for referral for formal evaluation and the updates to individualize services for children. We made changes to strengthen and clarify the provisions in this section.

Comment: Some commenters noted the importance of maintaining the 45-day requirement for developmental screenings in paragraph (a)(1), but some commenters stated the timeline for screening was too short and some stated it was too long. Some commenters noted we dropped the timeline from the previous regulation for developmental screenings in Migrant and Seasonal Head Start programs, and many commenters noted we inadvertently dropped the requirement to programs to obtain screenings instead of only explicitly completing them.

Response: The final rule retains the 45-day timeline for developmental screening. We believe it is both reasonable and important to complete screenings quickly so that individualized needs can be promptly identified. We restored the 30-calendar day timeline for Migrant and Seasonal Head Start programs to paragraph (a)(1), which is consistent with the previous regulation and was inadvertently dropped from the proposed rule. In addition, in paragraph (a)(1), we clarified that a program can meet the development screening requirement either by completing it themselves or obtaining the results from another source, and that the screening must be current.

Comment: Some commenters noted that what was paragraph (a)(2) in the NPRM for programs to adhere to a prompt timeline for referrals that they cannot control.

Response: We made revisions in paragraph (a)(3) to address these concerns. We believe it is important for programs to refer children to the local agency responsible for determining

IDEA eligibility for a formal evaluation as soon as possible, and not to exceed timelines required under IDEA, but understand programs cannot control how quickly the IDEA agency completes the formal evaluation

Comment: We received comments both in support and opposition of the proposal in what was paragraph (a)(3) in the NPRM to waive the 45-day developmental screening requirement for children with a current individualized family service plan (IFSP) or IEP. Some commenters supported the proposal and noted it was good to eliminate redundant and unnecessary screening. Some commenters opposed the provision and stated that relying only on an IFSP or IEP would lead programs to miss important information about the children they serve.

Response: We revised the final rule to remove the provision to waive the 45-day screening for children with a current IFSP or IEP. We note that developmental screenings are not overly time consuming, are not a burden for children, and agree that there is the potential for developmental issues to be missed if a program only relies on an IFSP or IEP. We believe that screenings can also serve as an important mechanism to build teacher-family partnerships, celebrate children's developmental milestones, and provide valuable information to both teachers and families on supporting children's holistic development, across settings.

Comment: Some commenters supported our proposal in paragraph (a)(5) for programs to help parents access services and support if their child has a significant delay in one or more areas of development that were likely to interfere with the child's development and school success. Some commenters suggested this was an important provision because it would ensure a specific at-risk population was better served. Some commenters supported the provision but stated that it was too vague and that further information or definitions were needed to clarify what we meant by "significant delay" and "supports and services." Some commenters also recommended

referencing Section 504 and the Americans with Disabilities Act (ADA) requirements or clarity about these services being provided in the natural environment. Some commenters who supported the provision stated that these children should be counted in the program's calculation for meeting the requirement that 10 percent of children in Head Start be eligible for services under IDEA.

Many commenters were opposed to our proposal in paragraph (a)(5). They acknowledged it would be an important service but opposed it because of associated costs. Other commenters opposed the provision for reasons that included: they did not think programs had the expertise to make the decision or provide the services; they believed it was inappropriate if other specialists already deemed special education services unnecessary; or they were concerned it would undermine their partnerships with local educational agencies. Some commenters felt it was unnecessary because programs already individualize services. Some commenters agreed it could be helpful to children but that it should be a recommendation not a requirement. Other commenters who opposed the requirement requested that if we implemented the provision, the children should count toward the program's 10 percent disability enrollment requirement.

Response: We believe that when a formal assessment finds a child has a significant delay, it is important that the program work with parents to address the identified needs, even if the child is not found eligible for early intervention or special education and related services under IDEA. Therefore, the final rule retains the policy in paragraph (a)(5) but makes changes to the provision to better clarify what is and is not expected of the program. We clarified that programs are required to partner with parents to determine if needed supports and services are available through a child's health insurance and/or whether it is appropriate to provide supports

for the child pursuant to Section 504 of the Rehabilitation Act if the child satisfies the definition of disability in section 705(9)(b) of the Rehabilitation Act.

A program may use Head Start funds for such services and supports when other funding is not available but the program is not required to do so. Family service, health, or other appropriate staff, together with the parents, must try to identify resources that can help provide the child with the services and supports they need. We think this clarifies what we mean by "supports and services" and did not define the term. We also note that the provision explicitly requires this determination be made with guidance from a mental health or child development professional to ensure staff with appropriate expertise guide the determination of the child's needs. We did not define "significant delay" so the mental health consultant and local experts can have appropriate flexibility.

Comment: Many commenters wrote in support of the general approach to child assessment in paragraph (b), including its research base and its clarity on using and integrating assessment information into individualization and teaching practices. However, many commenters expressed concern about the term "standardized and structured assessment" in paragraph (b)(1) and sought greater clarity on its meaning.

Response: We added language to paragraph (b)(1) to clarify that the standardized and structured assessments may be "observation-based or direct."

Comment: Some commenters recommended we add requirements about the frequency of assessments or made other suggestions for paragraph (b), such as how the data are reported.

Response: We did not revise paragraph (b) to include requirements about the frequency of assessments because we believe those determinations are best made at the local level.

However, we made small changes in paragraph (b)(2) to further strengthen how programs use assessments. Specifically, paragraph (b)(2) was revised to require program "regularly" use assessment and other information to support individualized learning and that such assessment data be used to "inform" strategies for individualization.

Comment: Some commenters were unclear about the need to assess DLLs in multiple languages if they are proficient in English, as proposed in paragraph (c)(2). Some recommended that DLLs only be assessed in their non-English language if they struggle with English. Some commenters stated that assessment in both languages should not be required for program participation and asked whether programs will seek parental input or consent for screenings and assessments in both languages.

Response: Assessing the language development of a DLL child in both English and his/her home language provides a more complete picture of the child's language development, including potential strengths or concerns, even if the child is proficient in English. Additionally, as stated in §1302.34(b)(6), program staff must inform parents and family members about the purposes and results of screenings and assessments and discuss children's progress.

Comment: Commenters were concerned with the feasibility of assessing DLLs in their home language as proposed in paragraph (c)(2). Commenters raised concerns such as: lack of valid, reliable assessments in less common languages; feasibility of having interpreters for all languages; and burden on staff to assess children in both languages. Some commenters requested clarification, such as if it is acceptable for an English-speaking staff person to use a Spanish interpreter to conduct assessments with DLLs and, for assessments conducted in both languages, if teachers should record the higher of the two scores.

Response: We strongly believe that programs should assess DLLs in their home language with valid, reliable assessments, when feasible. While Spanish is the home language of most DLLs in Head Start, we recognize that there are over 140 other languages spoken by Head Start children and that valid, reliable assessments are not available in every language spoken by children in Head Start. We revised paragraph (c)(2)(ii) and added new language at paragraph (c)(2)(iii) in the final rule to reflect this reality including mechanisms that support accurate and appropriate assessment processes. We also revised paragraph (c)(3) to acknowledge when interpreters may be necessary to work in conjunction with qualified staff that do not speak the language. Finally in paragraph (c)(4) we clarified that only in instances where an interpreter and qualified staff are not available can screenings and assessments be done in English, but it is particularly important that programs gather and use other information and structured observations over time about the child development, including information from the family about home language use. Assessments with DLLs should be conducted with the same frequency as that for all children – as noted in paragraph (b)(1), assessments must be conducted with sufficient frequency to allow for individualization within the program year.

Comment: Some commenters were concerned that requirements for serving DLLs might not support parental choice, including the requirement in paragraph (b)(2) to assess children in both languages, and the focus on exposure to English for infants and toddlers in §1302.31(b)(2)(i).

Response: We believe assessing children's language skills in both English and their home language is necessary to accurately capture DLL children's language development. Additionally, the Act requires Head Start programs support the acquisition of English for DLL children.

§1302.34 Parent and family engagement in education and child development services.

This section includes provisions to ensure that center-based and family child care programs structure their education services to recognize parents' important roles in their child's education. It primarily reflects the previous requirements replaced by the final rule but reorganizes them for better clarity and implementation.

Many commenters expressed an over-arching concern that the proposed rule diminished the role of the parents, though commenters generally supported this section and noted it retained the important philosophy that parents are children's first and most important teachers. Some commenters also recommended changes, some of which we felt were too prescriptive or unnecessary to support best practice. Other comments are discussed below.

Comment: Some commenters recommended changes to further clarify the important role of parents and suggested greater alignment with the Parent Family and Community Engagement Framework.

Response: We revised this section to clarify and strengthen the standards. For example, the section heading has been changed from "Parent involvement" to "Parent and family engagement in education and child development services" to better reflect the intent of this section and align the work programs have done with the Parent, Family, and Community Engagement Framework. In addition, changes were made in paragraph (a) to better reflect parents' central role in children's education. We added a new provision in paragraph (b)(2) to strengthen the engagement between teaching staff and parent. In addition, we made changes in paragraphs (b)(4), (6), and (7) to better distinguish which engagement activities are appropriate for parents as opposed to families.

Comment: Some commenters stated that we required too many home visits, and others suggested we require more home visits. Some commenters opposed the requirement in

paragraph (b)(7) for teachers to complete a home visit before the start of the program year, if possible, while others supported it.

Response: In response to comments seeking some clarification, we made a few small structural changes to the provision that is now found in paragraph (b)(7) to clarify the home visit requirement. However, we did not revise the number of required teacher home visits. Further, we note that paragraph (b)(7) states that one visit should take place before the program year begins "if feasible." We believe that home visits before the start of the program year reflects best practice but that sufficient flexibility is provided when it truly is not feasible. As before, teachers can do more than two home visits if they feel that is appropriate.

Comment: Some commenters recommended combining the provisions in this section with those in §1302.51.

Response: We agree that both this section and §1302.51 address activities to engage parents and families in their children's learning. However, we did not combine the sections because this section specifically addresses services and philosophies related to children's educational services and §1302.51 includes parent services and are better organized in the parent engagement subpart.

*§1302.35 Education in home-based programs.*

This section includes the requirements for education services in home-based programs. It codifies and builds upon the guidance and technical assistance we provided to home-based programs for many years. We discuss comments and changes we made to the proposed rule below.

Comment: Some commenters supported the use of research or evidenced-based home visiting curriculum, the use of promising practices, and recommended we specify particular home visiting programs or curricula or asked for clarifications about the requirement.

Response: We believe the use of a research-based home visiting curriculum is critical to ensuring home-based services improve child and family outcomes. We did not revise the section to require a particular curriculum for serving children in the home-based program because we believe programs should have local flexibility to select a curriculum that best meets the needs of the children and families they serve. We clarified the language around adaptations of curricula in the same way as in §1302.32 for center-based and family child care programs.

Comment: Some commenters suggested we include language that clearly states home visits are to help parents understand their child's development and to support responsive interactions between parent and child. Some commenters further requested clarification about how the Head Start Early Learning Outcomes Framework: Ages Birth to Five applies to home-based because it does not include family goals.

Response: We agree that home visits must reflect the critical role of helping parents support the early learning and development of their children. Therefore, we revised paragraph (b)(1) to clarify that home visitors must be able to effectively communicate with parents directly or through an interpreter. In addition, we reordered the home-based education section to put the parent and the home-based experiences in paragraph (c) prior to the discussion of curriculum now found in paragraph (d), to emphasize the central role of parents in successful home-based services. We believe this addresses the comments and that further revision is not necessary. Further, the Head Start Early Learning Outcomes Framework: Ages Birth to Five describes what

children ages birth to five should know and do. We have the same expectations for all children enrolled in any Head Start option.

Comment: Many commenters suggested that we require components of the Parent, Family, and Community Engagement Framework (PFCEF) to be included in the home visit experiences in what was paragraph (d) and is now paragraph (c).

Response: Programs are required to use the PFCEF as part of their family engagement services, which are already required in paragraph (b)(4). Therefore, we did not make this revision.

*§1302.36 Tribal language preservation and revitalization.*

This section provides support for programs serving American Indian and Alaska Native children that wish to or are already engaging in tribal language revitalization efforts. We added this as a new section based on reviewer comments about our inconsistent inclusion and meaning of the phrase "Native language" in the proposed standards in the NPRM.

Comment: Some commenters expressed concern about the inconsistency of the inclusion of “Native language” for American Indian and Alaska Native children and requested clarity on the intent of these provisions in §§1302.31 and 1302.35.

Response: We revised the language in §§1302.31 and 1302.35 to clarify the intent of these provisions with respect to American Indian and Alaska Native children. Additionally, we added this new section to clarify that programs serving American Indian and Alaska Native children may choose to engage in efforts to preserve, revitalize, restore, or maintain the tribal language(s) for these children.

**Health Program Services; Subpart D**

In this subpart, we updated program performance standards related to health, nutrition, mental health, and safety. We retained the core health services from the previous program performance standards, including screening, ongoing care and follow-up care both because the Act clearly links health, mental health, and nutritional services as important supports to foster children's school readiness and because research demonstrates a strong link between child health, school readiness, and long-term outcomes.[87,88, 89] We further strengthened the requirements with an emphasis on oral health and parent education in health issues. We also updated the mental health requirements to reflect best practice, to ensure programs use mental health services to improve classroom management, and to support staff in effectively addressing challenging behaviors. We also streamlined program performance standards to make it easier for programs to find what they need and to implement what we require. We received many comments on this subpart. Commenters generally supported our reorganization and streamlined requirements. Some noted their support for our continued emphasis on health services as central to Head Start. Many commenters offered recommendations for additional changes. In response to comments, we made technical changes, clarified requirements, and further strengthened health, nutrition, and mental health services. We also improved family support services and strengthened and clarified safety practices. We discuss comments and our responses below.

General Comments

Comment: Some commenters were concerned we diminished the importance of health services in Head Start.

---

[87] Currie, J.M. (2005). Health disparities and gaps in school readiness. *The Future of Children, 15*(1), 117-138.

[88] Janus, M., & Duku, E. (2007). The school entry gap: Socioeconomic, family, and health factors associated with children's school readiness to learn. *Early Education and Development, 18*(3), 375-403.

[89] Bruner, C. (2009). Connecting child health and school readiness. (Issue Brief No. 9). Denver, CO: The Colorado Trust.

Response: We do not believe we diminished the importance of health services in Head Start. The rule is clear that programs are required to promote the health and well-being of all children in Head Start. We believe this is central to Head Start's mission of helping children succeed in school and in life. The rule clearly articulates the many health services programs must provide and allows programs better flexibility to focus on improved delivery of health and well-being services instead of process-laden requirements.

Comment: Some commenters recommended we replace the word "dental" with "oral" throughout the rule to reflect current scientific and clinical terminology.

Response: We agree "oral" is a more appropriate description than "dental." Therefore, we replaced the word "dental" with "oral" throughout the regulation.

*§1302.40 Purpose.*

In this section, we outline the overall goal of this subpart, which is to ensure programs provide high-quality health, mental health, and nutrition services that support each child's growth and school readiness. To improve clarity, we moved the requirement for programs to establish and maintain a Health Services Advisory Committee from subpart E to this section.

Comment: Some commenters suggested we include oral health in the list of health services included under this section. Other commenters recommended we include the word "culturally" in the description of appropriate services.

Response: We agree oral health is an important element of overall health and might not automatically be recognized as included under health. So, we added "oral health" to the list of health services. We also agree health practices need to be culturally appropriate and revised paragraph (a) to improve clarity about service delivery.

*§1302.41 Collaboration and communication with parents.*

This section requires programs collaborate and communicate with parents about their children's health in a linguistically and culturally appropriate manner and communicate with them about health needs and concerns in a timely manner. It also includes program requirements for advance authorization from parents and for sharing policies for health emergencies. We received some comments on this section.

Comment: We received some comments requesting clarification on communication and collaboration with parents. For example, commenters noted that an example offered in the NPRM preamble did not appear in the regulation text. Other commenters asked which "health emergency policies" referenced in paragraph (b)(2) programs must share with parents.

Response: The preamble in the NPRM provided explanation and rationale for the proposed requirements. We offered examples as guidance to make the rule more accessible to readers. We did not revise the requirement about sharing policies for health emergencies because we think it is appropriately described. Most programs share their health emergency policies with parents through a parent handbook or other vehicle.

*§1302.42 Child health status and care.*

This section includes requirements for programs to determine children's source of care, to support parents in ensuring children are up-to-date for preventive and primary medical and oral health care, and to support parents to ensure children receive ongoing necessary care. It also requires programs to determine if children have health insurance and supports families in accessing health insurance if they do not. It also includes requirements for extended follow-up care where appropriate and clarifies use of program funds for medical and oral health services. Commenters generally supported this section but also requested clarification and offered additional suggestions. We address these comments below.

Comment: We received many comments about the timelines in paragraphs (a) and (b) that describe requirements for determining whether a child has an ongoing source of health care and insurance coverage, to assist families in accessing care and health coverage, and to determine if children are up-to-date on preventive and primary medical and oral health care. Some commenters stated that the 30-day and 90-day timelines in paragraphs (a) and (b) were too long and would result in delayed services. Some commenters stated the 30-day timeline in paragraph (a)(1) was too short. Many commenters requested additional clarification on the timelines. For example, many commenters requested more specificity about what we meant by "as quickly as possible" in paragraph (a)(2). Some commenters suggested we clarify the definition for "program entry" to distinguish it from "enrollment." They stated that the perceived distinction between the two terms could result in unintended consequences, such as programs delaying child enrollment because they cannot obtain required health information before children actually attend the program

Response: We retained the 30-day and 90-day timelines from the previous standards, which we believe are appropriate to ensure children's needs are addressed in a timely manner and have not presented problems for most programs to meet. However, to improve clarity about when the timelines begin, we replaced the phrase, "from the child's enrollment" with "after the child first attends the program or, for the home-based program option, receives a home visit" in paragraphs (a)(1), (b)(1), (b)(2) and (b)(3) to clarify when requirements must be met.

Comment: Some commenters recommended we revise paragraph (a)(2) to recognize the unique role that Indian Health Services plays for many children enrolled in tribal Head Start programs.

Response: We acknowledge the role Indian Health Services plays for children enrolled in American Indian Alaska Native Head Start programs. However, we did not think it was necessary to provide additional clarity in paragraph (a)(2). Paragraph (a) clearly does not exclude any source of continuous and accessible health care.

Comment: Some commenters recommended changes or requested more clarity to the requirements in paragraph (b)(1)(i) to determine if children are up-to-date on preventive and primary care. For example, some commenters requested we specifically include oral health care services. Some commenters suggested we waive the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) requirement for blood lead testing because of concerns that local doctors refuse to do blood lead tests for children who are at low risk based on a lead risk assessment. Others suggested we allow programs to substitute a lead risk assessment in lieu of blood lead testing. Some commenters requested more clarity about the meaning of "health care professional" as it relates to oral health. Others requested more clarity about the qualifications of health care professionals.

Response: We revised paragraph (b)(1)(i) to improve clarity. We amended this paragraph to include "dental periodicity schedule" to clarify programs must determine whether the child is up-to-date on both medical health and oral health care. We agree that our use of the term "health care professional" to apply to both health and oral health was confusing. So, we amended this provision to include "oral health care professional" as well as "health care professional." We did not specify qualifications for health care professionals, because state requirements vary. We expect programs to ensure that health and oral health professionals are qualified in their respective areas per state requirements. We did not make revisions to the requirements related to EPSDT because we do not have the authority to promulgate a regulation

that contradicts how states implement EPSDT, especially in light of the potential serious health consequences of elevated lead levels.

Comment: Some commenters stated that paragraphs (b)(1)(ii) and (iii) suggested parents were not capable of or bore no responsibility to get their children up to date on immunizations. They believed the requirement would force programs to undermine the role of parents when they provide this service.

Response: It was not our intent to undermine the role of parents in getting children up-to-date with preventive and primary medical and oral health care. We consolidated what were paragraphs (b)(1)(ii) and (iii) in the NPRM into paragraph (b)(1)(ii) and revised the language to more clearly articulate our intent. We expect programs to help parents, as necessary, in their efforts to ensure their children are up-to-date with preventive and primary care. For those children who are not up to date, paragraph (b)(1)(ii) requires that programs must assist parents to make arrangements to bring their children up to date and to directly facilitate health services only with parental consent.

Comment: Some commenters were concerned that paragraph (b)(2) required programs to conduct all hearing and vision screenings, rather than accept screening results from another source. In addition, commenters suggested that children should be screened for "mental and physical trauma," as well as hearing and vision.

Response: We revised paragraph (b)(2) to clarify that programs must either conduct or obtain hearing and vision screenings. We did not make revisions to specifically include screening for mental and physical trauma. Local programs may, with parent consent, implement such screening as indicated, particularly if they serve populations with known or likely exposure to trauma.

Comment: Some commenters suggested revisions to paragraph (b)(4) that requires a program to identify children's nutritional health needs and describes specific information they must take into account. For example, some commenters opposed requirements to collect so much specific health information because it was an unhelpful "paper chase" and unnecessarily burdensome since health care providers already collect this data and provide follow up as necessary. Some commenters opposed our requirements that programs collect hematocrit or hemoglobin for each child. Some commenters suggested we require programs to collect additional information about children's health status, such as sweetened beverage consumption, physical activity, screen time levels, and consumption of healthy foods such as whole grains, fruits, and vegetables. Some commenters asked for clarification about what follow-up was necessary based on the health information. Some commenters objected to the requirement accounting for all children's body max index (BMI) when BMI is not generally used for children under age two. Other commenters expressed concern about whether Head Start staff are qualified to interpret BMI and suggested programs with concerns about children's weight, BMI, or growth refer families to their physicians for further assessment. Commenters requested clarification, including a timeline to identify nutrition needs.

Response: We believe it is appropriate to require programs collect some information about each child's nutritional health status to help meet the individual needs of children. However, we revised paragraph (b)(4) so that rather than requiring programs to collect and track data on all children, many of whom would fall within typical or acceptable ranges, we require programs to identify each child's nutritional health needs, taking into account available health information, including the child's health records, and family and staff concerns. In addition, in paragraph (c), we required programs to work with parents to ensure children obtain necessary

referral, follow up appointments, and treatments. Programs may collect height and weight data directly as a means to more regularly track growth and as part of the required periodic observations or use other appropriate strategies for new or recurring concerns. We also revised paragraph (d) to include examples of how programs would use health information that may affect children's development, learning, or behavior.

Comment: Commenters suggested we revise paragraph (c)(3) to state topical fluoride or varnish can be used for all children, not just for those that live in areas where the water is not fluoridated.

Response: We revised paragraph (c)(3) to clarify programs must provide oral health preventive care for all children including, access to topical fluoride treatments and, as indicated, fluoride supplements.

Comment: Some commenters requested we require programs to provide diapers and formula for infants and toddlers during the portion of the day they attend the program.

Response: In paragraph (e)(1), we codified a long-standing expectation that programs must provide formula and diapers as needed by children during the time they attend the program.

§1302.43 Oral health practices.

In this section, we require programs to promote effective oral health hygiene with daily tooth brushing. Research demonstrates a link between oral health, dental pain, and children's

attendance in preschool programs, as well as their ability to effectively engage in class activities.[90,91,92,93] We discuss the comments we received on this section below.

Comment: Commenters offered a number of suggestions for this section. Some recommended we change the title of this section to "Tooth brushing and other evidence or best practice based preventive oral health practices." Some commenters recommended we include greater specificity. For example, some recommended we include requirements for cleaning infant gums, to use toothpaste that contains fluoride, to implement tooth brushing as soon as a child's first tooth emerges, or to ensure children brush their teeth two times per day, for two minutes each time.

Response: We revised the title of this section from "Tooth brushing" to "Oral health practices" to better reflect the connection between tooth brushing and oral health status. We also revised this section to require that all children with teeth, not just those age one or older, have their teeth brushed at least once per day with toothpaste that contains fluoride. We did not make further revisions to this section because we did not think further specificity was appropriate or supported by strong evidence.

*§1302.44 Child nutrition.*

This section details program performance standards for Head Start programs to meet each child's nutritional requirements and feeding needs. This section includes nutrition service requirements, including how much food should be offered and requirements for supporting

[90] Abanto, J., Carvalho, T. S., Mendes, F. M., Wanderley, M. T., Bönecker, M. and Raggio, D. P. (2011), Impact of oral diseases and disorders on oral health-related quality of life of preschool children. *Community Dentistry and Oral Epidemiology, 39*, 105–114. doi: 10.1111/j.1600-0528.2010.00580.x

[91] U.S. General Accounting Office. (2000). *Oral Health: Dental Disease Is a Chronic Problem Among Low Income and Vulnerable Populations.* Washington, DC: General Accounting Office.

[92] Schechter N. 2000. The impact of acute and chronic dental pain on child development. *Journal of the Southeastern Society of Pediatric Dentistry 6*(2), 16.

[93] Altarum Institute. 2007. Issue Brief: *Oral Health Is Critical to the School Readiness of Children in Washington, DC*. Washington, DC: Altarum Institute.

breastfeeding. It also includes requirements about use of funds. Nutrition is one of the founding principles of Head Start programs. Good nutrition supports children's ability to grow, develop, and achieve and maintain a healthy weight. Commenters suggested revisions and sought clarification. Based on comments we received, we made some changes to improve clarity and further strengthen requirements. We address comments below.

Comment: Some commenters recommended we specify in paragraph (a)(1) that nutrition services must be culturally and developmentally appropriate to ensure they respond to the needs of enrolled children.

Response: We agree and made this revision.

Comment: Some commenters recommended we add additional requirements to paragraph (a)(2). For example, some commenters suggested we require programs to make drinking water available to children. They stated that if children were able to satisfy thirst with water, they may be less likely to consume large amounts of sugar sweetened beverages. Other comments suggested we require programs to serve a varied diet with an emphasis on fruits, vegetables, and whole grains rather than meet a proportion of children's daily nutritional needs.

Response: We revised this section to add a new requirement at paragraph (a)(2)(ix) to require programs make safe drinking water available to children during the program day. We did not make revisions to emphasize fruits, vegetables, and whole grains because we think the requirement that programs meet the nutritional needs of children and adhere with CACFP requirements on meal patterns is sufficiently prescriptive.

Comment: We received some comments about how our requirements in this section interact with CACFP requirements. For example, some commenters requested we remove the requirement in paragraph (a)(2)(iii) about food being high in nutrients and low in fat, sugar, and

salt because it is redundant with CACFP. Some other commenters expressed concern or sought clarification about or exemption from CACFP requirements because of burden and cost.

Response: We did not revise paragraph (a)(2)(iii) because we believe it is necessary to emphasize the importance of healthy food that is high in nutrients and low in salt, fat and sugar over and above CACFP requirements regarding the nutrition content of food. We did not revise paragraph (a)(1)(iv) because we think it is sufficiently clear. In addition, we note that we require programs to use reimbursement from CACFP, unless, as might occur in a home-based option, CACFP is not available. In that case, programs may use Head Start or Early Head Start funds for allowable food costs as we state in paragraph (b). We have no authority to change CACFP requirements and made no revisions.

Comment: Commenters suggested we retain the provision from the previous program performance standards that required programs to involve parents and appropriate community agencies in planning, implementing, and evaluating the program's nutrition services.

Response: We did not retain the previous standard that programs engage parents and the community in nutrition services. While we think this can be a valuable method to ensure cultural appropriateness and respond to local nutrition related issues, we recognize it may be difficult for some programs to regularly do this. We encourage programs to maintain this practice as much as they can, but we want to provide local flexibility to identify the approach.

Comment: Some commenters indicated that the word "appropriate" in paragraph (a)(2)(vii) that modifies snacks could vary widely in interpretation and suggested we replace "appropriate" with "healthy."

Response: We agree this requirement is clearer if we indicate snacks and meals should be "healthy" and revised the paragraph accordingly.

Comment: We received comments about our requirement to promote breastfeeding in paragraph (a)(2)(viii). Commenters were generally supportive of our focus on breastfeeding. Some commenters recommended we require programs to train staff on how to properly handle and store breast milk. Other commenters recommended we require programs to either ensure staff complete lactation counselor training or provide referrals to lactation counselors or consultants. Others asked us to clarify whether programs must have breastfeeding rooms in each center.

Response: We did not think it was necessary to add a requirement for programs to train staff on how to properly handle and store breast milk because we think that is unnecessarily prescriptive in detailing how a program must meet the requirement that they properly store and handle breast milk. Many programs will find state licensing already requires this. We also did not require programs to ensure staff complete lactation counselor training. However, we amended paragraph (a)(2)(viii) to require programs provide referrals to lactation consultants or counselors if necessary. Finally, neither the NPRM nor the final rule required programs to have separate rooms for breastfeeding in each center. Programs may meet the requirement in §1302.44(a)(2)(viii) to promote breastfeeding with a designated private area with a comfortable chair, an outlet for a pump, and access to a sink for hand washing to accommodate the needs of mothers who breastfeed or pump milk.

*§1302.45 Child mental health and social and emotional well-being.*

This section includes the requirements for services programs must provide related to child mental health and the support of children's social and emotional well-being. Early childhood mental health and healthy social and emotional well-being has been clearly linked to children's school readiness outcomes. Research estimates between 9 percent and 14 percent of

young children experience mental health or social and emotional issues that negatively impact their development.[94] The standards described in this section support programs in creating a culture that promotes positive mental health and social and emotional well-being, including supporting positive staff-child interactions and parental knowledge of mental health. Research also demonstrates that the use of mental health consultation services has distinct benefits, including improved child behavior, staff job satisfaction, and overall effectiveness of early childhood programs.[95,96,97] Therefore, this section also includes specific requirements for what mental health consultants must do to assist programs, staff, and parents.

In general, commenters supported strengthening mental health consultation in Head Start, but suggested ways to improve the standards to ensure a clear understanding of the importance of mental health, the qualifications of a mental health consultant, and the role that the mental health consultant plays in improving programs' ability to address mental health problems, including challenging behaviors. We address these and other comments below and describe changes we made to this section to ensure that programs have the tools to successfully promote the mental health and social and emotional well-being of all children.

Comment: Commenters suggested we refer to social-emotional well-being rather than "child mental health" to reduce the prejudice and discrimination around mental health services and improve parent and staff understanding of what mental health means for children.

---

[94] Brauner, C. B., & Stephen, B. C. (2006). Estimating the prevalence of early childhood serious emotional/behavioral disorder. *Public Health Reports, 121*, 303–310.

[95] Gilliam, W.S., & Golan, S. (2006). Preschool and child care expulsion and suspension: Rates and predictors in one state. *Infants and Young Children, 19*(3), 228-245.

[96] Perry, D. F., Dunne, M. C., McFadden, L., & Campbell, D. (2008). Reducing the risk for preschool expulsion: Mental health consultation for young children with challenging behaviors. *Journal of Child and Family Studies*, *17*(1), 44-54.

[97] Brennan, E. M., Bradley, J. R., Allen, M. D., & Perry, D. F. (2008). The evidence base for mental health consultation in early childhood settings: Research synthesis addressing staff and program outcomes. *Early Education and Development*, *19*(6), 982-1022.

Response: We agree and revised the title of this section as well as the requirements throughout to more accurately mirror how the field of early childhood discusses children's mental health and behavior by more broadly defining child mental health and social and emotional well-being.

Comment: Commenters requested clarification about who can serve as mental health consultants and the role of mental health consultants in the program. For example, commenters asked about the necessary qualifications of mental health consultants and the amount of time mental health consultants must spend in the program. Commenters also noted a shortage of mental health consultants who are licensed, particularly in rural and tribal areas, and suggested sharing best practice information about effective mental health consultation in such programs. Some commenters misinterpreted this section to remove requirements for programs to use mental health consultants and were in favor of only utilizing mental health consultants on an as-needed basis. Other commenters suggested that additional funds would be needed to implement these standards.

Response: We agree that it is important for programs to understand the importance of mental health and the role of mental health consultants in promoting the well-being of Head Start children. We revised this section to include that programs must ensure mental health consultants assist the program, staff and parents and clarified how programs must support a culture of promoting children's mental health and social and emotional well-being. We clarified the qualifications of mental health consultants in §1302.91(e)(8)(ii). We understand that access to mental health consultants, particularly those with knowledge and experience serving young children, may not be available in all communities, and that there may be a particular struggle in tribal and rural areas, but we believe access to mental health consultants in all programs is

critically important. In order to acknowledge this difficulty, we only require knowledge and experience working with young children if consultants with this knowledge and experience are available in the community.

To address the level of utilization of mental health consultants, we revised paragraph (a)(2) to reinstate the requirement from the previous regulation that a program must "secure mental health consultation services on a schedule of sufficient and consistent frequency." We also clarified that programs must ensure that mental health consultants are available to partner with staff and families in a timely and effective manner. Additionally, to improve clarity, we added a new paragraph (b)(6) to reference the use of mental health consultants as required in §1302.17. While we understand the concerns some commenters describe related to cost, Head Start has a long-standing history of using mental health consultants who are certified and licensed and we expect programs to meet these requirements within their existing budgets and may use a variety of strategies, including the use of technology, when capacity is an issue.

Comment: Some commenters recommended that the standards be revised to require parental consent for consultation.

Response: To help normalize the mental health consultation process and reduce prejudice and discrimination around use of mental health consultants, we revised paragraph (a)(3) to require programs to obtain parental consent for mental health consultation services when they enroll children in the program.

Comment: Commenters suggested we add specific strategies for addressing mental health issues and challenging behaviors, including home visits, Applied Behavior Analysis, and trauma-informed care. Some commenters suggested we require programs track and evaluate mental and behavioral health practices in programs.

Response: While we agree that these strategies can be effective in supporting children with behavioral and mental health problems, we think it is important to give programs flexibility to address individual child needs in the most appropriate way. Therefore, we do not prescribe specific practices or strategies, but have revised paragraph (b)(1) to reflect the concept in paragraph (a) that programs must implement strategies to identify and support children with mental health and social and emotional concerns and their families.

Comment: Some commenters recommended the inclusion of mental health services within the context of home visiting or family child care options so that these services will be more effectively integrated throughout various program settings.

Response: We agree that mental health consultants should support staff in all Head Start program models and revised paragraphs (b)(2) and (3) to clarify our intent.

Comment: Commenters further suggested that internalizing or withdrawn behaviors should be explicitly referenced throughout the requirements to broaden the focus of child mental health beyond behaviors that can disrupt classes. Commenters also noted these problems need to be both identified as well as supported.

Response: We also added paragraph (b)(4) to explicitly include both internalizing and externalizing problems as issues for mental health consultants to assist staff to address.

Comment: Commenters stated that this section does not reflect the important role of parents and parental mental health.

Response: We agree that parents are critical to the promotion of child mental health and did not intend for the requirements to exclude them. We have added paragraph (b)(5) to explicitly include parents.

*§1302.46 Family support services for health, nutrition, and mental health.*

This section includes the requirements that address health education and support services that programs must deliver to families. It consolidated requirements from the previous rule to improve clarity and transparency. This section highlights the critical importance of parental health literacy, which has been linked to the health and long-term outcomes of young children.[98,99] Commenters supported this section and our reorganization. Commenters also offered suggestions to expand, reduce, and reorganize the requirements. We discuss comments and our responses below.

Comment: We received some comments with broad suggestions for this section. For example, commenters suggested we include a specific emphasis on father involvement. Commenters expressed concerns that staff do not have time to comply with the section's requirements and that the requirements are too broad. Others recommended we move this section to follow §1302.41.

Response: We did not make revisions to address these comments. This section addresses parents, which is defined to encompass mothers and fathers. Strategies to promote father engagement are included in subpart E. In addition, we believe these requirements are critical to supporting child and family outcomes and are an essential part of Head Start's comprehensive two-generation approach. Finally, we think the organization of subpart D clearly conveys requirements and did not revise the order of the sections.

Comment: Some commenters suggested revisions to increase the emphasis on health literacy and parent collaboration.

---

[98] Herman, A., & Jackson, P. (2011). Empowering low-income parents with skills to reduce excess pediatric emergency room and clinic visits through a tailored low literacy training intervention. *Journal of Health Communications, 15*(8), 895-910.

[99] Dewalt, D.A., & Hink, A., (2009). Health Literacy and Child Health Outcomes: A Systematic Review of the Literature. *Pediatrics, 124*(3), 265-274.

Response: We made slight revisions to paragraph (a), which we believe appropriately emphasizes parent collaboration, including for individuals with low health literacy.

Comment: Some commenters recommended we expand services in paragraphs (b)(1) related to nutrition, breastfeeding, tobacco, lead exposure, safe sleep and mental health. Some expressed concern that the requirements did not appropriately reflect the important role of parents and parental mental health and suggested revisions. They also recommended we revise our terminology about mental health to more clearly indicate the breadth of issues that should be addressed.

Response: We agree and revised these three paragraphs to better clarify the topics on which programs must offer to collaborate with parents to include health and developmental consequences of tobacco and lead exposure, safe sleep, healthy eating and the negative health consequences of sugar-sweetened beverages; breastfeeding support and treatment options for parental mental health or substance abuse problems; and more broadly defined child mental health and social and emotional well-being.

Comment: Some commenters recommended we include requirements to specifically assist children and families accessing health insurance for which they are eligible.

Response: We agree that programs play an important role in assisting families who need health insurance. We revised paragraph (b)(2)(i) to specify that programs provide information about public and private health insurance and designated enrollment periods.

*§1302.47 Safety practices.*

This section includes the requirements for strong safety practices and procedures that will ensure the health and safety of all children. Basic health and safety practices are essential to ensure high-quality care. In some instances, we moved away from prescribing extensive detail

when it is unnecessary to maintain a high standard of safety. Instead, we allow programs flexibility to adjust their policies and procedures according to the most up to date information about how to keep children safe. To ensure programs are equipped with adequate instruction on how to keep children safe at all times, we encourage programs to consult a new ACF resource called Caring for Our Children Basics (Basics)[100]. The section includes health and safety requirements for facilities, equipment, materials, background checks, safety training, safety practices, administrative safety procedures, and disaster preparedness plans. These recommendations were informed by research and best practice. We received many comments on this section including suggestions to expand, reduce, and clarify requirements. We address the comments we received on this section below.

Comment: Many commenters appreciated our focus on health and safety systems instead of extensive checklists and recommended monitoring protocols reflect this approach.

Response: We agree that the systems approach reflected in this rule is preferable to a checklist approach and have made a number of small changes to further support the systems approach, including in paragraphs (b)(1)(ix) and (b)(2)(v) adding that programs must keep facilities and materials safe through an ongoing system of preventive maintenance. This systems approach will also be reflected in monitoring in the future.

Comment: Some commenters recommended we rely on state licensing for health and safety standards and not include different health and safety standards.

Response: Many states have stringent health and safety regulations, but some do not. In addition, not all Head Start programs are state licensed. Therefore, we retained this section in the final rule; however, we have made some language changes to align the health and safety

[100] https://eclkc.ohs.acf.hhs.gov/hslc/tta-system/health/docs/caring-for-our-children-basics.pdf

training for staff to the health and safety requirements in the CCDBG Act. This will relieve the burden of different or conflicting licensing standards.

Comment: Some commenters addressed our provision in paragraph (a) that programs should consult Caring for our Children Basics for additional information to develop and implement adequate safety policies and practices detailed further in the subpart. Some commenters appreciated the flexibility we afforded programs under this section though noted that reduced specificity may compel programs to consult other authorities. Some commenters supported our inclusion of Caring for Our Children Basics and some suggested we require the specifics recommendations from Basics and include them in the regulation. Some commenters objected to the requirement and offered alternatives. For example, some commenters recommended we require programs to either "follow" Basics or "consult" Basics so our intent is clearer. Some commenters stated the requirements in Basics were unnecessarily high and costly. Other commenters requested additional clarification or expressed concern about what would happen if there were inconsistencies between Basics and state or local standards. Some seemed confused about the difference between Caring for Our Children and Caring for Our Children Basics or pointed out differences between the two documents. Some commenters were concerned about potential inconsistencies if Basics is updated more frequently than Head Start Program Performance Standards. Some commenters were concerned we would find programs to be out of compliance if they failed to meet all the recommendations included under Basics.

Response: We believe our reference to Basics will help clarify minimum health and safety expectations across early childhood settings. Many programs already exceed what Caring for Our Children Basics recommends as best practice. Other programs may need guidance in establishing their policies, procedures and systems and Basics will be a useful resource guide for

these programs. Furthermore, Basics represents a uniform set of health and safety standards and provides specific guidance to assist programs in achieving the standards identified in this regulation. We believe Basics will be an important resource for programs and useful tool for achieving consistency across programs. Therefore, we retained our requirement in paragraph (a) that encourages programs to consult Basics in developing their safety standards and training.

Comment: We received comments requesting clarification on the introductory text in paragraph (b) and paragraph (b)(1). For example, a commenter suggested we delete "at a minimum" in the introductory text in paragraph (b) to improve clarity. In addition, some commenters suggested we require family child care providers store guns and ammunition so children cannot readily access them. They also recommended we require programs to train staff on safe gun and ammunition storage procedures. Other commenters noted we omitted food preparation from paragraph (b)(1)(viii). Others suggested we require smoke-free environments and promote smoke-free environments for children to families and other caregivers.

Response: We agree the placement of "at a minimum" in the introductory text in paragraph (b) was confusing and moved it to paragraphs (b)(1), (2), (4), (5), (6), and (7) to improve clarity. We did not include revisions on gun safety because we think the requirement in paragraph (b)(1)(vii) that states facilities must be free from guns or firearms that are accessible to children is sufficient. Local programs may elect to provide training on storage safety but we did not require it. We revised paragraph (b)(1)(viii) to clarify that facilities have separate toileting and diapering areas from areas for food preparation. This reflects an important basic requirement from the previous program standards. We agree smoke-free environments are important. We did not make revisions to address this comment because paragraph (b)(1) already

requires facilities be free from pollutants and we prohibit smoking in all Head Start facilities under the terms of grant awards.

Comment: We received comments about our requirement in paragraph (b)(2) that all equipment and materials meet standards set by the Consumer Product Safety Commission (CPSC) and the American Society for Testing and Materials, International (ASTM). Some commenters agreed with this requirement. Commenters were concerned about the complexity and cost of meeting CPSC and ASTM standards. Some commenters suggested we reference the full names of the CPSC and the ASTM to improve clarity.

Response: We agree with commenters that it may be difficult for programs to identify all equipment and materials that are covered by the CPSC and the ASTM. Our understanding is that most equipment and material used in early childhood programs is labeled as compliant with applicable standards. In order to reduce potential burden for programs, we struck what was paragraph (b)(2)(iii) and revised paragraph (b)(2) to specify that indoor and outdoor play equipment, feeding chairs, strollers, and cribs must meet the applicable ASTM or CPSC standards and other materials and equipment used in the care of enrolled children must also meet those standards as applicable. We also included the full names of these entities for better clarity.

Comment: Some commenters recommended we include more specificity in paragraph (b)(2)(i). Specifically, they suggested we include specific language from Caring for Our Children about ensuring all indoor and outdoor equipment and materials and play spaces are clean and safe and appropriately disinfected.

Response: We did not revise paragraph (b)(2)(i) to make it more specific. We expect programs to determine what they must do to provide safe and healthy environments and

encourage them to consult Caring for Our Children Basics or other similar resources for additional guidance.

Comment: We received comments on paragraph (b)(4) that address safety training. Commenters requested more clarification, such as what topics programs must include in the initial training and how often they must offer this training. They also asked us to clarify what positions are included under "all staff." Other comments offered recommendations for additional specificity to the required staff training topics. For example, some commenters recommended additional specificity about safe sleep practices, and some commenters suggest we add cold weather safety.

Response: We agree that we were not clear enough about which staff needed safety training and whether it was necessary for all staff to be trained on all required topics. Therefore, we revised paragraph (b)(4) to clarify what safety training was required for staff with regular child contact in paragraph (b)(4)(i) and what safety training was necessary for staff without regular child contact in a new requirement at paragraph (b)(4)(ii). We have also clarified that the areas of training provided should be appropriate based on staff roles and ages of children they work with. Further, we did not specify in paragraph (b)(4) of this section what topics programs must include in the initial training and how often must they offer this training. We expect programs to design training curricula and determine how often this training must be provided in order to ensure staff are properly trained to keep children safe. We did not make revisions to address other requests for more specificity because we did not think we did not believe that level of prescription was necessary to ensure child safety.

Comment: Commenters recommended we replace "spills of bodily fluids," with "exposure to blood and body fluids" in hygiene practices.

Response: We revised this requirement accordingly, now found at paragraph (b)(6)(iii).

Comment: We received many comments about safety requirements for addressing child food allergies, which we addressed primarily in what was paragraph (b)(8)(vi) in the NPRM and is paragraph (b)(7)(vi) in the final rule. Many commenters were concerned the requirement created privacy concerns and offered alternative suggestions. Some commenters were concerned standards were not strong enough and parents might decline to enroll their child. Specific recommendations included: implementation of a system to share allergy information with relevant staff; to have a training system to ensure staff are prepared to manage allergy related emergencies; posting a list under a sign indicating that there is confidential information; and making sure all staff are aware of all allergies and using scan cards that include allergy information.

Response: A program's most critical responsibility is to keep children safe. We did not make changes to the food allergy requirements in paragraph (b)(7)(vi). We require programs to implement administrative safety procedures, including posting child allergy information prominently where staff can view where food is served. We do not believe this requirement creates privacy concerns. We believe that with the very young children that Head Start serves, the threat posed by any staff or volunteer who is serving food not knowing about a child's allergy is a far greater threat than others knowing about a child's food allergy. We have also made this clear in subpart C of part 1303 on Protections for the Privacy of Child Records.

Comment: We received comments about the requirement in paragraph (c) that programs must report any safety incidents in accordance with §1302.102(d)(1)(ii). For example, commenters requested clarification about the timeline or suggested the reporting requirement

was unnecessary. We received many comments about §1302.102(d)(1)(ii) to which this requirement in paragraph (c) is aligned.

Response: We revised §1302.102(d)(1)(ii) to reflect the many comments we received on that requirement. We discuss those comments and our revision in subpart J. We think those revisions provide sufficient clarity for this provision.

**Family and Community Engagement Program Services; Subpart E**

This subpart includes program requirements for family and community engagement services. It requires programs integrate family engagement into all systems and program services. It also includes the strategies and approaches programs must use for family engagement and strengthens the requirements for offering parent activities that promote child learning and development. Further, it details the family partnership process, including identification of family strengths and needs and individualized family partnership services. Finally, it details program requirements for community partnerships and coordination with other programs and systems. This subpart retains many provisions from the previous program standards but consolidates, clarifies, and reorganizes them and strengthens them with a greater focus on family services outcomes instead of processes and a requirement to offer research-based parenting curriculum.

We received many comments on this subpart. Some commenters supported the improved flexibility, attention to children's learning, and integration of family engagement. However, many commenters were concerned this subpart contributed to an overarching theme of a weakened role for parents. We believe parents are foundational to Head Start's success and that Head Start's two-generation approach is integral to its impact on the children and families it serves. It was not our intent to diminish the role of parents in the NPRM. The NPRM built on the groundbreaking work of the Parent, Family and Community Engagement Framework

(PFCEF) to focus on system-wide parent, family, and community supports that would create a roadmap for progress in achieving the types of outcomes that lead to positive and enduring change for children and families. However, it was clear from public comments that we needed to revise provisions to ensure the integral role of parents in Head Start is appropriately reflected in the final rule. We discuss public comments as well as our responses and revisions below.

*General Comments.*

Comment: Many commenters expressed concern that family partnership services were too focused on child development and learning and recommended we revise them to focus more broadly on strategies to enhance families' social and economic well-being and leadership skills. In addition to recommending revisions to separate parent and family services from child learning and development, some commenters offered specific suggestions, such as identification of economic well-being as part of family well-being and pilot programs to support two-generation practices.

Response: Section 636 of the Head Start Act specifies the purpose of Head Start is to improve the school readiness of children and provide services to families that support children's cognitive, social, and emotional development and school readiness. Research shows that family social and economic well-being greatly impacts children's development and school

readiness,[101,102,103,104,105] which is why two-generation approaches like Head Start are so important. We revised §1302.50(a) to further clarify the purpose of parent and family engagement as supporting children's learning and development. We made substantial revisions in §§1302.50 and 1302.52 to clarify that family partnership services should include the depth and breadth appropriate to support families. We also revised §§1302.50(b)(3) and 1302.52(a) to clarify that family well-being includes family safety, health, and economic stability. Thus, we believe the final rule appropriately reflects the statutory requirement that family engagement services be provided to improve children's learning and development and the importance of strong family partnership services in support of that purpose.

Comment: Many commenters broadly recommended revisions to emphasize the key role of parents in all areas of program operations.

Response: We agree that parents should be engaged in all aspects of program operations. Effective, comprehensive family engagement depends upon strategies that support family well-being and family engagement being embedded throughout systems and services. We believe the rule accomplishes this integration and note that collaboration with parents and families and parent and family engagement and services are integrated into all program services. In addition to the extensive parent and family services required in this subpart and in Program Governance,

[101] Kingston, S., Huang, K. Y., Calzada, E., Dawson-McClure, S., & Brotman, L. (2013). Parent involvement in education as a moderator of family and neighborhood socioeconomic context on school readiness among young children. *Journal of Community Psychology*, *41*(3), 265-276.

[102] Soltis, K., Davidson, T. M., Moreland, A., Felton, J., & Dumas, J. E. (2015). Associations among parental stress, child competence, and school-readiness: Findings from the PACE study. *Journal of child and family studies*, *24*(3), 649-657.

[103] Fantuzzo, J., McWayne, C., Perry, M. A., & Childs, S. (2004). Multiple dimensions of family involvement and their relations to behavioral and learning competencies for urban, low-income children. *School Psychology Review*, *33*(4), 467-480.

[104] McWayne, C., Fantuzzo, J., Cohen, H. L., & Sekino, Y. (2004). A multivariate examination of parent involvement and the social and academic competencies of urban kindergarten children. *Psychology in the Schools*, *41*(3), 363-377.

[105] Barnard, W. M. (2004). Parent involvement in elementary school and educational attainment. *Children and Youth Services Review*, *26,* 39-62.

parent and family engagement services are integrated throughout program operations. For example, we integrate these services in the education subpart (e.g., § 1302.34), the health services subpart (e.g., §§1302.41 and 1302.46), the disabilities subpart (e.g., §1302.62), the transitions subpart (§§1302.70(c) and 1302.71(b)), personnel policies (e.g., §§1302.90(a) and 1302.92(c)(3)), and program management (subpart J). However, we did make some revisions to address this concern. As previously noted, we reinstated parent committees as part of the governing structure in part 1301. Also as previously noted, we revised the family engagement section title in the Education and Child Development subpart to reflect the broader nature of parent and family engagement. In addition, to reflect that family and community program services in this subpart are not limited to partnership services, we revised the subpart title to read "Family and Community Engagement Program Services." We also revised §1302.50(b)(1) to recognize parents as children's primary "teachers and nurturers" to more specifically define the parent's role.

Comment: Many commenters recommend we reorganize part 1302 to place subpart E – Family and Community Engagement Program Services – before subpart C – Education and Child Development Services. They stated this would help convey the centrality of parent engagement to Head Start.

Response: We agree that parent engagement is foundational to Head Start. We think this is appropriately reflected in this subpart as well as in parent-related provisions integrated into every other subpart in part 1302 – Program Operations. Therefore, we do not think reorganizing the subparts is necessary to reflect parents' essential roles in the lives of their children and as partners in the Head Start program. We did not reorder any subparts in part 1302.

Comment: Some commenters recommended we do more to integrate the Parent, Family, and Community Engagement Framework (PFCEF) into the rule. For example, some commenters recommended we include the PFCEF title and outcomes definitions into the rule. Others recommended we add more specificity related to the PFCEF and/or stronger requirements to track and measure progress in the outcomes included in the PFCEF.

Response: We agree programs have made important progress in service delivery through integration of the PFCEF in their systems and services. Therefore, this subpart included many of those key strategies and approaches, including a strong focus on family engagement outcomes. In response to comments, we revised the final rule to provide clearer identification of PFCEF outcomes in §1302.52(b), alignment of the individualized family partnership services to the PFCEF outcomes in §1302.52(c)(1), and stronger requirements for tracking outcomes in §1302.52(c)(3).

*§1302.50 Family engagement.*

This section included the fundamental requirements that apply broadly to all parent and family engagement activities as well as general parent and family program practices. It requires programs to integrate family engagement strategies into all systems and program services and details fundamental requirements for approaches to family engagement. To address overarching concerns about conveying the centrality of family engagement and the important role of parents, we made some structural and other revisions to requirements in this section. In addition to some of the revisions to paragraph (a) that we previously noted, we made revisions such as changing the section title from "In general" to "Family engagement" and deleting the reference to community partnerships to clearly differentiate requirements in the sections related to family engagement in §§1302.50, 1302.51, and 1302.52 from the requirements for community

engagement in §1302.53. We also added the title "Family engagement approach" to paragraph (b) and changed the structure for the lead-in to paragraph (b) so that its requirements for family engagement are clearly delineated. We discuss comments and our responses below.

Comment: Some commenters suggested revising the requirement in what was paragraph (b)(2) in the NPRM and has been moved to paragraph (b)(6) in the final rule to ensure information is provided in a family's preferred language to ensure that they access and participate in services. Another commenter recommended we explicitly require materials be accessible to families who are "low literacy" or not proficient in English.

Response: Though we agree it is important that programs make information and services available in the languages spoken by enrolled families, we also understand that programs may have a dozen or more languages represented among their enrollment at any one time and that some languages may be spoken by only a few members of a community. We believe that our requirement in what is now paragraph (b)(6) is appropriately specific. We also have confidence that programs will consider the needs of the families they enroll, including literacy, in their interactions with families.

Comment: Some commenters supported the father engagement requirement in what was paragraph (b)(3) in the NPRM. Other commenters stated that father engagement should not be mandated. Some offered additional suggestions, such as adding the term "male" to father engagement to include the men who participate in raising children who are not their biological fathers and explicitly adding services for lesbian, gay, bisexual, and transgender (LGBT) parents.

Response: The definitions of "family" and "parent" under part 1305 allow for many variations of people who may have the role of parents or guardians or as authorized caregivers. We have retained a focus on "father engagement," which is in paragraph (b)(1) in the final rule,

because research demonstrates that child outcomes improve when fathers are positively involved. This does not preclude the engagement of other males who may have significant roles in children's lives so we do not think we need a broader requirement. While the regulation requires that programs implement strategies to engage fathers in their children's learning and development, this is not the same as mandating father engagement for every father. In fact, the requirement in §1302.15(f) explicitly states that parent participation is not required. Because of the inclusive definitions we provide for "parent" and "family," we did not amend the section to specifically list LGBT parents.

Comment: Some commenters recommended replacing the phrase "responsive to and reflect" with "incorporates" in paragraph (b)(2).

Response: We agree and made this revision.

Comment: Commenters believed the provisions in this section weakened family services, and requested changes to ensure that Head Start's two-generation approach to addressing family needs is not diminished. Some of these commenters requested that Head Start programs be allowed to utilize innovative two-generation approaches to deliver services to families of enrolled children.

Response: As stated previously, it was not the intent of the NPRM to diminish or weaken the critical role that Head Start programs play in supporting families of enrolled children. In addition, Head Start programs have always been allowed to utilize two-generation approaches to deliver services to families of enrolled children, and many already do. However, we added a provision in paragraph (b)(4) to clarify that programs should implement innovative strategies to address prevalent needs of families across the program. This provision further acknowledges

that in order to implement such strategies effectively, programs may need to leverage community partnerships or other funding sources.

*§1302.51 Parent activities to promote child learning and development.*

This section includes requirements for activities programs must provide to parents to assist them in promoting child development and learning. It included a new requirement that programs offer the opportunity for parents to participate in research-based parenting curriculum. We revised this section to include the requirement for working with parents to support regular child attendance from §1302.50(b)(1) in the NPRM. We believe it is more appropriately placed in this section. We also addressed the concern that we did not adequately reflect the important role of parents in children's learning with revisions in the introductory text in paragraph (a) and paragraph (a)(1).

Comment: As previously noted, some commenters recommended we combine the requirements of this section with the requirements of §1302.34. Others recommended a reorganization to amplify the importance of supporting children's learning as a purpose for family engagement.

Response: We did not make this revision. We believe §1302.34 appropriately integrates parent and family engagement into center-based and family child care education services that are focused on the child. The activities in this section are parent-focused. We think this organization better conveys the importance of integrated family engagement services throughout program operations and reflects which staff will primarily engage in the service delivery.

Comment: Some commenters suggested adding language to the regulation on informing parents about the importance of bilingualism.

Response: We agree that programs should provide parents with information about brain development, including bilingualism. We added paragraph (a)(3) to reflect this suggestion.

Comment: Some commenters supported the requirement in paragraph (b) for a research-based parenting curriculum, noting it would raise program quality. Some requested further clarification, such as a list of acceptable curricula or whether adaptations could be made to the curricula. Others recommended we add more strengths-based language to the requirement. Some commenters opposed this requirement for reasons such as cost and concern appropriate research-based curricula were unavailable or suggested participation be optional because it would be burdensome to working parents.

Response: We think this requirement will improve the quality of service delivery. We do not think further clarification is necessary, but agree that the requirement should be strengths-based and revised paragraph (b) to reflect that characteristic. We also clarified that significant adaptations could be made to better meet the needs of the populations served, but that in such cases programs must work with an expert to develop these adaptations. Technical assistance is available on available research-based parenting curricula through the Early Childhood Learning and Knowledge Center. We note that parent participation is never required as criteria for a child's enrollment in Head Start.

*§1302.52 Family partnership services.*

This section details the family engagement service requirements programs must provide to identify family needs and goals and provide services and supports to help meet family needs and achieve their goals. It requires a family partnership services approach that is initiated as early as possible, shaped by parent interest and need, focused on outcomes instead of process, and effectively targeted program and staff resources based on need to ensure appropriate levels

of service intensity. We designed this section to align with the Parent, Family, and Community Engagement Framework that has helped programs develop an ongoing process of individualized services based on family strengths and needs instead of the development of a single written plan. Many commenters strongly opposed our elimination of a specific family partnership plan. Though we intended to strengthen family engagement services with requirements that detail an ongoing outcomes-focused process, commenters believed this section diminished family engagement services and contributed to an overall weaker role for parents in Head Start. We address these and other comments below.

Comment: Many commenters strongly suggested we restore the written family partnership agreement. Commenters articulated concern that removal of the requirement for a written agreement weakened family services in Head Start. Other commenters thought that eliminating the requirement for a written agreement meant we eliminated the family goal setting process. Though some commenters agreed that the paper document can become more of a paperwork process than the means to supporting families in identifying and achieving goals, they still felt that the written agreement is an important step in formalizing the process. Some commenters expressed support for the increased local flexibility afforded by not requiring a written agreement.

Response: We intended for this subpart and this section specifically to streamline requirements, place an emphasis on outcomes over process, and allow more local flexibility to implement effective processes and strategies for meeting family service outcomes. We did not intend for this section to diminish the program's two-generation approach or the strength and breadth of family services.

We made revisions to this subpart and section to clarify our intent for the family partnership services, including that it must include a family partnership agreement. We added this provision in §1302.50(b)(3). We also added §1302.50(b)(5) in the final rule to require a program's family engagement approach to include partnership with families to identify needs, interests, strengths, goals, services and resources that support parents. As previously noted, we revised paragraph (a) in this section to clarify that family well-being includes family safety, health, and economic stability. Also as previously noted, we revised paragraph (b) to strengthen alignment between intake and family assessment procedures and identification of family strengths and needs to the outcomes of the Parent, Family, and Community, Engagement Framework. These changes help clarify that the rule does not narrow the breadth or depth of family services that are ultimately aimed at promoting the school readiness of children.

Finally, we made significant revisions to paragraph (c) to detail the full process of family partnership services. In paragraph (c)(1), we require programs to offer individualized services that identify family interests, needs, and aspirations related to the family engagement outcomes in the PFCEF. In paragraph (c)(2), we require programs to help families achieve their identified outcomes. In paragraph (c)(3), we require programs to establish and implement a family partnership agreement process, including a family partnership agreement, to review family progress, revise goals, evaluate and track whether identified needs and goals are met, and adjust strategies on an ongoing basis. In paragraph (c)(4), we provide programs with flexibility to target resources to ensure appropriate levels of service intensity.

We believe the revisions to this section and to §1302.50 strengthen program quality through a focus on outcomes instead of process, dispel concerns about the rule diminishing

family partnership services, and will ensure programs implement strong and effective family partnership services that strengthen families and improve child outcomes.

Comment: Some commenters suggested we clarify whether parent goals should focus on the parent or the parent's goals for the child. Others recommended that we be more explicit about data and performance indicators related to family services and well-being.

Response: We believe this subpart provides appropriate flexibility for parents to identify their needs, goals, and aspirations so we did not include additional specificity about the types of goals parents set. We revised this section to reframe a requirement that was in paragraph (c)(2) in the NPRM and paragraph (c)(3) in the final rule to ensure programs review, evaluate, and track family needs and goals and appropriate strategies on an ongoing basis.

*§1302.53 Community partnerships and coordination with other early childhood and education programs.*

This section includes program requirements for community partnerships. It largely maintains provisions from the previous performance standards about ongoing collaborative relationships and partnerships with community organizations. It requires programs take an active role in promoting coordinated systems of comprehensive early childhood services. It added a new requirement for a memorandum of understanding with the appropriate local entity responsible for managing publicly funded preschool programs to reflect requirements from the Head Start Act. It also added new requirements for coordination with state and local Quality Rating and Improvement Systems and state data systems to ensure that we are maximizing access to services, reducing duplication and fostering informed quality improvement.

We reorganized and retitled this section to improve clarity. For example, we reorganized §§1302.50 and 1302.54 so community partnership requirements were solely consolidated under

§1302.53. We reorganized this section to describe program requirements for ongoing collaborative relationships and partnerships with community organizations in paragraph (a). We moved what was paragraph (a) in the NPRM to paragraph (b) in the final rule and restructured requirements for memorandum of understanding, QRIS, and data systems to fall under paragraph (b) to better articulate the linkages between these three requirements and those in paragraph (b) that require programs take an active role in promoting coordinated systems of comprehensive early childhood services. We also revised and moved the requirement to participate in statewide longitudinal data systems from subpart J to this section.

We also moved the requirement about Health Services Advisory Committees from paragraph (c) to §1302.40(b). In addition, we renamed this entire section "Community partnerships and coordination with other programs and systems" to more clearly identify its applicability and purpose. We received many comments on this section. We discuss them and our responses below.

Comment: We received many comments on the community partnership requirements described in what is now paragraph (a) but was paragraph (b) in the NPRM. Many commenters suggested we add new partners with which programs should establish collaborative relationships and partnerships, such as programs funded through the Runaway Homeless Youth Act, financial partners, and school boards. Other commenters were concerned we removed explicit mention of nutrition and housing assistance agencies. Some commenters recommended we not add any specific community partnerships and let programs decide based on community data. Some commenters requested additional clarification, such as for greater specificity for coordinating community plans or whether we will allocate funds to comply with this section of the regulation.

Response: We agree that there are a variety of potential partners with the capacity to help meet the comprehensive needs of children and families. However, rather than continue to add to the list of potential specific partnerships, we believe programs will appropriately assess their family and community needs and identify partnerships that will support their service delivery. In addition, we note this section promotes local flexibility in the development of community partnerships and there is no requirement for a program to have community plan. Programs may request additional assistance for guidance with the development of community plans and partnerships. Finally, Congress appropriates funds for the Head Start program. We do not have the authority to provide additional funds.

Comment: We received many comments about our proposal, now found in paragraph (b)(2), that stated programs should participate in their state or local QRIS under certain conditions. Some commenters supported this requirement for reasons including: it increases a program's marketability; it improves information available to parents; it can reduce inefficiencies and inequities by aligning Head Start programs with other child care and state pre-kindergarten programs; it encourages quality improvement; it could direct more families to Head Start; and it makes progress toward common indicators of quality across programs. Some commenters asked for clarification, such as how to incentivize participation in QRIS. Other commenters suggested revisions, such as moving it to another section or adding criteria for specific subgroups such as DLLs.

Many commenters opposed this requirement and recommended its removal. Commenters expressed a number of reasons including: QRIS is not available in every state; it is duplicative of monitoring, licensing, and NAEYC accreditation; it would be too costly and burdensome; and research is mixed on its benefits to programs or families.

Response: We believe it is important that Head Start programs participate in state or local quality improvement efforts and that the value of QRIS outweighs the challenges, including giving parents more informed choices about the quality of programs. While it is true that most local education agencies are exempt from licensing, Preschool Development Grants require participation in QRIS. We believe this signals recognition of the value of QRIS participation and that as participation occurs across the spectrum of programs; it will continue to strengthen both local programs and the QRIS itself. We also recognize that there may be challenges that make it difficult for all programs to participate in QRIS, including wait times, and a lack of validated systems. However, we also understand that unqualified mandated participation could lead to duplication in monitoring and rating and that the conditions as we outlined them in the NPRM may have been too stringent. Therefore, we modified this provision in the final rule. Specifically we removed the qualifier that the tiers must be validated and added a condition that the state must accept Head Start monitoring data as evidence of meeting indicators in the QRIS tiers and that participation must not impact a program's ability to meet Head Start standards. We believe the final rule sets a strong and reasonable way for Head Start programs to participate in these important state systems without duplication and burden.

Comment: Some commenters opposed the requirement for tribal programs specifically, stating that it was not appropriate in these service areas.

Response: We agree that state and local QRIS systems are not comparably structured to serve in tribal areas as they are in other service areas. Therefore, we revised paragraph (b) to clarify that tribal programs only need to consider whether participation in state or local QRIS would benefit their programs and families.

Comment: Some commenters requested we combine the two standards on Statewide Longitudinal Data System (SLDS): one in this section and another in §1302.101 on partnering with the SLDS, and requested clarification of the requirements.

Response: We agree with this comment and think that the two mostly duplicative requirements may lead to confusion. Thus, we removed the requirement from §1302.101 and combined it into §1302.53. In the process, we dropped the terms "early childhood data systems," "statewide data system," and "Statewide Longitudinal Data System" and replaced them with "state education data systems" to make it non-program specific and less confusing.

**Additional Services for Children with Disabilities; Subpart F**

This subpart includes the standards for additional services for children with disabilities and their families. These provisions align with the Act and reflect requirements that children must be identified and receive services as prescribed in IDEA, focus on effective service delivery instead of outdated or unused documentation, and incorporate best practices. In order to communicate its critical importance, we also incorporated requirements for the full inclusion and participation of children with disabilities in all program activities, including but not limited to children eligible for services under IDEA. Commenters generally supported our overall approach to serve children with disabilities and their families. We discuss these and additional comments below.

*General Comments.*

Comment: Some commenters were concerned our elimination of what was part 1308 in the prior rule meant we eliminated requirements for services to children with disabilities.

Response: While there is no longer a part 1308, the final rule preserves the critical role of Early Head Start and Head Start programs in screening and referring children with suspected disabilities and as a program where children with disabilities are prioritized for services and fully integrated into every aspect of service delivery. We believe the final rule builds upon Head Start's long-standing commitment to serving children with disabilities and strengthens these services through part 1302. The final rule reflects the appropriate role of local agencies responsible for implementing IDEA, as required by IDEA, for evaluation, eligibility for services, establishment of an IFSP or IEP, and implementation of early intervention services or special education and related services, as appropriate.

Comment: Some commenters suggested we include additional services or specific approaches to service delivery in this subpart. For example, some commenters suggested audiology services or Applied Behavioral Analysis be added under this subpart.

Response: It is not our role to identify the specific type of special education and related services used with children with disabilities. We think audiology screening for all children is essential and require it under subpart D, which addresses health services. We did not make revisions.

Comment: Commenters suggested adding a requirement to ensure DLLs struggling with English acquisition are not misidentified as having a developmental delay or disability. Some commenters suggested that staff should receive training to work with DLLs who also have disabilities.

Response: We believe these topics are more appropriate for technical assistance or guidance.

*§1302.60 Full participation in program services and activities.*

This section includes an outline of the requirements contained in this subpart and an assurance that all children with disabilities, including but not limited to those who are eligible for services under IDEA, receive all applicable program services and are able to fully participate in all program activities.

Comment: Many commenters recommended we revise this section to include specific reference to inclusive program practices.

Response: We agree that it is essential to specify that services should be provided in the least restrictive possible setting and made revisions to reflect this clarification.

*§1302.61 Additional services for children.*

This section describes the additional services programs must provide to children with disabilities and children referred for but awaiting the determination of IDEA eligibility by the local agency responsible for implementing IDEA. It requires programs meet the individualized needs of children with disabilities and provide any necessary modifications and supports necessary to support the full participation of children with disabilities. It includes a new requirement for programs to provide individualized services and supports to the maximum extent possible to children awaiting determination of IDEA eligibility. Further, it includes additional services for children with an IFSP or IEP. Commenters were generally supportive of this section but raised some concerns and suggestions, which we discuss below.

Comment: Some commenters offered unqualified support for this section, but others expressed concerns about the proposal in paragraph (b) to provide services and supports while children are awaiting determination of IDEA eligibility. For example, concerns included program staff may not have the expertise to know what services should be provided, the cost of

services. Some commenters stated the standard was unnecessary because programs already individualize services for children.

Response: There is sometimes a significant delay in local agencies determining eligibility for IDEA and the development of an IFSP or IEP; even though both IDEA Part C and Part B have timelines for conducting evaluations, and for developing an IFSP or IEP once the eligibility determination has been made. Therefore, we think it is important that programs review all reasonable avenues for providing services that maximally support a child's individual needs, including services and supports for which the child may be eligible through insurance pending an eligibility determination under IDEA and the development of an IFSP or IEP. However, we made revisions to paragraph (b) to clarify our expectations including that programs should work with parents to determine if services and supports are available through a child's health insurance and/or whether they should be provided pursuant to Section 504 of the Rehabilitation Act if the child satisfies the definition of disability in section 705(9)(b) of the Rehabilitation Act. When such supports are not available through alternate means while the evaluation results are pending, though staff are not required to provide early intervention services or special education and related services, programs must individualize program services based on available information such as parent input and child observation, screening, and assessment data. We also clarify in paragraph (b) that program funds may be used for this purpose.

Comment: Some commenters stated they would like to be able to include children who receive services while IDEA eligibility is pending, as described in paragraph (b), in the calculation to meet the requirement that ten percent of total enrollment are children with disabilities.

Response: Though we understand that not all children with disabilities are eligible for services under IDEA, the Act stipulates that children must have an IFSP or IEP under IDEA to be counted as a child with a disability. Therefore, we have no authority to change how the ten percent requirement is calculated. We did not revise this provision.

Comment: Some commenters suggested we require the local educational agency to operate and coordinate with the Head Start program, similar to how Head Start is required to form agreements with the local educational agency.

Response: We appreciate that this would foster collaboration but we have no authority over local educational agencies. Programs are encouraged to develop ongoing working relationships with local agencies responsible for implementing IDEA.

Comment: Some commenters offered suggestions to further strengthen and clarify the standards for additional services for children with an IFSP or IEP.

Response: In response to these comments, we revised paragraph (c)(1)(iii) and added a new standard at paragraph (c)(1)(v). The revision to paragraph (c)(1)(iii) clarifies that many elements of an IFSP or IEP will be implemented by "other appropriate agencies, related service providers and specialists." Our addition at paragraph (c)(1)(v) clarifies that most services can be effectively delivered within the classroom setting. Providing services in the "natural environment" reduces transitions, increases inclusion, and increases the opportunity for gains to be generalized. We think it is an important stipulation that programs should work with parents and agencies responsible for implementing IDEA so that IFSPs and IEPs specify that services be delivered within children's own classes or family child care homes, if determined appropriate for the child.

*§1302.62 Additional services for parents.*

This section described the additional services programs must implement to support the parents of children with disabilities. These standards reorganize, clarify, and build upon previous regulations.

Comment: A commenter recommended that programs be required to provide information to their state parent and health assistance centers. Another commenter recommended we clarify some of the difference between Parts B and C of IDEA.

Response: Though we agree this can be useful information, it is not universally applicable and can be effectively provided as guidance or technical assistance so we did not make revisions. We believe our definition of "local agency responsible for implementing IDEA" is sufficiently clear and did not add further clarification.

*§1302.63 Coordination and collaboration with the local agency responsible for implementing IDEA.*

This section describes program requirements to coordinate and collaborate with the local agency (or agencies) responsible for implementing IDEA. This section retains many provisions from the previous regulation but streamlines and updates them to focus less on planning and more on service delivery. We believe coordination and collaboration with the local agencies responsible for implementing IDEA reflect an essential partnership in meeting the needs of children with disabilities in Head Start. Commenters generally supported this section.

Comment: Commenters expressed concern that children with disabilities sometimes are required to leave Early Head Start or Head Start or be dually enrolled to receive special education and related services at another site and offered recommendations to strengthen our standards.

Response: We fully support the requirements of IDEA that services must be provided in the least restrictive possible environment. We revised paragraph (b) to address concerns about dually enrolled children and the setting in which children receive services.

**Transition Services; Subpart G**

This subpart describes requirements for supporting transitions for children and families as they move between programs and settings. This subpart reorganizes and updates previous standards to reflect best practice for better clarity and implementation. Commenters supported many of the provisions in subpart G, such as the detailed requirements for activities to support transitions into kindergarten or other early childhood programs, the requirements for transitions of children with IEPs or IFSPs, the language focused on supporting transitions for children in migrant and seasonal Head Start programs, and the removal of the requirement to have a staff-parent meeting at the end of the year. We received other comments on this subpart and respond to them below.

*General Comments.*

Comment: Some commenters suggested that implementing the additional supports for transitions between Early Head Start to Head Start and from Head Start to kindergarten will impact programmatic procedures and budgets, and that additional funding will be needed. Others were concerned this subpart placed too much burden on the program from which a child is exiting and suggested revisions.

Response: We believe the transition services in this subpart are critical to support child development from birth to age five and beyond. This rule supports the transition process and continuity of services regardless of where families seek services, but we do not believe they are

substantially different than current practice. However, we agree that programs cannot control the receiving school or program, but our language supporting transitions and collaborating with community partners is sufficiently flexible to allow for these realities. Therefore, we did not revise the provisions.

Comment: Some commenters recommended that we include requirements for programs to assess their transition practices to ensure they effectively minimize the number of transitions and promote smooth transitions for children and families.

Response: Although we encourage programs to assess all aspects of their programming as part of the continuous quality improvement process, we do not agree that requiring programs to specifically assess their transitions practices is necessary.

*§1302.70 Transitions from Early Head Start.*

This section describes what programs are required to do to support successful transitions for children leaving Early Head Start. The requirements in this section also support parents' continued involvement in their child's education.

Comment: Commenters expressed concern about the requirement in paragraph (b)(2) on the timing of moving children from Early Head Start to Head Start after their third birthday. Some commenters recommended we allow a child who turns three after the kindergarten cut-off date to remain enrolled in Early Head Start until the child transitions into Head Start or to another program at the beginning of the next program year. Also, some commenters recommended we clarify the phrase "a limited number of additional months" in paragraph (b)(2) because this timeframe is vague.

Response: The Act sets the age requirements for Early Head Start. We encourage programs to use ongoing planning processes to make informed choices based on individual needs

and development for appropriate enrollment options into Head Start, pre-kindergarten, or other community based programs, to the extent available in their communities. Additionally, we used the phrase "a limited number of additional months" to provide programs with flexibility to determine the appropriate number of months to extend a child's enrollment to ensure a smooth transition. Children that turn three after the date of eligibility for kindergarten can enroll in Head Start if there is a space available during the program year. Therefore, we did not revise the provision.

Comment: Some commenters supported the requirements in paragraph (d) for Early Head Start and Head Start to work together to support continuity of services from birth to five. Some commenters recommended specific revisions, including adding a requirement to paragraph (d) for programs to serve families with the highest demographic risk.

Response: Prioritization requirements are described in subpart A, so we have not made changes to this section.

*§1302.71 Transitions from Head Start to kindergarten.*

In this section, we outline the services programs must implement to support successful transitions from Head Start to kindergarten. We received comments from the public and address them below.

Comment: One commenter suggested we change the phrase "transition to kindergarten" to "transition to school" throughout this section to better emphasize that broader transitions may occur between Head Start and the public school system, such as state preschool.

Response: This section focused on supports for transitions to kindergarten, while §1302.72 already addressed transitions to other early childhood education programs.

Comment: One commenter expressed concern that the language in paragraph (b)(2)(iii) on transition services to prepare parents to exercise their rights and responsibilities including options for their child to participate in language instruction educational programs, does not reflect the intent of Section 1112 of the Elementary and Secondary Education Act (ESEA), as referenced in the Act, and that programs should tell parents about the range of educational options available to DLLs when they enter elementary school. This commenter suggested that we should not promote native language instruction over other options. Additionally, other commenters requested clarification about whether Head Start programs are required to judge the appropriateness of different instructional approaches for DLLs in public schools.

Response: As described in section 642A of the Act, Head Start programs are required to help parents of DLL children understand the information provided to them under Section 1112 of ESEA. We believe that paragraph (b)(2)(iii) is consistent with this requirement; however, for clarity, we removed the explicit mention of "native language instruction." Further, Head Start programs are not expected to judge the appropriateness of different instructional approaches for DLLs; rather, programs should help make parents aware of different options for language instruction programs in the elementary school setting. We made appropriate edits to paragraph (b)(2)(iii) to clarify this intent.

Comment: Some commenters stated that requirements in this section were too challenging and burdensome. For example, some commenters expressed concern that collaboration with school districts receiving Head Start children is challenging and highlighted collaboration to determine the availability of summer school programming for children entering kindergarten as an example.

Response: We believe that supporting successful transitions of children and families into school is critical for supporting child development and continued parental involvement in children's education. We do not agree that this section is too burdensome or challenging so we did not make changes in response to these comments.

Comment: Some commenters suggested we include additional requirements in this section to make transition services stronger. For example, commenters recommended we expand transition services to encompass after care in kindergarten and suggested we include more requirements on community collaborations in this subpart.

Response: We think we focus on the key components of transition services to support families when children transition to kindergarten. As always, we encourage programs to identify the individual needs of Head Start children and families and work to meet those needs. Additionally, we believe that community collaborations are sufficiently addressed in §1302.53(a), which requires programs take an active role in promoting a coordinated system of comprehensive early childhood services among community agencies and partners, so additional requirements about community collaboration were unnecessary.

Comment: One commenter recommended we permit programs to continue to provide comprehensive services to a subset of very at-risk families after those children transition to elementary school.

Response: Head Start is not authorized or funded to serve children and families after they leave Head Start.

*§1302.72 Transitions between programs.*

In this section, we included three new provisions that will support transitions for children and families who might not otherwise receive such services.

Comment: Some commenters explicitly supported the provision for programs to make significant efforts to support transitions for children experiencing homelessness or in foster care when they move out of the community. Because of their high mobility rate, one commenter suggested that programs should anticipate transitions for these children, and that the language in paragraph (a) should include support for transitions to other early childhood programs, not just Head Start, as well as connections to other types of community services that can support these children.

Response: We agree with the suggestion to support transitions to other early childhood programs if Early Head Start or Head Start services are not available. We edited paragraph (a) to reflect this.

Comment: Some commenters expressed concerns about the requirement in paragraph (b) to provide transition services to families who decide to enroll their children in other high-quality early education programs in the year prior to kindergarten. Challenges described include difficulty identifying participation in other programs by children who do not return to Head Start and lack of mandates on other public programs. Commenters asked for clearer definitions of the terms "high quality" and "practical and appropriate," as well as guidance on determining the quality of other programs. One commenter stated that this transition strategy does not promote the continuity of care emphasized in the NPRM.

Response: We agree the term "high quality" is vague and difficult to determine during a transition process; therefore, we struck the term from this provision. The intent of this provision is to support the transition process, regardless of where families seek services. To allow for program flexibility, we retained the phrase "as practical and appropriate." We will continue to provide guidance on these terms, as requested by grantees.

**Services to Enrolled Pregnant Women; Subpart H**

This subpart describes services Early Head Start programs must provide to pregnant women enrolled in their programs. Long standing research clearly demonstrates the importance of prenatal care and the effectiveness of prenatal interventions to facilitate healthy pregnancies[106,107,108,109,110] and improve child outcomes that affect later school readiness[111,112,113,114,115] among at-risk women. While most of this subpart is structurally different from §1304.40 in the previous rule, it expands upon services we have always required to codify best practices and also highlights the importance of prenatal health care and education. Commenters generally supported this subpart. We discuss specific comments and our responses below.

*General Comments.*

Comment: Commenters supported our overall approach that creates a standalone subpart for services to pregnant women as well as individual new requirements for services to pregnant

[106] Olds, D.L., Henderson, Jr., C.R., Tatelbaum, R., & Chamberlin, R. (1986) Improving the Delivery of Prenatal Care and Outcomes of Pregnancy: A randomized Trial of Nurse Home Visitation. *Pediatrics, 77(1),* 16-28.

[107] Villar, J., Farnot, U., Barros, F., Victora, C., Langer, A., & Belizan J.M. (1992) A Randomized Trial of Psychosocial Support during High Risk Pregnancies, *The New England Journal of Medicine, 327(18),* 1266-1271.

[108] Olds, D.L., & Kitzman, H. (1993). Review of Research on Home Visiting for Pregnant Women and Parents of Young Children. *The Future of Children, 3(3),* 53-92.

[109] McLiaghlin, F.J., Altemeier, W.A., Christensen, M.J., Sherrod, K.B., Dietrich, M.S., & Stern, D.T. (1992). Randomized Trial of Comprehensive Prenatal Care for Low-Income Women: Effect on Infant Birth Weight. *Pediatrics, 89(1),* 128-132.

[110] Alexander, G.R., & Korenbrot, C.C. (1995). The Role of Prenatal Care in Preventing Low Birth Weight. *The Future of Children, 5(1),* 103-120.

[111] Larson, C. P. (1980). Efficacy of Prenatal and Postpartum Home Visits on Child Health and Development. *Pediatrics, 66(2),* 191-197.

[112] Olds, D.L., Henderson, Jr., C.R., & Kitzman, H. (1994). Does Prenatal and Infancy Nurse Home Visitation have Enduring Effects on Qualities of Parental Caregiving and Child Health at 25 to 50 Months of Life? *Pediatrics, 93(1),* 89-98.

[113] Olds, D.L., & Kitzman, H. (1990). Can Home Visitation Improve the Health of Women and Children at Environmental Risk? *Pediatrics, 86(1),* 108-116.

[114] Hack, M. Klein, N.K., & Taylor, H.G. (1995). Long-term Developmental Outcomes of Low Birth Weight Infants. The *Future of Children, 5(1),* 176-196.

[115] Reichman, N. E. (2005). Low birth weight and school readiness. *The Future of Children, 15*(1), 91-116.

women. Some commenters opposed the additional requirements we proposed for pregnant women while other commenters suggested programs would require additional funds if they increased services to pregnant women.

Response: We understand the concerns some commenters described, especially related to cost. However, pregnant women are enrolled in Early Head Start programs, and therefore, funding is provided for these services. This subpart primarily reflects current practice that was not included in the regulation. We retained this section to codify practices related to pregnant women.

Comment: Some commenters recommended programs carefully consider when to enroll pregnant women so that their children will be able to enroll in the Early Head Start program.

Response: While we agree with this comment, we do not think there is a need for a program performance standard to require such consideration.

Comment: Some commenters suggested that the entire subpart should refer to expectant families rather than pregnant women, or requested clarification about the scope of services required for a pregnant mother of an enrolled child who is not herself enrolled in Early Head Start.

Response: This subpart pertains only to enrolled pregnant women, and we revised §1302.80(a) to further clarify this. While we made it clear that relevant services should include the entire expectant family, wherever possible, pregnant women are the family member who is enrolled in Early Head Start. Further, §1302.46 describes services for expectant families of enrolled children that may be relevant, but programs must only provide opportunities to learn about healthy pregnancy and post-partum care to expectant parents of enrolled children who are not themselves enrolled. We did not make revisions based on these comments.

*§1302.80 Enrolled pregnant women.*

This section describes the services programs must provide to enrolled pregnant women. It requires programs to assess whether or not enrolled pregnant women have access to an ongoing source of health care and health insurance, and if not, to facilitate their access to such care and insurance. It also includes a requirement for a newborn visit. We received comments on this section and discuss them below.

Comment: One commenter explicitly opposed the new requirement in paragraph (b) to assist pregnant women in accessing health insurance.

Response: Ensuring pregnant women have health insurance is critical to ensuring they receive adequate prenatal care.[116,117,118] We did not revise the provision.

Comment: Some commenters requested clarity about what we meant by "as quickly as possible" in regard to the requirement in paragraph (b) that programs support access to health care for pregnant women. Commenters suggested 30 or 45 days.

Response: While we agree that 30 or 45 days are both reasonable interpretations of "as quickly as possible," in some cases this requirement should be met more quickly, and in other cases challenges may arise that prevent programs from providing these services within those timeframes. Therefore, it is not appropriate to regulate a precise time frame. We did not revise the provision.

Comment: Some commenters recommended we require programs to refer families to emergency shelters or transitional housing in cases of domestic violence or homelessness.

---

[116] Marquis, M. & Long, S. (2002). The role of public insurance and the public delivery system in improving birth outcomes for low-income pregnant women. *Medical Care (40)*, 1048–1059.

[117] Howell, E. (2001). The Impact of the Medicaid expansions for pregnant women: A synthesis of the evidence. *Medical Care Research Review,(58)* 3–30.

[118] Phillippi, J. C. (2009). Women's perceptions of access to prenatal care in the United States: A literature review. *Journal of Midwifery & Women's Health*, *54*(3), 219-225.

Response: Paragraph (c) already requires programs to refer families to emergency shelters or transitional housing, as appropriate.

Comment: Many commenters suggested we revise what was §1302.82(b) to require programs to offer but not necessarily provide a newborn home visit within two weeks because families should have the right to refuse. Some commenters asked that programs be allowed to consider cultural practices and length of hospital stays or illness in requiring an initial home visit at two weeks.

Response: The initial home visit is planned with the pregnant woman and her family as part of prenatal services that a program provides and the timing of the visit can reflect the beliefs and circumstances of the family. We clarified this intent by revising what is now §1302.80(d) to require that programs must schedule a home visit within two weeks.

Comment: Commenters requested clarification about the qualifications for the "health staff" mentioned in what was §1302.82 (b) who perform the two-week postpartum visit.

Response: We removed the reference to "health staff" in what is now §1302.80(d) to clarify programs have flexibility to staff the home visit in a manner that is appropriate for individual family needs. We now call this visit a newborn visit.

*§1302.81 Prenatal and postpartum information, education, and services.*

This section strengthens program performance standards pertaining to enrolled pregnant women by requiring programs to ensure all enrolled pregnant women have opportunities to learn about various relevant topics. It also makes clear that programs must address needs for appropriate supports for emotional well-being, nurturing and responsive caregiving, and father engagement during pregnancy and early childhood.

Comment: Some commenters suggested we revise paragraph (a) and the title of this section to clarify the expectation for the level of service delivery.

Response: For clarification, we have changed the title of this section and the phrase in paragraph (a) to "prenatal and postpartum information, education, and services."

Comment: Some commenters suggested that maternal and paternal depression should be included in the list of prenatal and postpartum services described in paragraph (a). Some commenters explicitly suggested that expectant families be screened for both prenatal and postnatal depression.

Response: We revised the language in paragraph (a) to include parental depression.

Comment: Commenters recommended we require programs to use tools and resources to assess risk factors and needs of expectant families. Further, some commenters requested inclusion of explicit requirements regarding the hours and days or number of home visits required for pregnant women.

Response: We believe we struck the right balance in allowing programs to determine the specific ways to achieve the outcomes and do not think additional prescriptive federal requirements are necessary. We did not make these changes.

Comment: Some commenters suggested additions to the required educational services regarding oral health for both pregnant women and newborns during the newborn home visit.

Response: We do not believe that discussing later oral health is an appropriate focus of this newborn home visit. We did not revise the provision.

Comment: Some commenters requested guidance about the availability of prenatal educational materials. Other commenters suggested that we issue guidance to make programs

aware of the educational materials available free of charge through the CACFP regarding nutrition, physical activity, and breastfeeding.

Response: As commenters noted, there are materials available through USDA, and other sources that could be used, free of charge to provide prenatal educational services to pregnant women and their families. We believe programs can easily access this information and do not think changes are needed to the regulation.

*§1302.82 Family partnership services for enrolled pregnant women.*

This section describes requirements for programs to provide family partnership services for enrolled pregnant women.

Comment: Some commenters wanted this section to include specific language for including fathers and father engagement in family partnership services for enrolled pregnant women.

Response: We agree that the language should more explicitly reflect the role of fathers and revised paragraphs (a) and (b) accordingly.

**Human Resources Management; Subpart I**

In this subpart, we combined all previous performance standards related to human resources management into one coherent section. This subpart includes requirements for personnel policies, staff qualifications, training and professional development, and staff health and wellness and volunteers. We renamed the subpart Human Resources Management to better encompass the requirements in this subpart. We received many comments on this subpart. We summarize and respond to these comments below.

*§1302.90 Personnel policies.*

This section requires programs to establish written personnel policies and procedures, sets forth a background check process, standards of conduct for staff, consultants, and volunteers, and staffing requirements when programs serve DLLs. We received many comments on our background check requirements. We discuss these and other comments on this section below.

Comment: Commenters supported the general requirement in paragraph (a) that programs develop written personnel policies and procedures. Many commenters asked us to provide more clarity about the policy council's role in hiring and firing staff. Some commenters asked us to require programs to make policies and procedures available to all staff. Some commenters asked us to prescribe exactly what program policies and procedures must contain.

Response: We revised paragraph (a) to read, "A program must establish written personnel policies and procedures that are approved by the governing body and policy council or policy committee and that are available to all staff." We purposely devised this rule to be less prescriptive to afford programs flexibility and autonomy so we did not include additional specificity about personnel policies and procedures other than what is required in paragraphs (b), (c), and (d) in this section. We revised this paragraph to clarify that staff have access to the personnel policies and procedures and to reflect the Act's requirement that the governing body and policy council or policy committee must review and approve the program's personnel policies and procedures. We relied on the Act for the governance requirements on hiring and firing so we did not make any changes.

Comment: Commenters generally supported our background check requirements in paragraph (b), noting that they were in the best interests of children and align with the Head Start Act and Child Care Development Block Grant Act of 2014 (CCDBG). Commenters expressed

some concern with potential costs associated with the requirements. Some commenters recommended additional alignment, such as with provisions from Section 658(H) of CCDBG that require programs to complete the background check process within 45 days. Some commenters asked us to mirror exactly what the Act states about background checks to minimize conflict. They did not interpret the Act to require fingerprints with criminal history records checks. Others requested additional amendments such as limits to fees a program may charge to process criminal history checks, mandates for confidentiality, an appeal process, and an exemption for some employees. Some commenters recommended we rename paragraph (b) to improve clarity.

Response: We believe our background check requirements align with the Act and generally align with section 658(H) of CCDBG. However, we did not change the timeframe we prescribed for programs to complete background checks. We believe 90 days is appropriate, particularly since the Act requires Head Start programs to complete one of the checks before hire. We did not address background check fees in this rule. We understand programs may bear costs associated with background checks and we encourage programs to use the resources available to them and consider ways to allocate funds differently to cover these costs. We do not think it is the best interest of Head Start children to allow exemptions from the background checks. In regard to concerns about privacy, we expect programs will address confidentiality in their written policies and procedures because paragraph (c)(1)(iv) requires programs to ensure all staff, consultants, and volunteers comply with confidentiality policies. We did not require programs to establish a background checks appeal process. If either prospective or current employees decide to challenge background check findings, we encourage programs to direct them to the state, tribal, or federal agency that conducted the check. We agree the title of

paragraph (b) was not clear enough and have renamed it "Background checks and selection procedures."

Comment: Some commenters expressed concern about the legality of asking prospective employees for their dates of birth. Other commenters were concerned if we did not reference Title VII of the Civil Rights Act of 1964, programs could use background checks to discriminate in hiring practices against protected individuals such as African Americans and Hispanics.

Response: Dates of birth are probably the most important factor needed to identify an individual and are necessary to conduct background checks. The Age Discrimination in Employment Act of 1967 does not prohibit an employer from asking for date of birth or age. In fact, the U.S. Equal Employment Opportunity Commission (EEOC) specifically ruled that an employer that asks for date of birth or age does not automatically violate that act. As a best practice, the EEOC urges employers to clearly disclose to applicants why they need birth dates.[119] Title VII of the Civil Rights Act of 1964 (Title VII) requires employers to screen individuals based on criminal history in a manner that does not significantly disadvantage protected individuals, such as Hispanics and African Americans. In §1303.3 we include Title VII of the Civil Rights Act among the other federal laws Head Start programs need to comply with.

Comment: Some commenters found our structure for paragraph (b) to be confusing and asked us to clarify whether programs must complete the background check before a person was hired or within 90 days. Commenters offered suggestions, such as adding a provision that required programs to hire individuals who otherwise cleared one of the checks before they were hired or to limit their access to children until all background checks are cleared.

Response: We agree that our structure for paragraph (b) made it difficult to clearly understand what type of background check needed to be conducted before or after an individual

[119] *See* www.eeoc.gov/facts/age.html for more facts about age discrimination.

is hired. We did not change the background check requirements but we revised paragraphs (b)(1) and (2) to improve clarity. Paragraph (b)(1) now clearly requires programs to obtain either state or tribal criminal history records with fingerprint checks or federal criminal history records with fingerprints before an individual is hired. Paragraph (b)(2)(i) now clearly requires programs have 90 days after an individual is hired to obtain whichever criminal history check listed in paragraph (b)(1) they could not obtain before hire. It also states in paragraph (b)(2)(ii) and (iii) that programs have 90 days after an employee is hired to complete background checks with child abuse and neglect registries, if available, and sex offender registries. To ensure child safety while the all of the background checks are being completed, we added paragraph (b)(3) to require programs ensure the new employee will not have unsupervised access to children until their full background check process is complete.

Comment: Some commenters were concerned we would find programs either non-compliant or deficient if there were no child abuse and neglect registries in their state. Some commenters suggested we should specify whether programs must use state or national sex offender registry and we should require programs to conduct searches on the National Crime Information Center.

Response: We require programs to obtain checks from the national sex offender registry and state child abuse and neglect and sex offender registries, if available. We think the regulation is strong on ensuring child safety and do not think it is necessary to require programs to check the National Crime Information Center.

Comment: Some commenters recommended we require programs to conduct background checks on volunteers, contractors, and family child care providers.

Response: We agree contractor and family child care providers are required to have background checks. To clarify our intent we added the phrase "directly or through contract" to paragraph (b)(1) and clarify that transportation staff and contractors are also subject to these requirements, consistent with the policy proposed in the NPRM. We also clarify that all staff, consultants, and contractors are subject to this requirement. We do not require background checks for volunteers because there is some evidence this stifles parent volunteering and engagement, which is fundamental to Head Start's two-generation approach. Additionally, as described in paragraph (c)(1)(v) and §1302.94(b), programs must ensure children are never left alone with volunteers.

Comment: Many commenters were concerned about language in the preamble about programs providing justification for hiring individuals with arrests or convictions in relation to what was paragraph (b)(3) in the NPRM and is now paragraph (b)(4). Commenters noted this caused unnecessary bureaucracy and a few thought it contradicted the Act.

Response: Paragraph (b)(4) in this rule requires programs to review each employment application to assess relevancy. It does not conflict with the Act and does not require written justifications.

Comment: We received some comments about disqualification factors. Some commenters suggested we revise what is now paragraph (b)(4) to clarify that school-based grantees can use whichever state-imposed disqualification factors apply to them. Some commenters suggested we allow tribes to use tribal disqualification factors. Some commenters asked us to list specific pre-employment or disqualification factors.

Response: We revised paragraph (b)(4), which was paragraph (b)(3) in the NPRM, to clarify programs must use "applicable state or tribal Child Care Development Fund (CCDF)

disqualification factors in any employment decisions." However, because pre-employment and disqualification factors vary by state and tribe, we did not list those factors here.

Comment: Most commenters supported the requirement in what was paragraph (b)(4) in the NPRM but is now paragraph (b)(5) to conduct complete background checks every five years. They believed what we proposed aligns with background checks across multiple early childhood programs and with typical hiring practices. Some commenters opposed this requirement because it would impose undue costs for programs. Many commenters suggested exemptions for programs that have a more stringent system in place. Some commenters offered other alternatives to the five-year requirement, like use of consumer reporting agencies because they are fast and more comprehensive, and background checks more frequently than every five years.

Response: We agree that our five-year requirement that now appears in paragraph (b)(5) in the NPRM aligns with other program requirements and with typical hiring practices. We understand there may be costs associated with background checks. However, we believe child safety is paramount. Therefore, we expect programs to use resources available to them and to allocate funds differently, if necessary, to cover these costs. We revised paragraph (b)(5) to exempt a program from the five-year requirement if the program can demonstrate it has a more stringent system in place that will ensure child safety.

Comment: Some commenters asked us to clarify the requirement in what was paragraph (b)(5) and is now paragraph (b)(6) about consideration of current and former program parents for employment vacancies. They requested we clarify that programs are not required to consider otherwise qualified parents for positions if they do not apply.

Response: We revised paragraph (b)(6) to clarify that parents should be considered only for jobs for which they apply.

Comment: Some commenters asked us to define: "background check," "before and individual is hired," "clearance by registries," employment application," and the term "hire" as distinct from the phrase "an offer of employment."

Response: We did not define these terms or phrases. Programs should consider their ordinary and customary meanings.

Comment: Commenters generally supported the standards of conduct described in paragraph (c). Some noted their support of the requirements in what is now paragraph (c)(1)(ii) that prohibit staff from using food or physical activity or outdoor time as a reward or punishment. Some commenters requested we add more specificity to the requirements in paragraph (c)(1)(ii). For example, some requested we expressly ban physical, mechanical, and chemical restraint, as well as seclusion. Some commenters stated that the terms "isolation," "sarcastic," "derogatory," and "humiliation" were subjective and asked us to define them. Some commenters recommended we delete the list of what staff must not do and include a standard by which staff should aspire to conduct themselves instead.

Response: We do not think our standards of conduct in paragraph (c)(1)(ii) require more specificity. We made small changes to this paragraph to improve clarity that did not change meaning. For example, the prohibition on public or private humiliation, that was found in paragraph (c)(1)(ii)(I) in the NPRM, was moved to paragraph (c)(1)(ii)(F). We agree it was appropriate to add a requirement to the standards of conduct that expressed the positive and supportive behavior all staff, consultants, and volunteers must exhibit. This standard can be found at paragraph (c)(1)(i) and standards describing prohibitions that were in paragraph (c)(1)(i) in the NPRM are now found at paragraph (c)(1)(ii).

We did not define “isolation,” “sarcastic,” “derogatory,” and “humiliation” because we expect programs to consider these terms’ ordinary and customary meanings. Furthermore, we did not amend paragraph (c) to use the terms physical, mechanical, and chemical restraint or seclusion. We believe our standards of conduct clearly convey prohibition on restraint. Furthermore, the requirement now found in paragraph (c)(1)(ii)(B) that expressly prohibits isolation as a form of discipline and the requirement in paragraph (c)(1)(v) that prohibits staff from leaving children alone or unsupervised at any time more clearly convey our prohibition on seclusion.

Comment: Some commenters suggested we reference staff, contractors, and volunteers in paragraph (c)(1)(iii) so programs understand who must adhere to standards of conduct.

Response: We agree that we must clarify standards of conduct described in paragraph (c)(1) apply to staff, consultants, contractors, and volunteers. We revised paragraph (c) accordingly.

Comment: Some commenters requested we reaffirm Head Start’s policy that does not exclude same sex couples and add “sexual orientation” to what is now paragraph (c)(1)(iii)

Response: We agree, and we revised paragraph (c)(1)(iii) accordingly.

Comment: Commenters generally supported that personnel policies include appropriate penalties for staff that violate standards of conduct. Commenters asked us to clarify paragraph (c)(2), which requires personnel policies and procedures to include appropriate penalties for staff who violate the standards of conduct. Commenters requested to know who determines appropriate penalties.

Response: We expect programs to designate staff that will determine appropriate penalties. We think local programs are best suited to determine who that staff should be so we

did revise the provision. We also clarified in paragraph (c)(2) that personnel policies and procedures must include appropriate penalties for consultants and volunteers, as well as staff, who violate the standards of conduct.

Comment: Some commenters raised concerns with the requirement in paragraph (d)(1) about communication that is effective with DLLs and their families. Some commenters were concerned about the rarity of certain languages and corresponding lack of interpreters or qualified teachers. Commenters pointed out that, in some instances, staff who speak the second language are sometimes not proficient in English and it is costly for programs to train them.

Response: The prior performance standards required that programs be able to communicate effectively with families, either directly or through an interpreter. This has been a long-standing requirement and expectation in Head Start. If program staff, interpreters, or translators do not speak all languages of the families in the program, then other support services should be utilized, such as interpretation services available via phone and other methods. We revised paragraph (d)(1) to take into account those extremely limited circumstances where interpretation services are not available by phone and other methods and to clarify the requirement by including "to the extent feasible."

Comment: Some commenters raised concerns with the standard in paragraph (d)(2) that requires programs to have at least one staff member who speaks the home language of DLLs in classes where the majority of children speak the same non-English language. Commenters were concerned about the lack of qualified bilingual staff, particularly for infant groups. Some commenters asked whether a waiver will be available for this requirement, and how to find interpreters.

Response: The prior performance standards required that at least one staff member or home visitor speak the language of the majority of children in the class or home-based program. This has been a long-standing requirement and expectation in Head Start. When the majority of children speak the same language, we believe it is imperative that staff be able to provide the children with high-quality language experiences. There is not a waiver available for this requirement.

*§1302.91 Staff qualification and competency requirements.*

This section includes requirements for staff qualifications and competencies. We raised many staff qualifications over those in the previous performance standards, as required by the Act. In response to comments, we included some new staff qualification requirements for child and family services management staff, family services staff, and mental health consultants. We also restructured the section to improve clarity. We discuss comments and our responses below.

Comment: Some commenters offered general comments that addressed the entire section. Some requested guidance on how to measure sufficient knowledge, training, and experience, as it relates to requirements throughout this section. Other commenters suggested we require all staff in all program options to have the knowledge and ability to work with children with disabilities. Some commenters noted the need to fund and implement strategies with higher education to ensure degree and credential programs include appropriate coursework content specific to the infant, toddler, and preschool workforce. Other commenters suggested that the credential or degree requirements for bilingual staff be more flexible, as it is very difficult to find bilingual staff who are also qualified in early childhood education. Further, some commenters recommended we require programs to review state early childhood workforce requirements on a

regular basis to ensure that Head Start's requirements support and enhance state-based career ladders.

Response: We revised paragraph (a) to integrate professional development to support program service staff so they have the knowledge, training, experience, and competencies to fulfill their roles and responsibilities. We think programs should be continuously supporting staff in fulfilling their roles and responsibilities. We also revised paragraphs in this section to expand competencies for teachers, assistant teachers, family child care providers, and home visitors to include working with children with disabilities and DLLs to support effective service delivery. While we recognize recruitment of bilingual staff who are qualified in early childhood education may be challenging, we believe children who are dual language learners need highly-qualified teachers in order to achieve meaningful child outcomes. Additionally, while we agree access to appropriate coursework and financing is critical for a well-trained workforce, many of these challenges are beyond the scope of this final rule.

Comment: Commenters generally supported our proposal, in paragraph (i) of the NPRM and now found in paragraph (b), to require Early Head Start and Head Start program directors hired after the effective date of this final rule to have at least a baccalaureate degree. Some commenters were concerned this requirement would make it too difficult for programs to hire and retain directors. Some commenters suggested we allow programs to implement an alternate approach, such as allowing time for directors to acquire appropriate degrees or restricting the requirement to new hires. Other commenters supported a stronger requirement for directors and suggested we require directors to have a master's degree. Some commenters suggested additional requirements regarding experience or competencies.

Response: We retained our standard to require at least baccalaureate degrees for program directors as proposed in the NPRM. We revised the minimum background experience requirement to include administration in addition to supervision of staff and fiscal management. However, we retained local flexibility to define other necessary experience and competencies including experience in early childhood.

Comment: Some commenters supported our standard in what was paragraph (h)(3) in the NPRM that allowed flexibility for programs to establish qualifications for their fiscal officer based on an assessment of their needs and secure regularly scheduled or ongoing services of a fiscal officer. Other commenters suggested that fiscal functions should be led by a qualified accounting professional with expertise in understanding the operational risks, the potential for misalignment of funding, and the financial reporting associated with federal funding.

Response: We revised the standard for fiscal officer qualifications, now found in paragraph (c), to clarify that programs must consider the fiscal complexity of their organization to ensure fiscal officers have sufficient knowledge and experience to fulfill their role. We also require newly hired fiscal officers to be certified public accountants or have a baccalaureate degree in a related field.

Comment: The NPRM did not specifically address qualifications for staff who manage family services, health services, and disabilities services other than to require in paragraph (a) that all staff and consultants have sufficient knowledge, training, and experience to fulfill their roles and responsibilities. The NPRM did not retain language from the previous program performance standards about disabilities and health managers because we thought it was vague and not helpful for programs. Some commenters opposed our approach and interpreted it to mean we were removing services area management. Commenters suggested we require all

supervisors have a baccalaureate degree. Other commenters suggested we require all supervisory staff to have knowledge of and training on reflective supervision. Further, some commenters provided explicit suggestions for qualifications that the health services manager should be required to have, such as a minimum of an associate's or bachelor's degree in health, public health, nursing, or a related field, or an early childhood education degree with health-related certification or licensure. In addition, some commenters suggested qualifications for disabilities managers, including a bachelor's degree with a certification in early childhood special education or related field. Finally, some of these commenters also suggested adding competencies for disabilities managers, such as experience working in an early childhood education setting.

Response: We did not intend for the NPRM to signal the removal of service area management. Our goal in omitting references to service area management was to increase local flexibility to better meet the variety of needs in programs of differing size. However, we revised the rule to require degree qualifications for newly hired family services, health, and disabilities managers. Specifically, as stated in paragraph (d)(1), staff responsible for the management and oversight of family services, health services, and services to children with disabilities hired after the effective date of this rule, must have at a minimum, a baccalaureate degree, preferably related to one or more of the disciplines they oversee. Programs should not interpret this requirement to mean they must have different people for disabilities management, family services management, and health services management. Due to the varying sizes and complexities of program structures, we think programs must have the flexibility to decide on their own appropriate staffing patterns to meet these oversight and management responsibilities.

Comment: In what was paragraph (e) in the NPRM, we proposed minimum requirements for education coordinators, as required by the Act. Some commenters recommended phasing in a

requirement for education coordinators to have a master's degree. Some commenters requested additional flexibility in the requirement, such as allowing the degree to be in elementary education or family studies or allowing relevant coursework combined with a degree in an unrelated field. Additionally, some respondents suggested that education coordinators should have experience working explicitly with the age group of the classes they oversee.

Response: We believe the requirement as written is sufficient to ensure high-quality services and retained this requirement as proposed, now found in paragraph (d)(2). We did not include additional flexibility since minimum requirements for education coordinators are set by the Act. We made small technical revisions.

Comment: We specifically solicited comments on the appropriate qualifications for Early Head Start teachers, which was described in paragraph (b)(1) and now is located at paragraph (e)(1). We received a variety of different recommendations. For example, some commenters suggested we retain requirements from the Act that Early Head Start teachers have at least CDA. Some commenters suggested the CDA is adequate only if staff work closely with a coach, and some commenters recommended we require an associate's degree in early education. Others recommended we require a baccalaureate, and some supported phasing in baccalaureate requirements. Some commenters supported allowing one teacher in an Early Head Start class to meet a higher qualification and for the second teacher to have the current CDA qualification. Some commenters requested clarification of the term "equivalent course work," and offered suggestions. Some commenters expressed concern that increasing qualifications would impact programs' ability to hire parents and other community members who accurately reflect and can address the culturally and linguistically diverse needs and experiences of children and families, particularly in programs serving rural, migrant, and tribal populations.

Response: We maintained the staff qualification requirements for Early Head Start as proposed. Lowering these requirements is beyond the scope of this rule because they are set by the Act. We did not raise the requirement to a baccalaureate degree, although we agree with recommendations from the National Academy of Sciences (NAS) report[120] that a lead teacher in every class with a bachelor's degree and demonstrated competencies is optimal. Grantees are encouraged to implement effective career and professional development models and might find it particularly effective to have at least one lead teacher with higher credentials and another teacher who meets the minimum qualifications. We do not define "equivalent course work" because different colleges and universities describe majors and classes in a variety of ways; programs must evaluate the content and relevancy of the individual courses their teachers have taken.

Comment: We specifically solicited comments on the appropriate qualifications for Head Start teachers. In general, commenters supported requiring bachelor's degrees for all Head Start teachers. Some commenters suggested that all staff working directly with children and families should have a bachelor's degree. Other commenters expressed concern about compliance with higher standards, given the difficulties they already face in finding appropriately credentialed staff. These commenters were especially concerned with adding new credential requirements without designated funding to achieve the higher standards. Some commenters requested we allow degrees to be in a related field such as elementary education or family studies. Some commenters suggested the teacher qualification requirements should mirror language of other federal programs that supports alternative pathways and demonstrated competencies in lieu of credentials. Others recommended partnering with the Department of Education on an early education TEACH campaign in order to recruit highly qualified teachers. Other commenters

[120] Institute of Medicine (IOM) and National Research Council (NRC). 2015. Transforming the workforce for children birth through age 8: A unifying foundation. Washington, DC: The National Academies Press.

suggested allowing programs to use proxy indicators of competence such as years of experience, completed training, or CLASS scores as a way to maintain employment of individuals who do not meet degree requirements. Some commenters were concerned that the broad language of "equivalent coursework" may create unnecessary confusion in the field as to whether Teach for America candidates may be hired; and suggested that clarifying language be included in the final rule.

Finally, commenters described challenges in recruiting and retaining qualified staff members who speak the community's language and understand its nuances. These commenters expressed concern that increasing qualifications would impact programs' ability to hire parents and other community members who accurately reflect and can address the culturally and linguistically diverse needs and experiences of children and families, particularly in programs serving rural, migrant, and tribal populations.

Response: In paragraphs (e)(2) and (3), we maintained the staff qualification requirements for Head Start teachers as proposed and as required by the Act. Lowering these requirements is beyond the scope of this rule because minimums are set by the Act. The Act also does not grant us authority to allow exemptions or proxy indicators of currently employed teachers who do not meet qualification requirements. As noted earlier, we are in agreement with the NAS report that having teachers with a baccalaureate degree in every class is optimal.[121] We have updated the statutory reference in paragraph (e)(2)(ii) to include all of the alternative credentials, including Teach for America.

Comment: We received some comments on our requirement in what is now paragraph (e)(3) for qualifications for assistant teachers. Some commenters requested clarification on whether or not assistant teachers with a CDA credential must also be enrolled in a program leading to an

[121] Ibid.

associate or baccalaureate degree, or if assistant teachers without a CDA credential must be enrolled in either a degree program or CDA credential program. Some commenters suggested we should encourage assistant teachers to attain associate's degree as a career ladder towards becoming a teacher. Other commenters expressed concern that two years is not long enough for an assistant teacher to attain a credential or degree. Some commenters expressed confusion about the difference between teacher assistants and teacher aides.

Response: As required by the Act, the provision in paragraph (e)(3) requires Head Start assistant teachers have at least a minimum of a CDA credential or be enrolled in a CDA credential program to be completed within two years of the time of hire. We revised this provision to clarify that the minimum requirement also permits a state-awarded certificate that meets or exceeds the requirements for a CDA credential. While assistant teachers with a CDA credential or state-awarded equivalent are not required to be enrolled in a program that will lead to an associate or baccalaureate degree, assistant teachers that are enrolled in a program that will lead to such a degree meet the qualification requirements. We consider assistant teachers to be a second educational staff person working within a preschool setting who supports the teacher in implementing planned curricular activities with the children. A teacher aide is a third person who may or may not provide direct curriculum support.

Comment: We specifically solicited comments on the appropriate qualifications family child care providers, which was addressed in paragraph (g) in the NPRM and now is found in paragraph (e)(4)(i). Some commenters objected to our proposal in what is now paragraph (e)(4)(i) to shorten the timeline for family child care providers to attain credentials from two years to eighteen months. Conversely, some commenters suggested we require family child care providers meet the same qualifications as center-based teachers.

Response: We retained the requirements for family child care providers as proposed. We believe our requirement in paragraph (e)(4)(i) appropriately balances the need to strengthen requirements and acknowledge funding realities and the ability of higher education to support degrees in early childhood. We did not substantively revise the provision.

Comment: Some commenters suggested the requirement in what is now paragraph (e)(4)(ii) that a child development specialist have at a minimum, an associate degree in child development or early childhood education is too low, given their responsibilities. Some commenters requested we define "child development specialist" as it relates to family child care.

Response: We agree the work that child development specialists do with family child care providers to support high-quality service delivery in family child care settings, as described in §1302.23(e) requires a higher level of expertise. Therefore we amended what is now paragraph (e)(4)(ii) to more clearly link the duties of the child development specialist as described in §1302.23(e) and require child development specialists have a baccalaureate degree in child development, early childhood education or a related field.

Comment: Some commenters supported our focus on both staff qualifications and the staff competencies for teaching staff we described in what were paragraphs (b)(2) and (c)(2) and are now found in paragraph (e)(5). Some commenters suggested additional competencies for teaching staff including understanding the birth to five developmental continuum; partnering with and engaging parents in their child's education; effective team teaching; culturally and linguistically responsive practices; second language acquisition; administering assessments; and the capacity and desire to expand skills, knowledge and abilities.

Response: Programs have the flexibility to determine the appropriate competencies to ensure high-quality staff and program effectiveness within their own communities. However, we

revised paragraph (e)(5) to add use of assessment and promoting the progress of children with disabilities and dual language learners.

Comment: Many commenters expressed concern with or opposed our proposal to require home visitors have at least a CDA in what was paragraph (f) in the NPRM. Concerns with our proposal included: it was more important to focus on home visitor skills; home visitors are already trained and certified in other home visiting curriculum and that a CDA would be an inefficient use of funds; time should be provided to allow home visitors to obtain a CDA; and our proposal would disqualify home visitors with sociology, psychology, or other possibly relevant degrees.

Some commenters supported our proposal for home visitors to have a minimum of a CDA, although some of these commenters suggested their support was conditional on additional funds to raise home visitor salaries accordingly. Some commenters suggested additional flexibility for staff to meet this requirement such as an alternative or equivalent credential. Many commenters recommended we revise the standard to allow the home visitor to have a CDA or equivalent coursework or be enrolled in coursework to earn a CDA. Some commenters suggested that the minimum requirement of a CDA was too low and recommended we require at least an associate's degree in early childhood, child development or a related field with equivalent coursework that could be attained within a realistic timeframe. Some commenters suggested we set a national percentage goal for home visitors with bachelor's degrees.

Response: We believe our minimum requirement of a CDA for home visitors, now found in paragraph (e)(6)(i) is reasonable and in fact, given the complex nature of their work, that it is preferable for such staff to have an associate's or baccalaureate degree in a relevant field. We revised this requirement to clarify the credentials necessary for this position. In order to allow

adequate time for staff to obtain a CDA, we are delaying the requirement to comply with this provision for two years. We also revised competency requirements in paragraph (e)(6)(ii) to include supporting children with disabilities and DLLs, and building respectful, culturally responsive, and trusting relationships with families.

Comment: The NPRM required all staff, including family services, health, and disabilities staff, to have sufficient knowledge, training, and experience to fulfill their roles and responsibilities. It did not retain vague language from the prior program performance standards about family services, health, and disabilities staff. We specifically requested comments on specific degree requirements for these staff. We received comments in support and opposition of our approach. Some commenters praised our removal of these provisions, and stated it would increase local flexibility for programs to set their own qualifications and better address their professional needs. Other commenters disagreed, and instead suggested we at least restore the previous requirements and suggested we include new degree competencies and qualifications, such as a minimum of a baccalaureate. Some commenters provided specific recommendations for strengthening qualifications for family service workers, such as a requirement that they, at a minimum, have an associate's degree in social work or a related field.

Response: We agree with the concerns commenters raised about child and family services staff and made revisions accordingly. We added a new requirement in paragraph (e)(7) to require newly hired staff who work on family partnership services have at least a credential or certification in social work, human services, family services, counseling or a related field within eighteen months of hire. We believe it is optimal for these staff to have an associate's or baccalaureate degree in a related field. We restored health professional qualification

requirements in paragraph (e)(8)(i), and we expanded requirements for competencies to include assistant teachers and family child care providers in paragraph (e)(5).

Comment: Some commenters offered suggestions for the requirement for mental health consultants in what is now paragraph (e)(8)(ii). Some requested clarification about what it meant to "support" mental health services. Some commenters suggested mental health consultants be licensed or certified, demonstrate specific competencies, or have a degree in social work, professional counseling, or marriage and family therapy. Other commenters opposed the requirement that a mental health consultant be licensed or certified, citing inadequate funding.

Response: We think it is important that mental health consultants are licensed or certified mental health professionals so they have the training needed to provide the appropriate scope of services to young children and families. To strengthen the standard, we revised what is now paragraph (e)(8)(ii) to require that mental health consultants have, to the extent possible, knowledge of and experience in serving young children and their families. We also removed the language that referenced staff who "support" mental health services to improve clarity. We did not address other suggested requirements, because we believe that local programs need flexibility to determine the best approach to ensure mental health consultants are able to meet child and family needs.

Comment: Some commenters requested clarification for our use of the term "nutritionist" in what is now paragraph (e)(8)(iii). Commenters were concerned it could be interpreted to include a person who lacks formal education or training in the area of nutrition. Some commenters suggested we require registered dieticians and licensed nutritionists oversee all nutrition services.

Response: We believe the requirement that nutrition services be provided by registered dieticians and nutritionists is sufficient to ensure high-quality services.

Comment: Some commenters suggested we modify staff qualification requirements for migrant and seasonal and American Indian and Alaskan Native programs because these programs often find it difficult to hire staff with either credentials or degrees. For example, some commenters recommended we broaden the requirement for using child development specialists with associate's degrees in family child care to apply to migrant and seasonal programs because of challenges to find bilingual qualified staff in rural communities. Commenters recommended we allow migrant or seasonal Head Start programs to have lower staff qualifications than other Head Start programs and help them obtain degrees.

Response: Although we understand the challenges migrant and seasonal and American Indian and Alaskan Native programs face, we require these programs to hire qualified staff to work with children. However, we encourage programs to implement individualized professional development plans for all staff.

Comment: Some commenters suggested we add specific qualifications for coaches, such as a minimum of a bachelor's degree in in early childhood education or child development. Some commenters suggested we require coaches to demonstrate specific areas of knowledge, skills, and experience.

Response: We agree that in order for coaches to effectively support education staff they should have a minimum of a baccalaureate degree in early childhood education or a related field. Therefore, we have added a requirement in paragraph (f).

Comment: Some commenters requested clarification about teachers and providers working within community child care partnership sites need to meet the staff qualification

requirements. They stated that increased requirements for Early Head Start programs could harm partnerships with community child care programs.

Response: Teachers and family child care providers must meet staff qualification requirements. Grantees funded with EHS-CC Partnership funds are allowed 18 months following receipt of the award to help staff attain the required credentials or degrees.

*§1302.92 Training and professional development.*

In this section, we describe requirements for staff training and professional development. We require a coordinated system of professional development, including individualized coaching for all educators, including family child care providers. Commenters generally supported our integrated systems approach, and noted support for our more individualized professional development. Others cited research in support of our coaching requirements. We made revisions to strengthen professional development and training for all staff and to improve clarity of coaching requirements. We discuss these and other comments below.

Comment: Some commenters opposed our decision to omit a previous standard for staff performance appraisals because they stated these appraisals are an important way to identify professional development needs and to provide data to develop a training and technical assistance plan.

Response: We do not believe we need specific requirements for the process by which programs assess staff. Instead, we focused this section on requiring programs to implement a system to ensure all staff members receive the supportive training and development they need to provide high-quality services. Programs that value staff performance appraisals may continue to use this method as part of their system. We did not revise this provision.

Comment: Some commenters expressed concerned about the burden of “all day” orientations for program consultants.

Response: Paragraph (a) requires programs to provide an orientation to all new staff, consultants, and volunteers. We did not include any reference to “all day” or any prescribed length of orientations. We feel the intent of the provision is clear as written. Therefore, we did not revise this provision.

Comment: Many commenters expressed concern about the requirement in what was paragraph (b) about training and professional development having academic credit, as appropriate. Commenters recommended we revise the requirement to include continuing education units (CEUs). Some commenters misunderstood the intent of the requirement, pointing out that training on CPR, Sudden Infant Death Syndrome (SIDS), etc. could not bear academic credit.

Response: Paragraph (b) requires programs establish and implement a systematic approach to staff training and development. We did not intend to require that all staff training within the required system provide academic credit. Rather, academic credit should be sought, when appropriate, for such training and staff development in order to support staff progress toward degrees and other goals. We did not revise this provision.

Comment: Some commenters requested clarification about whether coaching hours would count toward the requirement for 15 clock hours of professional development. Some commenters expressed concerns that coaching hours will not be eligible for state registry professional development trainings.

Response: We consider coaching hours applicable toward meeting the 15 clock hours of professional development per year, assuming the coaching hours are designed to assist staff in

increasing knowledge and acquiring new skills to help them provide high-quality services within the scope of their job responsibilities. Whether coaching hours are eligible for state registries is beyond the purview of this rule.

Comment: Some commenters request that parent engagement strategies be included in training and professional development.

Response: We revised what was paragraph (b)(2) and is now paragraph (b)(3) to require training for all staff on best practices for family engagement strategies. In addition, to appropriately address professional development for child and family services staff who are not education staff, we included a new requirement in paragraph (b)(4) to require training for family services, health, and disabilities staff to build on their knowledge, experience, and competencies to improve child and family outcomes. We also amended paragraph (b)(5) to include partnering with families as an area of the professional development for education staff.

Comment: Some commenters suggested there were disparities in training opportunities between lead teachers and teacher assistants.

Response: We believe it is important for the entire teaching team to receive appropriate training and professional development. Paragraphs (b)(5) and (c) require research-based approaches to professional development for all education staff, which includes assistant teachers.

Comment: Some commenters requested the training and professional development system explicitly include additional subjects, such as physical activity, outdoor play, positive behavior supports, and children with disabilities.

Response: We revised what is now paragraph (b)(5) to include partnership with families, supporting children with disabilities and their families, and use of data to individualize learning experiences. We did not include other revisions to broaden the focus of the requirement. This

paragraph appropriately emphasizes professional development for education staff on the central aspects of effective teaching. We think it is important this section focus on these key skills for education staff. Programs can choose to provide professional development on other topics if they determine it best meets the needs of the children and families they serve.

Comment: Many commenters were concerned about our requirement in what is now paragraph (b)(5) to require research-based approaches to professional development for education staff. Commenters expressed a variety of concerns, such as cost, and requested further clarification about the term "research-based approaches." Other commenters supported our emphasis on research-based professional development and noted this was important to improving Head Start quality.

Response: We believe effective professional development is central to the delivery of high-quality education services that foster strong child outcomes. We think the requirement in paragraph (b)(5) is important to ensure program quality. There is existing guidance at at the Early Childhood Learning and Knowledge Center (ECLKC)[122] about research-based approaches professional development and professional development. We believe this a reasonable minimum threshold that will ensure programs are able to demonstrate outcomes for teacher development. Therefore, we did not revise this provision.

Comment: We received many comments on our proposal to require coaching be a part of the research-based approaches to professional development. Many commenters opposed it because of concerns such as cost. Some commenters strongly supported it, and pointed to research that demonstrated its importance in high-quality implementation and strong child outcomes. Some commenters stated the requirement was too prescriptive and placed too much burden on programs, especially rural programs, and staff. Other commenters requested we

[122] http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/pd/pds/Mentoring/edudev_art_00050_081105.html

include more specificity and requirements for the proposed coaching systems, such as additional qualifications or expanding the requirement beyond education staff. Commenters also requested additional clarification, such as a definition of "intensive" coaching or which staff members are covered by the coaching requirement. Some commenters requested clarification about whether coaching could include online, remote and video supported coaching or if the requirement could be phased in, in order to build the capacity of coaching over time.

Response: We revised the structure of the coaching requirements to improve clarity. Coaching requirements are now found in paragraph (c) instead of paragraphs (b)(4) and (5) in the NPRM. We restructured these requirements to improve clarity, made revisions to the structure of this section and specifically to paragraph (c) to clarify the coaching requirements apply to education staff, and revised paragraph (c)(1) to incorporate a strengths-based approach. In paragraph (c)(1), we require programs to implement a research-based coordinated coaching strategy that assesses all education staff to identify their strengths and areas of needed support and to identify which staff would benefit most from intensive coaching. In paragraph (c)(2), we require programs to provide intensive coaching to, at a minimum the education staff identified as most benefiting from intensive coaching. In paragraph (c)(3), we require programs to provide other forms of research-based professional development to education staff who do not receive intensive coaching. In paragraphs (c)(4) and (5), we require specific elements of the coaching system.

The intent of these requirements is to ensure all programs utilize research-based coaching strategies, whether the strategies are employed via online or video supported methods is up to the grantee to determine. We acknowledge there are costs associated with implementing coaching strategies, but think is important for high-quality service delivery. We believe we appropriately

balance local flexibility with requirements to include basic features that research indicates will support progress. The requirement allows programs flexibility to define much of the structural and goal setting aspects of their coaching strategy, including staffing patterns. Moreover, the effective date of the coaching requirement is delayed for approximately one year after this rule is published so programs have sufficient time for effective implementation. Additionally, we revised what is now paragraph (d) to add more flexibility to address concerns that the coaching provisions were too prescriptive.

Comment: Commenters requested we include language in coordinated coaching strategies in what is now paragraph (c) about a range of embedded professional development approaches.

Response: Paragraph (c)(2) requires intensive coaching for a subset of staff members. Paragraph (c)(3) requires programs provide other forms of research-based professional development to education staff who do not receive intensive coaching.

*§1302.93 Staff health and wellness.*

This section includes requirements for staff health and wellness, including staff health checks to ensure child safety and standards to support staff wellness. We discuss comments and our responses below.

Comment: We received many comments on the standards in paragraph (a) that address initial health examinations and periodic reexaminations for staff members. Some commenters requested clarification about the tuberculosis screening requirement in paragraph (a) for the initial health examination, including why it is the only mandatory screening. Other commenters recommended we revise paragraph (a) to describe the purpose and aspects of the initial health exam and others offered suggestions about the periodic re-examination. Some commenters

recommend we include a reference to the Health Services Advisory Committee (HSAC) in this section. Many commenters stated that paragraph (a) conflicted with state requirements and would therefore make some collaborations difficult.

Response: We revised paragraph (a) to be consistent with state, tribal, and local laws, which will support collaborations. We also struck the specific requirement for screening for tuberculosis and instead reference that health examinations include screenings or tests for communicable diseases, as appropriate. This provides local flexibility to respond to local health needs and meet applicable requirements. We think it is too prescriptive to define how often a health re-examination should occur and did not prescribe the required timeframe. We also do not think it is necessary to prescribe requirements related to occupational health exams. Programs may want to use recommendations for doctors, jurisdiction, or the HSAC. We did think it was necessary to reference the HSAC in this section.

Comment: Some commenters recommend the standard in paragraph (b) should be strengthened to include activities beyond making mental health and wellness information available. For example, commenters suggested we broaden the focus of health and wellness or add a new standard for a daily staff health check. Some commenters recommend we note that an Employee Assistance Program could be used to implement these standards. Some commenters noted staff compensation contributed to stress and mental health problems and should be addressed.

Response: We agree we should strengthen paragraph (b), but that most of the specific suggestions were too prescriptive. We also believe it is important for programs to have flexibility to develop their own approach to ensure staff wellness. We revised paragraph (b) to specify that programs must provide regularly scheduled opportunities to learn about health

topics. Staff compensation is outside the purview of this regulation. We agree that the Employee Assistance Program could be helpful but do not think it is appropriate to prescribe that level of specificity.

*§1302.94 Volunteers.*

This section includes requirements related to the utilization of volunteers. We address comments below.

Comment: Some commenters recommended that we provide a definition for a regular volunteer and some commenters suggested we require volunteers receive an orientation on program and class procedures.

Response: We revised the requirement in paragraph (a) about screening for communicable diseases to be consistent with staff requirements in §1302.93. What constitutes a regular volunteer can vary by program so we did not define this term. Section 1302.92(a) already requires volunteers to receive an orientation on the goals and underlying philosophy of the program and on the ways they are implemented. We think this is sufficient.

**Program Management and Quality Improvement; Subpart J**

This subpart establishes the roles and responsibilities for a program's management system and sets requirements for a data-driven management system for continuous improvement toward high-quality service delivery. It also sets forth requirements for the implementation of this rule. We received many comments on this subpart, most of which address the timeline for implementation of the final rule. Other commenters offered positive feedback on the management requirements or requested technical changes for clarity. We discuss the comments and our rationale for any changes to the regulatory text in this section.

*General Comments.*

Comment: Some commenters supported our requirement that programs implement a coordinated approach to serving DLLs and offered further suggestions to increase the focus on DLLs throughout program management. Specifically, these commenters suggested requirements for programs to identify DLLs as a focal point of the process of ongoing monitoring and self-improvement for achieving program goals in §1302.100. Commenters also requested a revision to §1302.101(b)(2) to indicate how their coordinated approach should be evaluated. Finally, commenters suggested revising §1302.102 to require programs set goals related to first and second language development for DLLs.

Response: The requirements in this subpart apply to all children, including special populations. This subpart also ensures the intentional implementation of a coordinated management approach for the full and effective participation of children who are DLLs and their families. We do not believe it is necessary to further emphasize particular populations within individual requirements throughout program management.

*§1302.100 Purpose.*

This section provides a general requirement for programs to implement management systems and a process of ongoing monitoring and continuous improvement for achieving program goals. Aside from the overarching comment related to DLLs discussed above, we did not receive comments on this section.

*§1302.101 Management system.*

This section describes the implementation of a program's management system by requiring regular and ongoing staff supervision to support continuous program improvement. This section also outlines requirements for programs to establish coordinated approaches to

ensure professional development, services for dual language learners, services for children with disabilities, and data management. We received many comments on this section, including suggestions for strengthening management system requirements and requests for clarification.

Comment: We heard from commenters about the proposal to remove the requirement to have written plans for management systems. Some commenters opposed the removal of written plans, suggesting they are critical to building effective management systems. Other commenters praised the elimination of the written plans, noting that the removal of this requirement would reduce unnecessary bureaucracy. Still other commenters requested guidance or clarification regarding the removal of this requirement.

Response: We agree programs may find written plans to be valuable. We expect these programs will continue to use written planning to coordinate their management systems and ensure that all staff are able to fully implement them. However, the intention of removing written plans as a requirement is, as some commenters noted, to shift the focus from compliance with prescribed plans to monitory progress toward goals. We did not restore this requirement.

Comment: Some commenters suggested that, for clarity, we eliminate the phrase "adequate record keeping" in paragraph (a) and create a new standard to address record keeping so that all of the requirements in paragraph (a) were not explicitly linked to record keeping.

Response: We agree and untethered adequate record keeping from the other provisions in paragraph (a) and instead added a new paragraph (a)(4) to reflect this requirement.

Comment: Some commenters suggested revisions to the reference to promoting continuity of care in paragraph (a)(3). Some commenters thought it should be deleted because it is already covered by the full range of services described in subparts C through H. Other commenters suggested this requirement be linked directly to services for infants and toddlers.

Response: We believe continuity of care is critically important, and therefore we emphasize it in this section, despite its representation throughout the broader set of standards. Further, while we agree that continuity of care is of particular importance to infants and toddlers, we believe it is also important for preschoolers. Therefore, we did not revise this requirement.

Comment: Some commenters suggested we specifically include reflective supervision, particularly for Early Head Start staff, as part of the regular and ongoing supervision required in paragraph (a)(2).

Response: We require programs to implement research-based professional development in subpart I and regular and ongoing supervision under this subpart. Reflective supervision could be a component of both of these strategies. Therefore, Early Head Start programs may use reflective supervision if it helps them to ensure continuous quality improvement. However, we believe local flexibility for individual programs to determine the best approach to ensuring their management system provides regular and ongoing supervision, as long as the approach is research-based and effectively supports achieving program goals. Therefore, we did not revise this requirement.

Comment: Some commenters supported and others opposed the requirement that programs integrate Head Start data with other early childhood data systems and work with the state's K-12 Statewide Longitudinal Data System (SLDS) to share relevant data. Most of these commenters expressed concerns about the burden for programs to participate in their state's SLDS and recommended that it should be encouraged to the extent practical but not required. Commenters also expressed concerns with the varied capacity of states to partner effectively with Head Start providers to share, use, and interpret data which leads to barriers for programs to participate such as poor data infrastructure in the state's SLDS, statutory roadblocks, or lack of

an SLDS in the state. Commenters stated that programs should not be held fully responsible with SLDS integration since it is beyond the abilities of most individual Head Start programs. Commenters also requested we advocate for the SLDS to send reports and information to programs that participate with their SLDS. One commenter recommended that tribes be explicitly exempt from any requirement to participate in their state's SLDS.

Response: We revised and reorganized the standards previously provided in §1302.101(b)(4)(iii) to §1302.53(b)(3). There, we clarified that a program should participate in their state education data system to the extent practicable and only if the program can receive the same support and benefits as other participating early childhood programs. Since state education data systems can vary greatly from state to state and the practicality of a program to participate in these systems can also vary, we provided programs flexibility as steps are taken to share data with their state within their capacity and existing supports provided. Regarding an exemption for tribes, we agree and added that AIAN programs are exempt from any requirement to participate in their state education data systems, unless an AIAN would choose to participate in the statewide data system to the extent practicable. Further, in paragraph (b)(4), we clarified that AIAN programs can determine whether or not they will participate in such data systems.

Comment: Commenters expressed concern with the requirement proposed in §1302.101(b)(4) of the NPRM to align data collections and definitions to the Common Education Data Standards (CEDS) due to the burden on programs (e.g., time, additional staff, and expense), and some commenters indicated that the responsibility to align with CEDS should not be on any individual program. Some commenters stated that the definitions in CEDS are not appropriate for all Head Start programs. Some commenters requested guidance on how to fulfill this requirement.

Response: We agree it is premature to promulgate standards encouraging programs to engage with CEDS since the early childhood data standards are not as far into development as the K-12 standards and there is insufficient information on the benefits and utilization of CEDS at the individual school level or early childhood setting. Additionally, CEDS is meant to be voluntary. As a result, we removed this standard.

Comment: Some commenters requested that programs be allowed to disclose PII from child records to the SLDS administrator to facilitate data sharing with the SLDS.

Response: According to §1303.22(c)(2), a program is allowed to disclose PII from child records without parental consent to federal or state officials, in connection with an audit or evaluation of education or child development programs, as long as the program maintains oversight of child records through a written agreement or other means. Therefore, officials representing a state entity that manages a state education data system, such as an SLDS, would fall under this description and a program would be allowed to disclose the necessary PII to such an official.

Comment: Some commenters opposed the requirement of a data governance body or council described in paragraph (b)(4) and stated that it is an excessive and costly requirement. Some commenters were in favor of the requirement. Commenters also requested clarity on the definition of this group, including its purpose, role, and function; how it differs from other governing groups, specifically the board of directors, policy council, and governing board; and whether it applies to Early Head Start programs.

Response: We believe programs have established systems that focus on the security of data, an important goal, but this has overshadowed effective data sharing with other relevant entities. We shifted the focus to encompass a balance between the security, availability, usability,

and integrity of data through these provisions. However, commenters misinterpreted our intent, primarily due to the terminology used. Therefore, we changed the term “data governance” to “data management” in this paragraph and we removed the reference to a “body or council” to focus less on the process and more on the desired outcome of establishing procedures to ensure data quality and effective data use and sharing, while protecting the privacy of child records. For this same reason, we also removed the requirement to consult with experts and advisors on early childhood data systems in their state. Programs are still encouraged to do this but including it as a standard distracts from the overall focus on outcomes instead of process. To clarify that this requirement also applies to Early Head Start, we changed “Head Start data” to “data.”

Comment: A commenter requested we require programs to align their data systems with one another.

Response: We disagree with this suggestion. Programs use multiple data systems and not every data system used can or should be aligned. For example, a data system used for salaries, wages, and fringe benefits would not align with a data system for the administration of children immunizations. Thus, requiring programs to align their data systems is too broad of a requirement and could create more complications than benefits.

*§1302.102 Achieving program goals.*

This section describes the program goal setting process with respect to quality improvement. It is reorganized from the previous rule to better convey the importance of establishing goals for effective health and safety practices, all elements of high-quality service provision, and continuous quality improvement for all programs, not just those with identified quality issues or deficiencies. It includes requirements for each aspect of the cycle of continuous quality improvement including planning; goal setting; and monitoring short- and long-term

progress towards achieving goals. This section also describes reporting requirements as they relate to ongoing monitoring and self-assessment. Commenters made a number of recommendations for strengthening this section, and we made small changes to the language for clarification throughout the section. We discuss specific comments and responses below.

Comment: Some commenters recommended we require a system that sets benchmarks for child and family outcomes, based on nationally normed assessment measures, and outlines strategies for tracking progress in order to support program improvement efforts, professional development, and evaluation. These commenters suggest that such a system would better ensure children enter school performing on par with their more advantaged peers.

Response: We believe that it is important for programs to have local flexibility to set their own goals and measure children and families' progress towards those goals. We do not think it is appropriate for us to set a single standard all programs must use to assess the continuous improvement of their program.

Comment: Commenters requested we require programs to set goals for the outcomes of educational and other services, rather than for the provision of these services. Some commenters also suggested that programs should be required to set goals for the recruitment, retention, and development of qualified staff. Other commenters suggested we reduce the types of program goals that are required. These commenters stated that too many goals would prevent programs from being able to focus and achieve desired outcomes.

Response: We believe we have achieved an appropriate balance for the goal-setting requirements. We encourage programs to set additional goals if it helps them effectively meet the needs of their community and ensure continuous quality improvement. The intent of this requirement is to set a minimum.

Comment: Many commenters requested programs be allowed to align revisions to their goals, as described in paragraph (a), with their five-year grant cycle.

Response: While we understand that programs may wish to revisit their goals, especially their long-term strategic goals described in paragraph (a)(1) with their five-year grant cycle, we feel continuous quality improvement requires programs to thoughtfully re-evaluate their goals on an ongoing basis. Additionally, the replacement of the Head Start Child Development and Early Learning Framework for three to five-year-olds with the Head Start Early Learning Outcomes Framework: Ages Birth to Five should result in a re-evaluation of programs' school readiness goals to ensure they are promoting the school readiness of all children in all domains. We did not revise this provision.

Comment: Many commenters praised the clear link of the Head Start Early Learning Outcomes Framework: Ages Birth to Five (HSELOF) to school readiness goals in paragraph (a)(3). Other commenters requested we allow programs to align with both HSELOF and their state early learning standards. Further, some commenters expressed confusion about the relationship between performance goals and school readiness goals.

Response: The requirement in paragraph (a)(3) is for all programs to align with both HSELOF and their state early learning standards, where state standards are applicable. We previously issued guidance describing the relationship between school readiness goals and program goals. This guidance clarifies that school readiness goals are a subset of program goals. However, we agree that the terminology "program performance goals" is confusing. Therefore, we revised the term throughout subpart J to "program goals." We also re-ordered the list of goals that programs must establish in this section to reflect a hierarchy of goals, starting with broad, strategic long-term goals.

Comment: Many commenters noted that the monitoring system will need to be aligned with the outcomes-focused approach to continuous quality improvement described in the section, and the requirements in paragraph (b).

Response: The monitoring process will be revised to align with these program performance standards.

Comment: Commenters offered suggestions for strengthening data use for continuous quality improvement in paragraph (c). Some commenters recommended we include requirements for best practices in using data to improve instruction, including how often data must be reviewed and used to inform services. Others suggested strengthening requirements for continuous improvement by referencing feedback loops, which they thought would allow programs to be proactive rather than reactive. These commenters also suggested that programs should be required to develop and implement policies and procedures that guide staff collaboration on the review, interpretation, and use of data to advance policy and practice improvements and professional learning goals.

Response: We do not agree that we should set such specific requirements for the process by which individual programs ensure continuous quality improvement. Rather, we focus on requiring programs to implement a system to ensure continuous quality improvement but leave the details of how each program will achieve this up to local communities to determine.

Comment: Some commenters suggested we require additional areas of data collection, aggregation and analysis to ensure continuous program improvement in all areas of program services. Suggestions included adding family engagement, home visits, group socializations, and staff development. Some commenters suggested that the requirement included too many areas

for data collection, aggregation, and analysis, stating that grantees need to be able to focus their efforts on a limited set of specific goals for program improvement.

Response: We believe we have achieved an appropriate balance for data requirements. Programs are encouraged to collect additional data, as necessary, in order to inform their own goals and ensure continuous quality improvement. The intent of this requirement is to set a minimum for service areas grantees must collect data on.

Comment: Some commenters stated that it is inappropriate to aggregate data for infants and toddlers, especially in small programs with very few children in similar developmental age ranges, or that it is inappropriate to directly assess infants and toddlers three times per year.

Response: The requirement to aggregate and analyze child-level assessment data three times per year in paragraph (c)(2)(ii) is not new. Guidance already exists on the topic of assessment and data aggregation for infants and toddlers and can be found at http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/ehsnrc/school-readiness/SchoolReadiness.htm. This guidance clarifies that aggregation and analysis of data is possible for infants and toddlers and does not have to done by child age. Further, we revised paragraph (c)(2)(ii) to refer programs to the definition of child-level assessment data in part 1305, which includes observation-based as well as direct assessments. We believe this change addresses concerns about frequent direct assessment of infants and toddlers.

Comment: Some commenters noted that we should add an exception for programs less than 90 days to the requirement to aggregate and analyze data three times per year.

Response: We agree and revised paragraphs (c)(2)(ii) and (iii) and a requirement in paragraph (c)(2)(iii) to clarify that programs operating for fewer than 90 days only have to aggregate and analyze their data twice per year.

Comment: Some commenters asked us to define "lessons" in paragraph (c)(iv), formerly paragraph (c)(2)(iii) in the NPRM.

Response: We revised the requirement to read "information," rather than "lessons" to clarify our intent.

Comment: Some commenters requested we provide justification for requiring reports.

Response: The Secretary has broad statutory authority under section 641A(a)(1) of the Act to establish standards to ensure the health and safety of children and appropriate program operation.

Comment: Many commenters suggested that the requirements in paragraph (d)(1)(ii), formerly paragraph (d)(1)(iii) in the NPRM, were too vague. Specifically, many commenters requested clarity about what risks should be reported under paragraph (d)(1)(iii)(C) in the NPRM. As proposed, commenters suggested the requirement would include everything from chicken pox to a bite from a classmate to an outbreak of influenza at a nearby nursing home. Commenters also requested clarity on which reasons for program closure under paragraph (d)(1)(iii)(B) in the NPRM need to be reported. For example, commenters asked whether programs needed to report when they close due to inclement weather. Finally, commenters stated the requirement in paragraph (d)(1)(iii)(D) in the NPRM was too vague and requested clarity on what legal proceedings, involving which related parties, would need to be reported.

Response: We agree with commenters that the proposed requirements in paragraphs (d)(1)(ii) and (iii) in the NPRM were unclear and we made revisions to clarify our intent. We revised and restructured these standards into paragraph (d)(1)(ii) and struck paragraph (d)(1)(iii) to clarify that programs must report significant incidents, rather than "risks," related to health and safety or financial and administrative circumstances, to the responsible HHS official.

Therefore, inclement weather closings, for example, would not apply to the requirement in what is now paragraph (d)(1)(ii)(B) and risks such as a nearby outbreak of influenza or minor incidents such as child biting a classmate are clearly not included. Finally, we revised what is now (d)(1)(ii)(C) to better clarify that we only require programs to report legal proceedings that are directly related to program operations.

Comment: Some commenters noted that the community assessment is too long to include in the annual self-assessment. These commenters suggested amending the requirement to include only a synopsis or summary of the most recent community assessment. Additionally, some commenters suggested that inclusion of the community assessment in the self-assessment should be aligned with each grantee's five-year grant cycle, such that grantees would only be required to include it when their grant cycle is being renewed.

Response: We revised paragraph (d)(2) to allow for a summary of the most recent community assessment to be included in the annual self-assessment. We also clarified that programs must be publish and disseminate the report.

*§1302.103 Implementation of program performance standards.*

This section includes requirements to ensure programs implement the program performance standards effectively and to provide flexibility to programs in meeting the requirements of subpart B, if any currently enrolled Head Start children could be displaced.

Comment: Many commenters requested consistent guidance, communication, and training and technical assistance to grantees related to the implementation of the final performance standards, and explicitly the move to full day programs.

Response: The final rule includes a compliance table that outlines that dates by which programs have to be in compliance with the new standards. It shows that many of the provisions

go into effect 60 days after publication but that others, such as some of the provisions related to curriculum, assessment, and coaching, do not require compliance until August 2017 and that the requirement for a longer day and year are further delayed. We think this staggered phase-in timeline will give programs adequate time to implement these changes in a thoughtful way with support from OHS and our training and technical assistance system.

**FINANCIAL AND ADMINISTRATIVE REQUIREMENTS; PART 1303**

This part lays out financial and administrative requirements for agencies.

*§1303.1 Overview.*

This part specifies the financial and administrative requirements for programs consistent with various sections in the Act. Subpart A outlines the financial requirements; subpart B focuses on administrative requirements; subpart C implements statutory provisions related to personally identifiable data, information, and records; subpart D outlines the requirements for the operation of delegate agencies; subpart E implements statutory provisions related to facilities; and subpart F describes transportation requirements. We received comments on each of these subparts. We summarize comments and provide our response below.

**Financial Requirements; Subpart A**

This subpart reorganizes, revises, and streamlines the financial requirements in subparts A, B, C, and D of part 1301 in the previous performance standards. This purpose of these changes is to organize the requirements in a more logical order, conform to recent changes in regulations that govern all federal grants, and reduce the administrative burden on agencies.

*§1303.2 Purpose.*

This section specifies that the purpose of this subpart is to establish requirements for program administration and grants management that apply to all grants under the Act. A summary of comments and our responses is below.

Comment: Some commenters were pleased we removed the accounting system certification we required in the previous performance standards at §1303.11. They stated that it resulted in added cost for programs with limited or no gain.

Response: We agree the certification was an unnecessary burden to grantees and their financial professionals.

Comment: Some commenters suggested that we should not have removed the annual audit requirement in §1301.12 of the previous performance standards. Many commenters recommended we clarify that an annual audit is still an allowable expense for programs of all sizes.

Response: The Office of Management and Budget establishes audit requirements and specified their requirement related to all federally required audits in the Uniform Guidance. Audits are a permissible expense regardless of program size. No changes to this section are necessary.

*§1303.3 Other requirements.*

This section displays in a chart an updated list of HHS regulations that apply to all grants made under the Act. We received many comments on this chart.

Comment: Commenters suggested we clarify what is required for issuance of a Dun and Bradstreet Data Universal Number System (DUNS) number and annual or reoccurring reporting requirements.

Response: We did not make changes in response to this comment. We believe that the cross-reference to 2 CFR 25.10 CCR (Central Contractor Registration)/DUNS provides grantees with sufficient DUNS information to support initial and ongoing compliance and reporting requirements.

*§1303.4 Federal financial assistance, non-federal match, and waiver requirements.*

This section consolidates into one section the financial assistance, non-federal match, and waiver requirements that were in §§1301.20 and 1301.21 of the previous performance standards. We did not receive comments on this section but made two technical changes to the regulatory text in the final rule. First, we used the term "non-federal match" throughout, instead of "non-federal share match" or "non-federal share matching" to be consistent and to more closely align with the Uniform Guidance. Second, we modified the language to state that a waiver of all or a portion of non-federal match could be approved "for" the budget period instead of "during" the budget period. Since waivers after the close of the budget period are possible, we wanted to ensure the language reflects that allowable activity.

*§1303.5 Limitations on development and administrative costs.*

This section affirms the requirement in section 644(b) of the Act that agencies not exceed the 15 percent cap on development and administration. It also implements the requirement in section 644(b) of the Act that the Secretary establish criteria for determining the costs of developing and administering a program and the total costs of such a program. In contrast to §1301.32(b) through (f) of the previous performance standards, this section represents a simplified and streamlined approach that requires grantees to categorize, identify, and allocate costs in order to determine whether they meet the 15 percent administrative cap. This section also specifies the requirements related to waivers of the cap on development and administration.

We received comments on this section and made one technical change to the regulatory text in the final rule. We removed the language requiring that a waiver not exceed 12 months to provide for the possibility of longer budget periods like those used for the Early Head Start-Child Care partnerships.

Comment: Some commenters believed it would be helpful if we train grantees on how to appropriately identify development and administrative costs. Other commenters suggested we increase the limit on administrative and development costs we proposed in paragraph (a)(1) of this section.

Response: We did not increase the limit on administrative and development costs specified in paragraph (a)(1) because it is established in the Act. Training is available on how to identify administrative and development costs.

**Administrative Requirements; Subpart B**

This subpart outlines the requirements for agency conduct, the limitations and prohibitions to which agencies must adhere, and the requirements for insurance and bonding.

*§1303.10 Purpose.*

This section specifies that grantees must observe standards of organization, management, and administration and conduct activities in a manner consistent with the Act. We received comments related to these general requirements.

Comment: Some commenters supported the requirement that grantees observe stated standards of organization, management and administration but urged us to include a new standard that requires employers to pay living wages, or provide compensation levels at parity

with elementary school teaching staff or the average compensation level for comparable work in the area.

Response: We did not change this requirement. We continue to require grantees to establish wages that are comparable to those paid in their community based on the wage comparability provision in the Act.

Comment: Some commenters expressed concern that we eliminated previous language that required each agency to provide reasonable access to information and records.

Response: We believe the issue of access to information and records is already adequately addressed by other applicable federal and state law and a Head Start specific provision is not necessary.

Comment: Some commenters asked that we consider equipment to be any item with a value of $25,000 or more.

Response: The fiscal regulations at 45 CFR part 75 govern the definition of equipment and we cannot adopt contrary requirements in these regulations.

Comment: Some commenters requested we allow agencies with Head Start and Early Head Start awards to prepare a single budget.

Response: Head Start and Early Head Start awards use separate Central Accounting Numbers (CANs) and fiscal regulations require separate accounting for those funds.

*§1303.11 Limitations and prohibitions.*

This section consolidates into one place the sections in the Act that place limitations or prohibitions on agencies. These sections pertain to union organizing, the Davis Bacon Act, limitations on compensation, nondiscrimination, unlawful activities, political activities and obtaining parental consent. We received comments on this section.

Comment: Some commenters recommended removal of the requirement that programs comply with the Davis-Bacon Act or requested that we limit the application of the Davis-Bacon Act to new major projects only.

Response: The Act requires compliance with the Davis-Bacon Act, including the definition of covered projects. We cannot eliminate this requirement through the regulatory process.

Comment: Some commenters suggested that Head Start program employees should not be allowed to engage in union organizing.

Response: Section 644(e) of the Act states that Head Start funds may not be used to assist, promote, or deter union organizing. We retained this prohibition in this section by referencing the Act.

*§1303.12 Insurance and bonding.*

This section requires that grantees maintain a documented process to identify risks and provide proof of appropriate coverage in their grant application. Our approach to require grantees to assess their own risks and determine appropriate cost-effective coverage is a less prescriptive approach that section §1301.11 of the previous performance standards. We received comments on this section.

Comment: Some commenters said removing specific requirements for insurance provides too much leeway, creates risk of liability and that appropriate coverage should be defined, with a minimum threshold or reference to state child care licensing requirements and suggested we remove the requirement that the process of identifying risks consider the risk of losses resulting from fraudulent acts by individuals authorized to disburse Head Start funds.

Response: We did not change this requirement in response to comments. We believe that implementation of an intentional risk assessment process is an important aspect of grantee fiscal viability and may dictate varying amounts of insurance coverage depending on the grantee's unique circumstances. We believe assurance that Head Start funds are not lost to fraudulent acts is an important part of identifying risks.

**Protections for the Privacy of Child Records; Subpart C**

This subpart outlines the requirements for programs to ensure the protection of child records, including requirements for parental consent and instances where disclosure of children's personally identifiable information (PII) without parental consent is allowable. We added standards that ensure the protection of the confidentiality of PII contained in child records. These standards align with the policies, protections, and rights found in the Family Educational Rights and Privacy Act (FERPA), as appropriate for Head Start and Early Head Start programs. We received comments on all sections of this subpart. Overall, commenters were supportive and positive about these standards, especially the alignment to FERPA and the emphasis placed on parent rights in respect to their child's record.

*§1303.20 Establishing procedures.*

This section outlines required procedures that support the sections that follow on confidentiality of PII in child records. We respond to the comments we received below.

Comment: Commenters requested clarification on whether programs are required to have procedures for parents to inspect a child's record or challenge the sharing of the child's PII, and suggested we reference this subpart in subpart D Health Program Services to ensure programs consider the privacy of child records in health program services.

Response: According to §1303.20, a program must establish procedures to protect the confidentiality of any PII in child records. As part of these procedures, programs must ensure parents have the right to inspect, ask to amend, and obtain copies of their child's records, request hearings, and inspect written agreements. This subpart is not specified in subpart D since the protections of the privacy of child records should be considered throughout the entire final rule. We also added breaches of PII to the issues that programs must report in §1302.102(d)(1)(ii).

Comment: Commenters requested federal support and training opportunities on this subpart to ensure proper implementation, especially for programs without a deep understanding of privacy rules and while programs link data to their state and federal data systems. Some commenters recommended we require capacity building for data privacy as part of staff training.

Response: We are committed to providing support for programs to understand, build capacity, and comply with the new privacy regulations. Programs must ensure staff, consultants, and volunteers comply with program confidentiality policies in accordance with §1302.90(c)(1)(iv).

*§1303.21 Program procedures – applicable confidentiality provisions.*

In this section, we describe in paragraph (a) that when FERPA's confidentiality requirements apply (i.e., for educational agencies and institutions that maintain education records), the confidentiality requirements in this subpart do not apply because those educational agencies and institutions must comply with FERPA. Similarly, we describe in paragraph (b) that the Head Start confidentiality requirements in this subpart also do not apply when IDEA's confidentiality provisions apply (i.e. a program collects, uses, or maintains early intervention records of infants and toddlers with disabilities referred to or eligible under Part C of the IDEA or education records of children with disabilities referred to or eligible under Part B of the

IDEA). Therefore, the Head Start confidentiality requirements in this subpart do not apply to the records of those children covered by IDEA or programs covered by FERPA. Commenters raised specific concerns and requested clarity, and our responses are discussed below.

Comment: Commenters requested we provide guidance and clarity on how other privacy laws apply including state laws and the Children's Online Privacy Protection Act (COPPA).

Response: A program must comply with other applicable federal, state, or local privacy laws such as COPPA, which applies to all programs, the Children's Internet Protection Act (CIPA) which applies to programs in the E-Rate program, and the Protection of Pupil Rights Amendment (PPRA), which applies to programs administered by the U.S. Department of Education (ED) receiving federal funds.

Comment: Some commenters expressed concern that it will be burdensome and confusing for some programs to comply with FERPA and this subpart, and that we make this subpart consistent with FERPA or provide guidance on how to comply with both.

Response: We agree that we are not duplicating under Head Start the confidentiality protections that already apply under FERPA and IDEA. The provisions we are promulgating are very similar to FERPA. However, we want to reiterate that when programs comply with FERPA or IDEA for the records of those children and programs covered under FERPA and/or IDEA, then this subpart does not apply. Thus, we are eliminating any perceived burden and duplication. We changed and restructured the language in this section to implement these provisions.

*§1303.22 Disclosures with, and without, parental consent.*

In this section, we describe provisions programs must follow to protect the privacy of child records and to share data. Most commenters in this section made recommendations or

requested clarifications related to specific needs of Head Start programs, which are discussed below.

Comment: Commenters recommended several changes to this section to reflect FERPA, such as: add an exception to parental consent for disclosing PII classified as "directory information"; include the entire criteria in FERPA on a written agreement; remove the term "disaster" from §1303.22(c)(4); add other FERPA requirements on the disclosure of PII without parental consent for a lawfully issued subpoena or judicial order; require the class of recipients be specified within the consent form; and permit disclosure without parental consent to a school the child intends to enroll or is already enrolled.

Response: We intended to align this section with FERPA while meeting the needs of Head Start and Early Head Start programs, and therefore a direct replication of FERPA would not be appropriate. In regards to directory information, we believe that a list of names, addresses, photographs, and other information that may fall under directory information can be harmful if disclosed without parental consent for the vulnerable population we serve, and therefore no change was made. In regards to the written agreement, our intent is for the program to determine the reasonable method to maintain control appropriate for the disclosure including a written agreement, direct supervision, and/or other methods. We updated §1303.22(c)(1) through (3) to focus on our intent which provides programs flexibility without being overly prescriptive. In regards to "disaster," the term refers to an emergency such as a natural or manmade disaster. We agreed with the recommendations to include the class of recipients in the consent form and to permit disclosure in compliance with a subpoena without consent, similar to what FERPA permits, and these changes have been made. Lastly, the disclosure without parental consent

related to a child's enrollment or transfer is already addressed in §1303.22(b), and parental consent is not required.

Comment: Commenters recommended we add clarify, replace, or define terms in this section including, "dependency matters" as this could refer to any case involving a dependent child and an adult caregiver, "case plan," and "foster care." Commenters expressed concern that these terms could differ from state to state.

Response: We disagree on defining dependency matters. However, it is not our intent that any case involving a dependent child and an adult caregiver inherently involves dependency matters, so we clarified that the court proceedings must directly involve dependency matters. Foster care is defined in part 1305. The definition for "case plan" was added to part 1305.

Comment: Commenters expressed concern that posting child allergy information prominently as described in §1302.47(b)(7)(vi) violates the privacy of children.

Response: We believe it is critical that food allergies are prominently displayed in areas wherever food is served to mitigate a serious health and safety risk for infants, toddlers, and preschool aged children. We also believe programs should be able to address other serious health and safety risks without parental consent to disclose PII. As a result, we added a "serious health and safety risk such as a serious food allergy" to §1303.22(c)(4) of this section.

Comment: Some commenters recommended that violators of the privacy rule be given the opportunity to self-correct before any sanctions are applied.

Response: Any violations of the privacy rule will be handled through existing monitoring and Head Start enforcement mechanisms.

Comment: Commenters requested an exception to release PII without consent in the case of reporting child abuse or neglect if they are required to do so by law.

Response: States receiving funds under the Child Abuse Prevention and Treatment Act (CAPTA) from HHS are required to enact laws mandating the reporting of known and suspected instances of child abuse and neglect. States must also ensure that the disclosure is made only to persons or entities determined by the State to have a need for the information. To ensure this section of the regulation does not conflict with federal, state, local, or tribal laws that require reporting of child abuse or neglect, we added §1303.22(c)(8) which allows the disclosure of PII without parental consent to an appropriate party to address suspected or known child maltreatment to comply with applicable federal, state, local, or tribal laws on reporting child abuse and neglect. We do not specify the persons who may access the records and under what circumstances since these vary by state.

Comment: Commenters expressed concern that a program would apply the five-year rule that used to appear in §1303.22(d) automatically after a single violation of a written agreement which could lead to conflicts with state and local mandatory reporting requirements; that barring third parties from accessing child records for any violation of the written agreement is too broad; and the annual review of the written agreement seems arbitrary.

Response: We agree with the concerns on the five-year rule, and we modified the provision to allow a program greater flexibility in handling third party violations. A program must review the written agreement annually, but only update it if necessary.

Comment: Commenters expressed concern that programs will not be allowed to share data with partners critical to Head Start programs such as community partners, health partners, contractors, consultants, subrecipients, and volunteers. Commenters requested that we clarify data sharing with community partners; the term “educational interest”; and the term “official.”

Response: A program may disclose PII from a child record without consent to a partner if the partner meets one of the conditions in §1303.22(c). A partner will most likely qualify as an "official acting for the program" if they are directly or indirectly providing program services for which the agency would otherwise use an employee. If a community partner does not qualify under any condition in §1303.22(c), we recommend programs build written consent into the enrollment process for these partners. We removed "educational interests" and replaced it with plain language for clarity. We added language to §1303.22(c)(1) through (3) to clarify the term official.

*§1303.23 Parental rights.*

In this section, we focus on parents' rights. We recognize that parents should be at the forefront when it comes to the collection, use, and sharing of the PII in respect to their child's record. Most commenters in this section supported the rights provided to parents. Other commenters raised concerns, which are discussed below.

Comment: Some commenters requested we provide an additional requirement for programs to annually inform the parent on what data are being collected, how and why the data are used, and how the data are being safeguarded.

Response: The parental consent form coupled with the annual notice already provides this information to the parent. We believe that requiring details on each data element collected, how each is used and for what exact purpose, and the specific security measures taken to protect the data would be excessive and burdensome.

Comment: Commenters both agreed and disagreed with informing parents of their rights annually due to the conflicting perceived level of effort required by the program. Another commenter noted a conflicting requirement that allowed a parent the right to obtain a copy of the

child record even when court ordered the contents related to disclosure not be disclosed or when it involves a child abuse or neglect case.

Response: We believe that it is important that the program annually notify parents of their rights. However, this notification does not necessarily need to be individualized for every parent. For instance, the program could include a standard handout as part of the material the parent will already receive during the program year. This flexibility reduces burden on programs. In regards to the conflicting information, we added language in §1303.23(d) to ensure the parents' right to a copy of a record does not conflict with a court order.

Comment: Some commenters expressed concern with programs making decisions on how to effectively share data and what specific data to share.

Response: We agree that it can be challenging for programs to make decisions about how to share data and what data to share. Programs may request guidance through the training and technical assistance system. Additionally, we did not intend for programs to share all PII during a disclosure, therefore we added §1303.22(f) to limit the program to only disclose the PII that is necessary for the purpose of the disclosure.

*§1303.24 Maintaining records.*

In this section, we describe recordkeeping requirements related to the protection of child privacy. Programs must maintain, with each child's record, a list of all individuals, agencies, or organizations that obtained access to PII from child records. The list must indicate the expressed interests that each person, agency, or organization had to obtain this information. Recordkeeping of disclosures to program officials or parents are not required since it would be too burdensome for programs. Programs must ensure that only parents, officials, and appropriate staff have access to records. We received some comments on this section, discussed below.

Comment: Some commenters requested we provide the amount of time a child record must be maintained and how IDEA relates to record maintenance.

Response: Depending on the type of data involved and the context in which the data are being used, there may be requirements for destruction of data with which programs must comply. We do not address information about other applicable program requirements, including those that may apply under IDEA, as that is beyond the scope of this regulation, but note that programs may be subject to record retention requirements for children they are serving based on applicable Federal and State statutes of limitations. However, when no other requirement exists, a program must destroy child records within a reasonable timeframe after the child has been served – this was added to §1303.24(a). We also added a restriction to data destruction in §1303.23(a)(4) to protect the parental right to inspect a record.

Comment: Some commenters pointed out an inconsistency between the NPRM preamble and proposed regulatory text. Specifically, for §1303.24(b), the NPRM preamble required a program maintain information of all requested access to PII from child records, but the proposed regulation stated that information on these parties is only maintained when a disclosure of PII is actually made. The commenters preferred the proposed regulatory text.

Response: We agree that programs must only maintain this information when a disclosure is actually made. It is not necessary to maintain records on each request for PII from child records if the program does not make a disclosure of PII in response to the request.

**Delegation of Program Operations; Subpart D**

This subpart consolidates previous performance standards on delegation of program operations into one section and revises requirements to conform with the Act. Section 641A(d)

of the Act requires agencies to establish procedures that relate to its delegate agencies and that provide further specifics related to evaluation, corrective actions, and terminations. We discuss and analyze the comments on this section below.

*§1303.30 Grantee responsibility and accountability.*

In this section, we clarify that a grantee is accountable for its delegate agencies. That means the grantee retains legal authority and financial accountability for the program when services are provided by delegate agencies. Consequently, the grantee must support and oversee delegate agencies and ensure they provide high-quality services to children and families and meet all applicable regulations. We also clarify a grantee may not terminate a delegate agency without showing cause and must establish a process for delegate agencies to appeal adverse decisions. We discuss the few comments we received on this section below.

Comment: One commenter stated the phrase "bears financial accountability" in the fourth sentence in this paragraph, implied the grantee was responsible for any financial debt a delegate incurred. The commenter recommended we clarify the grantee bears responsibility for those allowable transactions it authorizes that are directly related to the Head Start program provided by delegate agencies.

Response: When the phrase "bears financial accountability" is taken in context of the entire section, it implies the grantee is responsible for the use of Head Start funds by the delegate. Therefore, we did not make any changes to this section.

Comment: One commenter asked us to allow programs to terminate delegate agencies "at will" with provisions that cause the least amount of undue stress and harm as possible to children and families served.

Response: We did not allow grantees to terminate delegate agencies "at will." Grantees can only terminate delegate agencies, if the grantee shows cause why termination is necessary and the grantee's decision to terminate cannot be arbitrary or capricious.

*§1303.31 Determining and establishing delegate agencies.*

Under this section in the NPRM, we proposed to require an agency that enters into an agreement with another entity to serve children to determine if the agreement meets the definition of "delegate agency" in section 637(3) of the Act. We proposed this performance standard to clarify that if an entity meets the definition of delegate in the Act, it is a delegate, regardless of what a grantee calls the entity to which it has delegated all or part of the responsibility for operating the program.

Comment: The NPRM proposed a requirement for HHS to approve the delegate agency before the grantee may delegate program operations. One commenter suggested that a delegate agreement be considered as approved if HHS had not approved or denied it 60 days before the program year starts.

Response: We believe HHS approval of delegates is important. We did not change the requirement.

Comment: One commenter asked whether or not programs could grandfather in existing delegate relationships or must they still have written agreements.

Response: All grantee/delegate relationships must have written agreements approved by the responsible HHS official. This is not a new provision.

Comment: Some commenters asked us to differentiate between "delegate agency" and "contractors." Another commenter asked if partners and family child care homes were considered delegates and if so does the grantee provide appeal procedures of the agreement is

terminated. If family child care homes are considered delegates, the commenter recommended for us to add the following language to paragraph (a) to clarify that a grantee, partner, or family child care home can mutually agree to decline a delegate/grantee relationship: "…unless the grantee and the entity negotiate to form a contractual rather than a delegate relationship." This will provide flexibility to the entity regarding the requirement to form a policy committee or other delegate responsibility.

Response: A "delegate agency" is a public, private nonprofit (including a community based organization, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801), or for profit organization or agency to which a grantee has delegated all or part of the responsibility of the grantee for operating a Head Start program. Generally, a "contractor" either performs work or provides goods at a certain price or within a certain time.

We did not make any changes to paragraph (a) in this section. Family child care providers do not meet our definition for "delegate agency" because they do not meet the first part of that definition. They are our partners under the Early Head Start Child Care Partnership (EHS-CCP). Under EHS-CCP, new or existing Early Head Start grantees partner with regulated center-based or family child care providers who agree to meet Head Start program performance standards.

*§1303.32 Evaluations and corrective actions for delegate agencies.*

This section includes requirements from section 641A(d) of the Act with respect to the evaluation of delegate agencies and corrective actions in the event of a deficiency.

Comment: Some commenters asked us to include the actual language of section 641A(d) of the Act rather than cite to it and to clarify that the Act's requirement for each Head Start agency to establish procedures to evaluate and defund delegate agencies and for delegate

agencies to appeal defunding decisions may be satisfied with provisions on those topics in its delegate agency agreement(s).

Response: We refer to the Act when possible to streamline and to make the regulation read better. We did not make any changes to this section.

*§1303.33 Termination of delegate agencies.*

In this section, we clarify that a grantee cannot terminate a delegate agency without showing cause and the grantee's decision to terminate cannot be arbitrary or capricious. To align with section 641A(d)(1)(C) of the Act, we require grantees to establish procedures to defund a delegate agency. We also require grantees to establish procedures that are fair and timely for a delegate agency to appeal a defunding decision.

Furthermore, we removed the appeal procedures for delegate agencies that were under part 1303 subpart C in the previous rule. The reason being, grantees are accountable for the services their delegate agencies provide to children and families. We believe they must have the necessary tools at their disposal to remove delegate agencies. We believe the previous system inappropriately tied the hands of grantees and had become overly burdensome.

We address the comments we received on this section below.

Comment: Some commenters supported our proposal to eliminate complex delegate agency appeals procedures. They believed this provided helpful flexibility to Head Start agencies that, for reasons of cost or inadequate delegate agency performance, may find it necessary to terminate a delegate agency relationship.

Response: We agree that grantees are ultimately accountable for their delegates. Consequently, grantees must be able to remove delegates when necessary, without having to go

through an overly burdensome process. Furthermore, we believe grantees are in the best position to provide appeal processes for delegate agencies. We have not changed this provision.

**Facilities; Subpart E**

This subpart implements the statutory requirements related to facilities in section 644(c), (f), and (g) of the Act. It clarifies and reorganizes requirements for grantees when they apply to use Head Start funds to purchase, construct or make major renovations to facilities.

This subpart logically organizes all relevant information and requirements for protecting the federal interest under a broad variety of circumstances. It also removes requirements that are not Head Start-specific but rather are overarching requirements for managing federal grants and aligns all remaining provisions with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. We address comments we received on each section within this subpart below.

*§1303.40 Purpose.*

This section clarifies that the whole of subpart E applies to major renovations. It explains these provisions apply only to minor renovations and repairs when they are included in a purchase and are part of the purchase costs. We address the one comment we received on this section below.

Comment: One commenter noted that it may be necessary to us to clarify that information contained in a Program Instruction and its application be made clear in this section.

Response: We integrated the information from Program Instructions into this section and into our definition for "purchase" in part 1305. We did not make any changes here.

*§1303.41 Approval of previously purchased facilities.*

Our previous regulation did not address refinancing. But as interest rates have fallen, grantees have asked us for permission to apply for more advantageous loan terms. In this section, we allow grantees that have purchased facilities beginning in 1987 and that continue to pay purchase costs or seek to refinance indebtedness to apply for funds to meet costs associated with refinancing. We also revised the language to clarify that a purchase includes both principal and interest payments on approved loans in accordance with section 644(g)(2) of the Act. We received comments on this section and address them below.

Comment: One commenter asked why we included "1987" in this section.

Response: The "1987" date is consistent with the Act. The date notes it is allowable to use funds to purchase or continue the purchase of facilities after December 31, 1986. We revised the language to more closely mirror the Act.

Comment: One commenter asked us to remove language that requires grantees to obtain HHS permission to refinance an existing mortgage.

Response: We did not remove language that requires grantees to get HHS permission to refinance an existing mortgage. Refinancing of existing indebtedness may result in cross-collateral or cross-default provisions that put facilities subject to a federal interest at risk of foreclosure for debt not associated with the Head Start program.

*§1303.42 Eligibility to purchase, construct, and renovate facilities.*

This section prescribes what grantees must show to be eligible to construct or renovate a facility. It also clarifies grantees that apply for funds to purchase, construct or renovate a facility must establish that the facility will be available to Indian tribes, rural, or other low-income communities. We received multiple comments on this section. We address those comments below.

Comment: Commenters suggested we clarify in paragraph (a) how a grantee can establish that preliminary eligibility requirements are satisfied.

Response: We did not revise language in this section to prescribe how a grantee can establish preliminary eligibility to purchase, construct, or renovate a facility. We believe that a grantee may demonstrate preliminary eligibility in a variety of ways and that a prescriptive process might create compliance challenges for some grantees.

Comment: Some commenters felt we created an unnecessary cost burden because we require a certified appraiser to address availability of suitable facilities in paragraph (b) of this section. These commenters believed a real estate professional's opinion was sufficient.

Response: We agree availability of suitable facilities can be adequately established, at lower cost, by an independent real estate professional familiar with the local commercial real property market. Therefore, we revised paragraph (b) to clarify a real estate professional's opinion is sufficient.

*§1303.43 Use of grant funds to pay fees.*

This section clarifies the type and extent of pre-project costs, such as project feasibility studies and professional fees, we may approve before a grantee applies for funding to purchase, construct, and renovate facilities.

Comment: One commenter asked us to revise this section to allow grantees to use funds from their then-current Head Start grant for facilities projects or apply for and receive funds under the noted section.

Response: We did not revise this section to allow grantees to use existing grant funds for fees and costs associated with a facilities project. We believe that can be addressed through existing facilities regulations at 45 CFR part 75.

*§1303.44 Applications to purchase, construct, and renovate facilities.*

This section focuses on the process grantees must use to apply for funds to purchase, construct, and renovate facilities. We address comments we received on this section below.

Comment: One commenter queried whether the facilities application process is applicable to all uses of funds for facilities activities or only when additional funds are requested. Another suggested we should add a performance standard that requires the responsible HHS official to promptly review and make final decisions regarding completed applications under this subpart.

Response: General language in §1303.40 refers to facilities purchased, constructed or renovated with grant funds and applies to all defined activities regardless of how funding is awarded. Therefore, we did not make changes here.

We also did not require the responsible HHS official to promptly review and make final decisions. The primary reason being facilities applications require substantial information and some applications are incomplete when submitted. The length of time the responsible HHS official may need to help a grantee submit a complete application and determine availability of funding varies.

Comment: One commenter noted in paragraph (a)(2) of this section a deed or proof of legal ownership should not be the sole requirement for renovations on leased facilities. Grantees should be able to present a proposed lease agreement.

Response: We currently require grantees to submit a proposed lease in paragraph (b)(1) in this section currently requires submission of a proposed lease agreement and landlord consent. A slight amendment was made to remove the requirement that the submitted copy by an "official" copy since leases are not subject to official certification.

Comment: One commenter contended value appraisals for major renovations to leased properties were an unnecessary expense. The commenter also suggested we should allow grantees to submit bids and/or procurement documents in lieu of appraisals.

Response: Since a grantee does not obtain title to leased property subject to major renovations, we agree that an appraisal is not needed in that limited circumstance. We revised paragraph (a)(7) accordingly. However, we did not revise paragraph (a)(7) to allow grantees to submit bids and/or procurement documents in lieu of appraisals . We believe a licensed appraisal to establish value ensures consistency and accuracy.

Comment: One commenter suggested we should eliminate the required Phase I environmental assessment of proposed facilities sites in paragraph (a)(12) because remediation would increase project costs and prove to be an impediment to facilities projects on leased property. Another commenter suggested we should not require environmental assessments for major renovations.

Response: We did not remove this performance standard. We rely on environmental assessments to ensure we only fund those activities that result in safe and healthy care environments for children, families and staff whether the facility is owned or leased.

Comment: One commenter asked us to reduce the lease term requirement for modular units on property not owned by the grantee from 15 years to 10 years.

Response: Modular units often represent a substantial expenditure. We believe that a lease term of 15 years will assure grantees have a location for the modular unit for a period of occupancy long enough to use the full value of the federal investment in the modular unit.

*§1303.45 Cost comparison to purchase, construct, and renovate facilities.*

We require grantees to compare costs to renovate, to lease an existing facility, or to construct a new facility to determine which activity would be most cost effective to meet program needs. Grantees must be able to demonstrate that they have compared costs and weighed options so we know our investment in a particular facility activity is cost-effective and service-relevant. This section allows grantees greater flexibility to describe projects and to compare costs to other alternatives within their service areas.

We address the one comment we received on this section below.

Comment: One commenter asked us to revise the last sentence in paragraph (a)(1) in this section so that it refers to a "comparable alternative facility."

Response: We did not revise paragraph (a)(1). We believe the term "alternative," allows for the possibility of a non-comparable facility, such as one that might be made usable through major renovations.

*§1303.46 Recording and posting notices of federal interest.*

This section focuses on federal interest and clarifies when grantees must file notices of federal interest and what the notices must contain. We address comments we received on this section below.

Comment: Some commenters contended grantees would not be able to file federal interest notices until the purchase, construction, or major renovation was either complete or at least when these activities have begun or when a grantee obtains ownership or begins occupancy.

Response: To protect federal interest in acquired facilities or in facilities undergoing major renovations with federal funds, we believe the notice of federal interest must be filed as early as possible to avoid the superior placement of liens for materials and services that would compromise priority of the federal interest. Therefore, we did not revise paragraphs (b)(1)-(3).

Comment: Some commenters felt the performance standard in paragraph (b)(4) that requires grantees to post the notice of federal interest on the exterior and the interior of modular units, could be cost prohibitive.

Response: We did not revise paragraph (b)(4). Posting the notice of federal interest on the exterior of the property informs all third parties that there is federal interest in the property. The exterior notice of federal interest for a modular unit can be as simple as a single-page laminated weatherproof copy of the interior notice firmly attached to the exterior of the modular unit, which would involve minimal cost.

Comment: Commenters liked our streamlined definition for "major renovations," but asked us to either define or clarify what we mean by "federal interest."

Response: We agree our former definition for "major renovations" was difficult for grantees to apply.

We did not change our definition for "federal interest," because we believe it fully advises grantees of when a federal interest is created and how property that is being used to meet non-federal match is treated. We believe what we mean by "federal interest" is more detailed and complete in this final rule.

*§1303.47 Contents of notices of federal interest.*

This section comprehensively explains what notices of federal interest must contain when a grantee owns a facility, when a grantee leases a facility, and when a grantee occupies a modular unit. We received some comments on this section, which we address below.

Comment: One commenter asked us to strike the term "or minor" from paragraph (a)(4).

Response: We revised paragraph (a)(4) to remove the phrase "or minor" because minor renovations or repairs are not subject to this subpart unless they are part of a purchase.

Comment: One commenter recommended we remove the performance standard in paragraph (a)(8) that requires the governing body to formally approve the notice of federal interest because it was unnecessarily prescriptive.

Response: We believe as the entity fiscally and legally responsible for the grantee, the governing body should be made aware of any notices of federal interest the grantee files. However, given the governing body must approve all facilities applications, we agree they do not also need to approve the notice of federal interest. We revised paragraph (a)(8) accordingly.

Comment: Commenters asked us to clarify whether a recorded lease could serve as a notice of federal interest. Other commenters noted the reference in paragraph (b)(1)(vi) of this section to notices of federal interest on leased property should have referred to §1303.50(b)(1) through (4). Another commenter stated landlords may be unwilling to lease to Head Start grantees if a notice of federal interest for major renovations to leased property is required.

Response: We revised paragraph (b)(1)(vi), so it is clear a recorded lease that includes requisite provisions can serve as a notice of federal interest for leased property subject to major renovations. We also revised paragraph (b)(1)(vi) so that it references paragraph (b)(1)(i) through (v).

Finally, we did not revise this performance standard to accommodate situations where landlords may be unwilling to lease to Head Start grantees if a notice of federal interest for major renovations to leased property is required. We believe requiring recognition of the federal interest resulting from major renovations in lease agreements filed in the public record protects the ongoing use of improved properties for Head Start purposes during the useful life of the improvements financed with Head Start funds.

Comment: Commenters asked us to clarify what the word "proof" in paragraph (c)(3) meant.

Response: We replaced the word "proof" with the phrase "[A] statement that."

*§1303.49 Protection of federal interest in mortgage agreements.*

Funding for facilities often includes both federal funds and mortgage proceeds. As funding for facilities has become more complex, it is common to find federal funds and mortgages on the same property. In order to protect federal interest, we require grantees to ensure that any mortgage agreements they have include specific provisions that would mitigate our risk of loss and ensure the property remains for Head Start purposes.

This section prescribes what mortgage agreements must contain. We address comments we received on this section below.

Comment: Commenter indicated the term "a real property… agreement" made paragraph (b) in the section unclear. The commenter asked us to reference any default under "an agreement described in §1303.49(a) instead.

Response: We revised paragraph (b) accordingly.

§1303.50 Third party leases and occupancy arrangements.

Grantees may use federal funds to renovate leased property, often at substantial cost. This section requires grantees to have leases in place for 30 years for construction of a facility and at least 15 years for a renovation or placement of a modular unit to protect federal interests in these unusual cases where the government is putting major costs into facilities on land that they do not own. We address comments we received on this section below.

Comment: Some commenters asked us to not apply paragraph (a) in this section to existing leases that did not meet term requirements.

Other commenters suggested there should be a flexible approach to lease term lengths that depended on the cost of the facilities project, individual circumstances of the grantee, community and nature of the facilities project or, that we adopt a fixed period of 10 years. Some commenters also noted that five-year grant cycles did not align with 15 or 30 year leases.

Response: We revised paragraph (a) to clarify that its terms did not apply to existing leases prior to the effective date of the regulations. We did not take a flexible approach to lease term lengths. Given that facilities activities involve substantial Head Start funds and are intended to be available for Head Start use as needed during the useful life of the facility, we made lease term lengths consistent. We also set term lengths to ensure grantees are subject to comparable lease term length requirements, regardless of location. Finally, we believe long term occupancy agreements for the full useful life of major renovations and purchases are needed to protect the Head Start funds used for major renovations and purchase of facilities located on leased property.

It is understood that migrant and seasonal Head Start programs may not utilize leased premises for entire program years. However, given the high dollar cost of major renovations and purchase of facilities, we believe that long term occupancy agreements, even if for limited portions of the program year, are needed. If a facility is no longer needed for program purposes, grantees can request disposition of the leasehold interest in the property.

*§1303.51 Subordination of the federal interest.*

This section emphasizes that only the responsible HHS official can subordinate federal interest to a lender or other third party. Grantees cannot subordinate federal interest on their own. The HHS official must agree to subordination in writing. In addition to a written agreement, the mortgage agreement or security agreement for which subordination is requested

must comply with §1303.49, and the amount of federal funds already contributed to the facility must not exceed the amount provided by the lender seeking subordination. We address comments we received on this section below.

Comment: Commenters indicated that limiting subordination of the federal interest to circumstances where the amount requested exceeds the amount of federal funding in the property would result in reluctant lenders.

Response: We revised this performance standard to integrate the possibility of subordination to a lesser debt if certain conditions are met.

*§1303.52 Insurance, bonding, and maintenance.*

Our experience has demonstrated that grantees have not maintained sufficient insurance for replacement of facilities that are substantially damaged or destroyed, particularly through floods and other natural disasters. After Hurricane Sandy, we realized we had to be more vigilant to protect grantees against loss.

In this section, we require grantees to obtain flood insurance if their facilities are located in areas the National Flood Insurance Program defines as high risk. We also clarify for grantees that physical damage or destruction insurance must cover full replacement value.

We address comments we received on this section below.

Comment: One commenter noted that the cost of flood insurance should be included in the Cost and Savings Analysis so as not to create an unfunded mandate upon the grantee.

Response: We did not make any changes here because flood insurance is an allowable cost to the Head Start award and can be included in the grantee's application for funding.

Comment: One commenter asked us to revise paragraph (b)(3) to read, "A grantee must submit to the responsible HHS official, within 10 days after coverage begins, copies of applicable certificates of insurance."

Response: We revised paragraph (b)(3) to clarify what insurance coverage must be proven but leaves it to the grantee to choose what documents to present to prove coverage.

*§1303.53 Copies of documents.*

This section adds notices of federal interest to the list of required documents grantees must provide to the responsible HHS official. It also requires grantees to give copies of notices of federal interest to the responsible HHS official after they have filed the notices in their jurisdiction's property records. This is particularly important because notices of federal interest do not fully protect the federal share until the notices are filed in the appropriate property records. We address comments we received on this section below.

Comment: One commenter was concerned that if we include leases in this section, we might create a situation wherein large numbers of leases would have to be reviewed annually.

Response: We do not require grantees to submit documents listed in this section annually. Furthermore, these documents are only necessary when related to purchase, construction or major renovation, so we believe the volume of submissions will be manageable. We revised this section to clarify these documents must be submitted when Head Start funds are used for the noted facilities activities.

*§1303.54 Record retention.*

This section clarifies what documents grantees must retain as records. This section does not change the basic retention period, which is aligned with general requirements in the Uniform

Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. We did not receive any comments on this section.

*§1303.55 Procurement procedures.*

This section summarizes general procurement procedures as context for grantees. We did not receive any comments on this section.

*§1303.56 Inspection of work.*

This section aligns the elements of the final inspection report with those required in the engineer or architect's certification that accompanies the initial facilities project application. We address comments we received on this section below.

Comment: One commenter recommended that we do not require project architects to certify compliance with regulations beyond his control such as licensing and Section 504 of the Rehabilitation Act.

Response: We did not make any changes here. We believe the project architect is a qualified professional familiar with the project, who can express an opinion as to whether a facility subject to purchase, construction or major renovation with Head Start funds meets all applicable federal, state, and local requirements

**Transportation; Subpart F**

This subpart describes the requirements for programs related to transportation services. We received comments on this subpart. Some commenters supported the requirements in this section and stated that without transportation provided by the program, many high need families would be unable to access the program as they do not have private vehicles or access to public transportation. Other commenters expressed concerns or asked for clarifications. These comments are discussed in further detail below along with our responses.

*General Comments.*

Comment: Some commenters asked about the applicability of the regulation including for field trips or transporting children and parents to medical appointments. Some commenters expressed concern about the cost of transportation services or specific elements, such as requiring bus monitors. One commenter asked about the relative cost, quality, and compliance of contractual versus directly provided transportation.

Response: Incidental transportation as described under the definition of "transportation services" in part 1305 is exempt from the requirements of this subpart. This includes taking a sick child home or taking a child and parent on a medical visit. Field trips are not incidental transportation and therefore are subject to the requirements of this subpart. Additionally, we recognize that providing transportation is expensive, but that many high need children would not be able to participate in Head Start without transportation services. No program is required to transport all or any children, but if high need families require transportation services to access the program, such services should be part of the program design. Programs should also regularly assess the cost and quality of their transportation service and make informed decisions about the safest and most cost efficient options. We did not make any changes to the regulation in response to these comments.

*§1303.70 Purpose.*

This section describes transportation services and waiver options for programs. We received some comments on this section, which are discussed below.

Comment: Some commenters objected to the requirement in paragraph (b) that programs not offering transportation services make reasonable efforts to assist families who might otherwise have difficulty ensuring their child's participation. Some commenters indicated this

provision could be especially difficult in rural areas and should therefore be removed. Some commenters requested more clarity about what constitutes "reasonable assistance."

Response: This provision is intended to ensure that programs that do not provide transportation ensure that lack of such service does not pose a barrier to participation in the program for the highest need children and families. Many rural Head Start programs, for example, provide transportation because not doing so would greatly limit the number of the highest need children who could participate. We expect that when a program has determined transportation is not a needed service, there are available alternatives. Therefore we retained this requirement, but added an example of reasonable assistance to paragraph (b).

Comment: One commenter suggested that programs must ensure compliance with the requirements of this subpart when obtaining Head Start transportation services by coordinating with another human service agency.

Response: We agree with this comment but do not think it requires a revision to the regulation. As defined in part 1305, Head Start transportation services include "the planned transporting of children to and from sites where an agency provides services funded under the Head Start Act." Therefore services provided through a coordinating agency would have to meet the requirements of this subpart. Each program is responsible for ensuring that the transportation services it provides, whether directly, through a coordinated effort with an LEA or community partner, or through a contractual arrangement, meet these requirements.

Comment: Some commenters asked for additional information about the circumstances under which a waiver can be issued and how decisions regarding waiver approval are made.

Response: Per the regulation, we will only consider waivers in circumstances where adherence to this subpart would create a safety hazard or, for preschool children, a major

program disruption in relation to the requirements for child restraint systems or bus monitors, such that a waiver is in the best interest of enrolled children. We did not make any changes to these provisions. Typically, programs receiving transportation services through a partnership with a local education agency are the only ones approved for waivers. Programs can find information about applying for a transportation waiver through the Head Start Enterprise System (HSES) or by contacting their program official.

*§1303.71 Vehicles.*

This section describes the requirements for vehicles used to transport children. We received some comments on this section, which are discussed below.

Comment: One commenter requested additional information about allowable alternate vehicles.

Response: The definition of "allowable alternate vehicle" is provided in part 1305 and refers to a vehicle designed for carrying eleven or more people, including the driver, that meets all the Federal Motor Vehicle Safety Standards applicable to school buses, except 49 CFR 571.108 and 571.131. It is a vehicle that may not look like a traditional school bus, but has the required safety features such as compartmentalized seating, rollover protection, joint impact strength, and fuel system integrity. We did not make any changes to this provision.

Comment: One commenter objected to the removal of the former requirement that safety equipment be strategically placed and marked.

Response: While we expect each program to store such equipment where it is safe from children but accessible in an emergency, we agree that such equipment should be clearly labeled. We amended paragraph (b) to specify this.

*§1303.72 Vehicle operation.*

This section describes safety requirements during vehicle operation, driver qualification and application review requirements, and requirements for driver and bus monitor training. We received some comments on this section, discussed below.

Comment: One commenter suggested that we allow reasonable accommodation related to the requirements of the commercial driver's license (CDL) and that drivers should follow applicable Department of Transportation (DOT) regulations, including for drug and alcohol testing.

Response: In addition to possessing an appropriate CDL, drivers providing Head Start transportation services must meet applicable DOT, tribal, state, and local requirements for their jurisdiction. There are requirements for drug and alcohol testing associated with a CDL. Therefore, we did not make any revisions to this provision.

Comment: Some commenters expressed concern that the requirement to review a driver candidate's record through the National Driver Register could delay the hiring of needed drivers.

Response: While we understand the concerns about the expediency of various background checks, we believe it is very important to use available sources that may provide information about the safety record of driver candidates. Therefore, we retained this requirement to check the National Driver Register where available.

Comment: One commenter expressed concern that standards articulated the requirement for child safety restraint systems, but did not actually require that children be seated while using them.

Response: We agree that safety restraint systems only afford protection if they are properly used. We amended §1303.72(a)(1) to specify that each child should be seated in a child restraint system appropriate to the child's age, height and weight.

Comment: Some commenters referred to the requirement in paragraph (d) that drivers receive training in first aid. One suggested that Cardio Pulmonary Resuscitation (CPR) also be required. Another suggested it is not necessary to require first aid training for drivers.

Response: We agree that drivers should have both first aid and CPR training. This is required in §1302.47, and is therefore deleted from the list of training requirements in this section.

*§1303.73 Trip routing.*

This section establishes requirements for the safe and efficient planning of transportation routes.

Comment: Some commenters had concerns about the length of bus routes, including that some bus routes exceed an hour due to the geography of the service area and that complying with the trip routing safety requirements results in longer trips.

Response: Programs must keep trips under one hour, to the extent possible. We recognize that in some areas, such as rural areas, routes may be longer than an hour. We encourage programs to train bus monitors to provide meaningful interactions, discussion, songs, etc. with children during the time on the bus. We also understand that such things as requiring no U turns and curbside pick-up and drop off may extend routes. However, as the majority of school bus related child fatalities occur before boarding or after exiting the bus, we believe these safety provisions are necessary. We did not make any changes to these provisions.

*§1303.74 Safety procedures.*

This section describes the safety procedures programs must adhere to as part of transportation. We did not receive any comments on this section and therefore did not make any changes to these provisions.

*§1303.75 Children with disabilities.*

This section describes requirements for transporting children with disabilities. Below we discuss the comments we received on this section and our corresponding responses.

Comment: Some commenters supported the provision in paragraph (a) of this section that children with disabilities must be transported in the same vehicles used to transport other children whenever possible. Other commenters raised questions or concerns including a request to retain a previous provision to ensure special transportation requirements in a child's IEP or IFSP are followed, and a question about whether a program must ensure that drivers from other agencies are trained.

Response: In paragraph (b), we retained the provision that ensures special transportation requirements in a child's IEP or IFSP are followed; this provision was also retained in the NPRM. All Head Start transportation services, including those for children with disabilities, must meet the requirements of this regulation, whether they are provided directly, contractually, or through agreement with a local educational agency or other partner.

**FEDERAL ADMINISTRATIVE PROCEDURES; PART 1304**
**Monitoring, Suspension, Termination, Denial of Refunding, Reduction in Funding, and their Appeals; Subpart A**

This subpart focuses on monitoring, areas of noncompliance, deficiencies, and quality improvement plans. It outlines what happens when a grantee is suspended, when a grantee is terminated, when a grantee's financial assistance or application for refunding is denied, and when a grantee's assistance is reduced. It also clarifies the appeals process for certain adverse actions. We analyze the comments received on this subpart below.

*§1304.1 Purpose.*

This section lays out the Secretary's authority to monitor whether grantees meet program performance standards and to prescribe notice and appeal procedures. We did not receive any comments on this section.

*§1304.2 Monitoring.*

This section clarifies our authority to monitor grantees to ensure they comply with the Act, all program performance standards, and other federal regulations. We also clarify for programs that a deficiency can develop from an uncorrected area of noncompliance and from monitoring findings that show either a grantee's systemic or substantial material failure to comply with standards. We received comments from the public on this section and we discuss those comments below.

Comment: Some commenters urged us to take the lead to streamline Early Head Start, Head Start, and Child Care and Development Fund monitoring requirements and practices so that programs can focus more on performance and outcomes and less on monitoring compliance with detailed regulation. These commenters suggest for ACF to work more collaboratively with other federal partners to coordinate approaches to monitoring, and evaluating and supporting continuous quality improvement of early learning programs and their impacts. One commenter urged us to take the lead to build better integration between Early/Head Start data and state/local data systems.

Response: We will continue to work to better align Early Head Start, Head Start, and Child Care and Development Fund monitoring requirements and practices where possible. We will also continue to work with other federal partners to coordinate approaches to monitoring. We will continue to work with partners to facilitate better integration between Early/Head Start data and state/local data systems.

Comment: Some commenters asked us to define "immediate deficiencies," to prescribe how these deficiencies can be resolved, set time frames to correct areas of noncompliance and deficiencies, and, establish a deficiency review board that is independent of the regional office.

Response: We defer to the Act's definition for "deficiency," at section 637. Deficiencies are not determined at the regional level, though they were many years ago. Now, the Director of the Office of Head Start determines all deficiencies independently.

Comment: One commenter asked us to consider whether CLASS scores that fall below national norms, should be a non-compliance issue rather than a deficiency. The commenter believes data, including CLASS results, should be used as flashlight to illuminate paths to professional development and the central tenet of Head Start, continuous improvement.

Response: We did not propose any changes to the designation renewal system at former part 1307 in the NPRM. As we did not invite comments on the designation renewal system in the NPRM, we cannot respond to this comment here.

*§1304.3 Suspension with notice.*

This section includes the program performance standards for suspensions with notice. Although we retained, without change, most performance standards in this section, we proposed a few changes in the NPRM. We received comments on what we proposed in the NPRM and we address them below.

Comment: Some commenters complained paragraph (g) in this section gives the HHS official unilateral authority to impose additional suspensions indefinitely without having to verify in writing that deficiencies still exist. They argue that this practice conflicts with section 646(a)(5)(A) of the Act which requires the Secretary to prescribe procedures to assure that the Secretary may suspend financial assistance, "for not more than 30 days…" To comply with the

Act, they asked us to remove the sentence: "Nothing in this section precludes the HHS official from imposing suspension again for an additional 30 days if the cause of the suspension has been corrected."

Response: Paragraph (g) in this section does not violate section 646(a)(5)(A) of the Act. If a grantee has not satisfactorily corrected what led to the suspension in 30 days, HHS has the ability to impose another suspension for 30 days.

*§1304.4 Emergency suspension without advance notice.*

In this section, we discuss the circumstances that warrant emergency suspension without notice. We proposed a few small changes in the NPRM, specifically we added the term "emergency situation" to the reasons we can suspend without notice, to be more closely aligned with the Act. And we proposed to no longer allow grantees to use contributions during the suspended period to count toward in-kind match. We received comments on this section and discuss those comments below.

Comment: Some commenters believed paragraph (b) was worded awkwardly. To make the paragraph read better, the commenter asked us to make the following changes: delete the phrase "by any means" in paragraph (b)(2); reword paragraph (b)(3); and clarify what the "informal meeting" is in paragraph (b)(4). The commenter also pointed out something was missing in paragraph (c).

Response: We revised the language in paragraphs (b)(1)(iv), (b)(2) and (3), and (c) for clarification.

Comment: Some commenters noted if we allow the responsible HHS official to impose additional 30 days suspensions, then in effect we have terminated the program. If a Head Start

program loses funding for 60, 90, or more days, the program is likely to be so financially handicapped that the result could be the same as a termination of funding.

Response: We disagree that suspension is tantamount to termination. We only use suspension when such measure is allowed under the Act and usually in extraordinary circumstances. From 2013 to 2015, we issued 5 summary suspensions. Of the 5 summary suspensions, 4 resulted in termination.

Comment: Some commenters recommended we describe how programs should appeal findings to the HHS official.

Response: We did not prescribe how programs should appeal findings to the HHS official. There is no formal process for how programs must appeal findings to the HHS official. However, regardless of how evidence is presented to the HHS official, we will consider it.

*§1304.5 Termination and denial of refunding.*

In this section describe the circumstances under which HHS can terminate, and, deny refunding or reduce funding. We also discuss appeal procedures for terminations and denials of refunding. We address the one comment we received on this section below.

Comment: Some commenters asked us to define "financial viability" again because our proposed definition was too broad and too subjective. A commenter proposed the following definition: "Financial viability means that an organization is able to meet its financial obligations as they become due."

Response: We did not revise our definition for "financial viability." However, we will clarify here what we mean by the phrase "balance funding and expenses." The phrase "balance funding and expenses" refers to the status of a grantee's funds and obligations by the end of the

funding period. We understand throughout a funding period, funding and expenses will not always remain balanced. However, they should balance by the end of the funding period.

*§1304.6 Appeal for prospective delegate agencies.*

Section 646(a)(1) of the Act requires appeal procedures for certain conflicts between delegates and grantees. The Act requires a timely and expeditious appeal to the Secretary for an entity who wants to serve as a delegate and whose application has been rejected or not acted upon.

The previous regulation included an additional step that allowed prospective delegate agencies to appeal application decisions to the grantee first. This extra step added nothing to the application appeal process beyond extending it. Therefore, in the NPRM, we proposed to eliminate this extra step. We also proposed to eliminate the reconsideration process. We address the one comment we received on this section below.

Comment: According to one commenter, because we eliminated the appeal between prospective delegate agencies and grantees and require only the appeal to ACF, there may be occasions where a grantee wishes to reconsider its decision about a prospective delegate agency.

Response: Granted, there may be occasions where a grantee wishes to reconsider its decision about a delegate agency. We did not prohibit a grantee that chooses to reconsider its decision about a prospective delegate agency, but we did not require the grantee to do so either.

*§1304.7 Legal fees.*

This section focuses on grantees' right to attorneys and attorney fees. In the NPRM, we proposed to revise this section to align with section 646(a)(4)(C) of the Act, which requires the Secretary to prescribe procedures that prohibit a Head Start agency from using program grant

funds to pay attorney fees and costs incurred during an appeal. This section also addresses when an agency may apply for reimbursement of fees and the procedures for doing so.

Comment: Some commenters asked us to clarify whether delegate agencies can seek reimbursement for legal fees.

Response: No. Delegate agencies cannot seek reimbursement for legal fees. The Act only speaks to the reimbursement of legal fees for the grantee appealing an HHS decision.

**Designation Renewal; Subpart B**

We did not make changes to the content of this subpart and therefore did not invite comments in the NPRM. We made technical changes to reorder what was part 1307, where this subpart was located in the previous rule, in a logical order for this rule. Although we did not invite comments, some commenters raised concerns about the Designation Renewal System and offered suggestions for alternate approaches. As prescribed by the Administrative Procedures Act, because we did not give notice of any potential changes we cannot make any changes in the final rule.

**Selection of Grantees through Competition; Subpart C**

Section 641(d)(2) of the Act outlines the specific criteria the Secretary must use to select grantees and allow consideration of "other factors" and we refer to this citation in our regulatory text. This subpart revises previous program performance standards to reflect a more transparent and streamlined process for Head Start grant competitions and outline the other factors that are considered. We received comments on this section and discuss them below.

Comment: Commenters were concerned about removing the previous criteria for grantee selection regarding opportunities for employment and for the direct participation of parents in planning, conducting, and administering the program.

Response: In the Act, Congress included an extensive list of criteria that must be considered when selecting from among qualified applicants. This list includes family and community involvement, and thus by referencing section 641(d)(2) of the Act, these important concepts are covered by this section of the regulation. This list includes the important participation of families and communities.

**Replacement of American Indian and Alaska Native Grantees; Subpart D**

This subpart outlines the requirements for replacing American Indian and Alaska Native Head Start programs. We did not receive any comments on this section and did not make any changes.

**Head Start Fellows Program, Subpart E**

This subpart outlines the requirements for administration of the Head Start Fellows Program. We did not receive any comments on this section and did not make any changes.

**DEFINITIONS; PART 1305**

In this part, we include definitions from all sections of the previous rule for ease of grantee and prospective grantee understanding and transparency. In the previous rule, definitions were attached to each section. We consolidated definitions that were repeated in multiple sections in the previous rule. In addition, we removed many definitions that were either not meaningful or did not add to the widely understood meaning. We also removed definitions when

it was clearer to incorporate their meaning into the provisions themselves or when the terms were not included in the final rule. We restored definitions from the previous rule that were not included in the NPRM when we used these terms in the final rule. We added some new definitions to this part in order to support other revisions throughout the rule or to provide technical clarity including their statutory basis in the Act, and reference the definitions in other relevant pieces of legislation where appropriate. Finally, we made a technical change to add a section on the purpose of this part, and renamed and redesignated the proposed section §1305.1 to §1305.2 in this final rule.

We received many comments on this part. Many commenters requested that we add additional definitions. Others asked that additional details be included in previous or proposed definitions. Others pointed out inconsistencies between definitions and asked for clarification. Finally, commenters asked that definitions from the Act and other statutes be spelled out in the rule. We discuss and respond to each of these categories of comments below.

Comment: Many commenters requested a definition for "planned operation."

Response: In light of the changes to the service duration requirements for center-based programs in §1302.21(c) that remove the term "planned operation," we have deleted the definitions for "hours of operation" because they are no longer necessary. We added a definition for "hours of planned class operations."

Comment: Many commenters requested definitions that were not in the previous rule or the NPRM including: authorized caregiver, directory information, entry, high-quality pre-K, noncompliance, inclusion, LEA, frequently absent, unexcused absence, material, standardized and structured assessments, seclusion/restraint, and research-based.

Response: We did not include definitions for directory information, entry and seclusion/restraint because they are not used in the performance standards and so need no definition. We did not define frequently absent or unexcused absence to allow programs reasonable flexibility to define those terms to best meet the needs of the families they serve. We did not define authorized caregiver, LEA, noncompliance, material or inclusion because we are using their widely understood meaning. We did not define high-quality pre-K but changed the language in §1302.14(a)(3) to include that pre-kindergarten must be comprehensive and available for a full school day. Similarly we did not define standardized and structured assessments but added in §1302.33(b)(1) that they may observation-based or direct. We did not include a definition for deficiency because if it defined by the Act and we rely entirely on that statutory definition.

Comment: Many commenters asked that definitions from statutes, including the Head Start Act, IDEA, and McKinney-Vento, be restated as definitions in this rule.

Response: We did not define terms when we are relying on the definition from other statues.

Comment: Many commenters requested clarification of definitions that were in the previous rule or the NPRM, such as enrolled, family, and federal interest.

Response: We have modified the definition of enrolled to clarify that a child is not considered enrolled until they attend the program for center-based and family child care or received a home visit for home-based. We do not believe the definitions of family or federal interest needed changes.

Comment: Commenters pointed out that the definition of Migrant or Seasonal Head Start Program did not limit agricultural work to "the production and harvesting of tree and field crops," while the definition of migrant family did limit it in this way.

Response: We removed this phrase to make the definitions consistent.

Comment: Some commenters suggested adding language to the regulation stating that DLLs should be defined and identified in a consistent manner. Some also suggested including a definition for DLLs in the regulation.

Response: We do not agree that we should require programs to identify DLLs in a consistent manner in regulation, as this would unnecessarily limit program flexibility to develop their own processes for identifying DLLs. However, we do agree that it is important to incorporate a definition for "dual language learner" into regulation. We added a definition to part 1305 that is consistent with definitions used by experts in the field. This definition is inclusive of children who have a home language other than English, as well children who have home languages of both English and another non-English language.

## VI. Regulatory Process Matters

a. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[123] as amended by the Small Business Regulatory Enforcement Fairness Act, requires federal agencies to determine, to the extent feasible, a rule's economic impact on small entities, explore regulatory options for reducing any significant economic impact on a substantial number of such entities, and explain their regulatory approach. This final rule will not result in a significant economic impact on a substantial number of small entities. It is intended to ensure accountability for federal funds consistent with the purposes of the Improving Head Start for School Readiness Act of 2007[124] and is not duplicative of other requirements.

b. Regulatory Planning and Review Executive Order 12866

Executive Order 12866 requires federal agencies to submit significant regulatory actions to the Office of Management and Budget (OMB) for review. The Order defines "significant regulatory actions," generally, as any regulatory action that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[125] This final rule is different from many rules in the federal government in that

[123] 5 U.S.C. 605(b).

[124] 42 U.S.C. 9801

[125] Executive Order 12866 section 3(f)(1).

it will not require Head Start programs to spend more or less money on Head Start services, rather it will require programs to spend the money they are awarded in different ways. Nonetheless, given that the cost of the rule exceeds $100 million and that, if fully implemented, the costs will either be borne by the federal government in the form of additional appropriations for Head Start or by Head Start programs in the form of loss of slots for eligible children and teacher employment, we have determined this rule represents a significant regulatory action as defined by Executive Order 12866. Given both the directives of the Order and the importance of understanding the costs savings, and benefits associated with these requirements both with and without additional appropriations, we describe the costs, savings, and benefits associated with this final rule as well as available regulatory alternatives below.

1. Need for Regulatory Action

The purpose of Head Start, as prescribed by the Act, is to "promote the school readiness of low-income children by enhancing their cognitive, social, and emotional development."[126] This mission is based upon decades of scientific research that documents the strong and lasting impact of children's experiences in their first five years of life on brain development, learning, and health,[127,128,129] and the significant economic impact of such benefits on children individually and on society as a whole. A wealth of research suggests that participation in early learning programs can help support optimal child development during these crucial first five years, particularly for children from low-income families, with benefits for society lasting well into

[126] 42 U.S.C. 9831

[127] National Scientific Council on the Developing Child (2007). *The Timing and Quality of Early Experiences Combine to Shape Brain Architecture: Working Paper No. 5*. Cambridge, MA: Author.

[128] Anda R.F., Felitti V.J., Bremner J.D., Walker J.D., Whitfield C., Perry, B.D., Dube, S.R., & Giles, W.H. (2006). The enduring effects of abuse and related adverse experiences in childhood. A convergence of evidence from neurobiology and epidemiology. *European Archives of Psychiatry and Clinical Neuroscience, 256(3),* 174-186.

[129] National Scientific Council on the Developing Child (2010). *Early Experiences Can Alter Gene Expression and Affect Long-Term Development: Working Paper No. 10*. Cambridge, MA: Author.

adulthood.[130,131,132,133] However, provision of consistently high-quality early learning experiences is central to reaping these benefits from early learning programs, including Head Start programs. The congressionally mandated, randomized control trial study of Head Start's impact did not show lasting effects on the outcomes measured beyond the end of the Head Start program years for all children. Specifically, while the Impact Study found effects at the end of participation in Head Start, by third grade the control and treatment groups showed no significant differences.[134] However, recent reanalysis of data from the Head Start Impact Study suggests that those programs that were full-day had a more positive impact on children's cognitive outcomes.[135] In order for Head Start to achieve its mission to be an effective tool in supporting children's success in kindergarten and beyond, all programs must be high quality. Decades of best practices, the latest research in early education, expert advice, the Secretary's Advisory Committee's recommendations, and Congressional mandates from the Act, all demonstrate that more can be done to ensure all Head Start programs provide consistently high-quality early learning experiences that prepare children for kindergarten and have long-term effects on their academic success. These findings all culminate in the need for policy changes. Additionally, we streamlined requirements and minimized administrative burden on local programs anticipate these changes will help move Head Start away from a compliance-oriented culture to an

[130] Heckman, J.J., Moon, S.H., Pinto, R., Savalyev, P.A. & Yavitz, A. (2010). The Rate of Return to the High/Scope Perry Preschool Program. Journal of Public Economics, 94(1-2), 114–128.
[131] The Council of Economic Advisers. (December, 2014). *The Economics of Early Childhood Investments.* Washington, DC: Authors.
[132] Reynolds, A.J., Temple, J.A., Robertson, D.L., Mann, E.A. (2002). Age 21 Cost-Benefit Analysis of the Title I Chicago Child-Parent Centers. *Educational Evaluation and Policy Analysis*, 24(4), 267-303.
[133] Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M., . . .Zaslow, M. (2013). Investing in our future: The evidence base on preschool education. Foundation for Child Development.
[134] Puma, M., Bell, S., Cook, R., Heid, C., Broene, P., Jenkins, F., & Downer, J. (2012). Third grade follow-up to the Head Start impact study final report. *US Department of Health and Human Services Office of Planning, Research and Evaluation*.
[135] Walters, C. (2014). *Inputs in the production of early childhood human capital: Evidence from Head Start.* American Economic Journal: Applied Economics, 7(4), 76-102.

outcomes-focused one. Furthermore, we believe this approach will support better collaboration with other programs and funding streams. We believe the final rule, which incorporates these needed changes, will empower all programs to achieve this goal.

2. Cost and Savings Analysis

In this section, we first summarize and respond to comments we received on the Regulatory Impact Analysis in the NPRM. Then, we describe the data sources and general methodology used to calculate costs and savings throughout this analysis. We also summarize the total estimated costs and cost savings associated with this rule, split into four categories: costs and cost savings borne by Head Start, costs and cost savings borne by other parties, opportunity costs, and transfer costs. Finally, we itemize the cost and cost savings estimates associated with individual provisions and describe the assumptions, methodology, and data used to calculate each estimate.

**Comment and Response**

Comment: Many commenters noted that new requirements would impose additional costs. Some of the costs that commenters highlighted were already accounted for in the Regulatory Impact Analyses of the NPRM including costs associated with increased duration, background checks, curriculum requirements, mentor coaching, additional staff qualifications, the waiver application process, providing annual notice to parents of release of personally identifiable information, and costs to implement the changes to the Head Start Program Performance Standards (HSPPS). Other commenters explicitly suggested that the Regulatory Impact Analysis underestimated the costs associated with the provisions it addressed, such as the cost of additional facilities or other start-up including cots for naptime, in the estimate for increasing Head Start center-based duration. Some of these commenters did not provide

evidence or a rationale to support these claims. Other commenters suggested costs in their community would be higher for a variety of reasons.

Response: We estimate the costs associated with increasing duration, additional background checks, new curriculum requirements, coaching, additional staff qualifications, the waiver application process, providing annual notice to parents of release of personally identifiable information, and many other new requirements in the HSPPS in this Regulatory Impact Analysis. We acknowledge there are additional costs associated with facilities and other start-up activities for increasing duration Given the period of ramp-up that most programs will need to implement the duration requirements with additional funding, we anticipate that a portion of any first 12-month operational award will be available for the purchase or renovation of facilities and other start-up activities before programs begin serving children at the higher duration. Nonetheless, we have included an estimate of start-up costs and assumed that these one-time costs will be borne the year prior to the effective dates for duration requirements to reflect the additional costs that would be incurred if these requirements were implemented without adequate funding. In addition, we have adjusted estimates throughout this analysis to reflect revisions to requirements in response to public comments, for example, the final rule requires 1,020 annual hours rather than prescribing 6 hours per day and 180 days per year for Head Start center-based programs, and the final rule reinstates the requirement for parent committees. While we understand that costs of specific provisions will vary across communities, we use the best available data to estimate the cost for all Head Start programs, on average.

Comment: Some commenters expressed concerns related to costs that the NPRM would have imposed or they perceived the NPRM to impose. These costs include the cost of group socialization sites needing to be licensed, costs in rural areas if the home-based option for

preschool was removed as a standard option, reduced benefits from the elimination of family partnership agreements, transportation for child health services, partnering with universities to adapt curricula, decreased in-kind matches in volunteer hours and engagement due to reduced enrollment, loss of transportation when partnering with an LEA because of full day requirements, and services to children with significant delays who do not yet have IEPs or IFSPs.

Response: Throughout the preamble of the final rule, we address comments suggesting concerns related to requirements that would have imposed unnecessary or unaccounted for costs. We revised the final rule to provide greater flexibility or prevent unintended consequences that would have resulted in additional costs for many of the concerns commenters noted. For example, the final rule requires 1,020 annual hours rather than prescribing 6 hours per day and 180 days per year for Head Start center-based programs. The final rule also allows programs to align their schedules with their local education agency to maintain or facilitate partnerships. These changes address concerns about costs that would arise from disrupted partnerships with local education agencies and costs associated with extending the year in cases where 1,020 annual hours are already being provided through a slightly shorter year.

Comment: Some commenters expressed concerns about costs that are implicitly required in current regulation but more explicitly required in the revision of the HSPPS including tracking and analyzing data for continuous quality improvement, providing mental health consultation services, and appropriate training for staff or volunteers involved in the transportation of children.

Response: Although we recognize there are costs associated with these services, the purpose of the Regulatory Impact Analysis is to estimate the costs associated with new requirements. Tracking and analyzing data for continuous quality improvement, providing

mental health consultation services, and appropriate training for staff or volunteers are requirements that existed in the previous performance standards so those costs have not been quantified here. However, in the Benefits Analysis section, we have noted that the clarity the final rule provides should lead to improved compliance with these and other requirements which should be associated with improved child safety and stronger child and family outcomes.

Comment: Some commenters suggested that the Regulatory Impact Analysis should incorporate costs associated with prioritizing three year olds for enrollment in Head Start. These commenters highlighted the lower group size and ratio requirements for three-year-olds as an indication of greater cost.

Response: We would consider prioritizing three-year olds and thereby serving fewer children in Head Start a conversion that would not change the grantee's overall budget and would not be supported by additional funds. Therefore we have not accounted for any monetary costs associated with this provision here. While we recognize that this would lead to a reduction in slots, it would actually be an increase in the number of children served by early childhood programs overall, because the prioritization is only required if there are programs in the community serving four-year olds. Further, we lack data to support a reasonable assumption about how often and at what point in the future other programs in Head Start communities would be available to serve four-year-olds. Therefore, we have not quantified these costs to programs or any transfer of benefits here.

Comment: Many commenters suggested specific costs associated with new requirements in the NPRM that are being maintained in the final rule and that were not addressed in the original Regulatory Impact Analysis, including use of a parenting curriculum, attempting to contact parents if they have not notified the program that their children will be absent,

participation in state Quality Improvement Rating Systems, and participation in state longitudinal data systems.

Response: We have estimated costs associated with these requirements in the Regulatory Impact Analysis below.

Comment: Many commenters expressed the desire for the Head Start Performance Standards to require and account for increased teacher compensation.

Response: We agree that teacher compensation is vitally important to attracting and retaining effective teachers. However, addressing compensation is outside the scope of this regulation because teacher compensation is determined by congressional appropriations and local decisions. Nonetheless, our cost estimates for increasing duration assume costs will be driven in large part by additional pay for teacher's time, such that programs that must increase their duration as a result of this rule could increase teacher pay in a commensurate fashion if sufficient funds are available.

Comment: Some commenters suggested the Regulatory Impact Analysis should include mention of the benefits associated with longer duration allowing parents to work.

Response: We agree and have revised the discussion of potential benefits to include the benefits associated with allowing more Head Start parents to work.

Comment: Some commenters suggested revisions to our cost estimates for specific provisions. Commenters suggested we revise the assumption that there would be no additional administrative costs associated with transforming double session programs into single session, full school day and full school year programs. Commenters also suggested that the regulatory impact analysis should build in cost of living increases overtime to reflect the true cost of the rule.

Response: We have revised our estimates in response to these comments. With regard to administrative costs we no longer assume a reduction in the cost estimate for increasing duration based on lower administrative costs. In addition, while the Regulatory Impact Analysis reports costs in real dollars, we have added a table in the section on the implications of Congressional and Secretarial action that reflects the costs of the rule, adjusted for cost of living increases over time, to ensure the full cost and the potential slot loss associated with those costs are clearly articulated.

**Data Sources and Methodology**

The majority of the estimates in this regulatory impact analysis utilize two Office of Head Start internal datasets: the Grant Application and Budget Instrument (GABI) and the Program Information Report (PIR). Whenever possible, in this regulatory impact analysis, estimates are based upon these datasets. When a data point is necessary to estimate the cost of any provision that cannot be drawn from the GABI or PIR, other data sources are utilized. These data sources are described or cited in the narrative of the relevant cost estimates.

The Head Start GABI is a uniform OMB approved application and budget instrument to standardize the format for the collection of program-specific data grantees provide with a continuation grant application. Head Start grantees provide a range of data on their proposed budgets including non-federal share, any other sources of funding, program options, and program schedules.

The PIR is a survey of all grantees that provides comprehensive data on Head Start, Early Head Start and Migrant Head Start programs nationwide. Data collection for the PIR is automated to improve efficiency in the collection and analysis of data. Head Start achieves a 100 percent response rate annually from approximately 2,600 respondents.

These datasets have some limitations. For example, depending on where programs are in the application process or if they are submitting competitive applications, rather than continuation applications, the GABI data can be incomplete. We addressed this limitation in two ways. For grantees that had not submitted GABI data in FY 2015 due to DRS transitions or other factors, we used their FY 2014 GABI data. In addition, to account for missing data, we determined which specific grantees did not have program schedules in the 2015 GABI data, and then determined the funded enrollment associated with those specific grantees using data from the Head Start Enterprise System. Through this analysis, we learned that 11 percent of Head Start funded enrollment slots and 13 percent of Early Head Start enrollment slots are missing from the 2015 GABI data. Therefore, throughout this analysis, we increase estimates using GABI data by 11 percent for Head Start and 13 percent for Early Head Start. Further, the PIR data is self-reported data that has not been independently verified.

The methodology we use to estimate costs and cost savings associated with individual provisions varies throughout this analysis. We have included a description of each methodology in the Itemized Costs and Cost Savings section of this analysis. As appropriate, estimates associated with new salaries have been doubled to account for fringe benefits and overhead. Estimates associated with duration requirements that increase the hours and days staff must work and increases to salaries based on higher credentials are inflated by one-third to include costs associated with an increase in fringe benefits but exclude any additional overhead costs.

Finally, in general, we have rounded total cost estimates but have not rounded itemized cost estimates for transparency of the estimation process. These unrounded itemized cost estimates should not be interpreted as overly precise, but instead represent our best estimation given limitations.

**Summary of Costs and Cost Savings**

Throughout this analysis, we identify and itemize the costs and cost savings to society associated with the changes from the previous regulation in three categories: costs borne by Head Start, costs borne by other parties, and opportunity costs. We describe the calculation of each of these costs in the appropriate sections throughout this analysis. The table below summarizes all of the itemized costs for every year over a ten year window. The final year (year ten) represents our best estimation of costs in year ten and ongoing costs thereafter. We analyze the costs of the regulation two ways in the table and throughout this analysis – we estimate the costs of the regulation without consideration of the substantial resources provided in FY 2016 to increase duration in Head Start and we estimate the costs net of these resources which have already been provided and are now part of the budget baseline for the Head Start program, assuming this funding increase is maintained across the ten year window. In year 10, the total cost to Head Start after accounting for the funding Congress has already provided to expand duration total $1,003,152,645; without the $294 million in funding provided in FY 2016 and now part of the budget baseline, the total cost would be $1,297,152,645. In year ten and ongoing, costs borne by other parties total $46,464,140, and opportunity costs total $4,202,017. Therefore, we estimate the net cost to society of the final rule, if fully implemented, to be $1,053,818,802 in year ten and ongoing, when the funding Congress has already provided is taken into account.

Without additional appropriations in future years or action by the Secretary as described in §1302.21(c)(3) to lower the requirements described in paragraphs §1302.21(c)(2)(iii) and (iv) of the final rule, Head Start programs would need to absorb any additional costs within their current budgets. We discuss the implications of Congressional and Secretarial actions, as well as potential slot and teacher job loss, in more detail in the Benefits Analysis section below.

**Summary Table of All Costs Borne by Head Start Years 1-5**

| | Year 1 2016-2017* | Year 2 2017-2018* | Year 3 2018-2019* | Year 4 2019-2020* | Year 5 2020-2021* |
|---|---|---|---|---|---|
| Increased Head Start Center-Based (CB) Program Duration, Excluding Duration Funding Appropriated in FY 2016 | $ - | $ - | $ - | $508,440,805 | $508,440,805 |
| FY 2016 Funding Appropriated to Expand Head Start CB Duration | $ - | $ - | $ - | ($263,121,940) | ($263,121,940) |
| **Net Cost of Head Start CB Duration Increase** | **$ -** | **$ -** | **$ -** | **$245,318,865** | **$245,318,865** |
| Increased EHS CB Duration, Excluding Duration Funding Appropriated in FY 2016 | $ - | $ - | $30,878,060 | $30,878,060 | $30,878,060 |
| FY 2016 Funding Appropriated to Expand EHS CB Duration | | | ($30,878,060) | ($30,878,060) | ($30,878,060) |
| **Net Cost of EHS CB Duration Increase** | | | **$0** | **$0** | **$0** |
| Start-up Costs for Duration Increase for CB Programs | $ - | $ 6,175,612 | $101,688,161 | $ - | $124,109,936 |
| Increased EHS Home-Based (HB) Duration | $ - | $8,188,508 | $8,188,508 | $8,188,508 | $8,188,508 |
| Waiver for Two-Year-Old Ratios | $ (24,541,262) | $(24,541,262) | $(24,541,262) | $(24,541,262) | $(24,541,262) |
| Waiver Applications | $ 42,751 | $54,137 | $60,153 | $ 80,899 | $ 80,899 |
| Home Visit for Frequently Absent Children | $ 927,603 | $ 834,842 | $ 742,082 | $ 649,322 | $ 556,562 |
| Parent Contact -Unexpectedly Absent Children | $ 3,540,199 | $ 3,540,199 | $ 3,540,199 | $ 3,540,199 | $ 3,540,199 |
| Associate's Degree for Head Start (HS) Teachers | $ 10,472,585 | $10,472,585 | $10,472,585 | $10,472,585 | $10,472,585 |
| Home-visiting CDA for Home Visitors | $ - | $ - | $5,112,499 | $5,112,499 | $5,112,499 |
| Credential for New Family Service Workers | $ 549,046 | $ 549,046 | $ 549,046 | $ 549,046 | $ 549,046 |
| Bachelor's Degree for New Management Staff | $ 2,182,809 | $ 3,977,108 | $5,515,809 | $6,798,912 | $7,826,417 |
| Mentor Coaching | $ - | $141,978,651 | $141,978,651 | $141,978,651 | $141,978,651 |
| Improving Curriculum | $ - | $ 4,390,220 | $ 4,390,220 | $ 4,390,220 | $ 4,390,220 |
| Monitoring Fidelity of Curriculum Implementation | $ - | $ 33,983 | $ 33,983 | $ 33,983 | $ 33,983 |
| Assessments for Dual Language Learners | $ - | $6,082,338 | $6,082,338 | $ 6,082,338 | $6,082,338 |
| Removal of Head Start-specific IEPs | $ (41,180,576) | $ (41,180,576) | $ (41,180,576) | (41,180,576) | $ (41,180,576) |
| Parenting Curriculum | $ 4,055,157 | $ 4,055,157 | $ 4,055,157 | $ 4,055,157 | $ 4,055,157 |
| Memorandum of Understanding (MOU) | $ 61,506 | $ - | $ - | $ - | $ - |
| Criminal Background Checks | $ - | $ 4,117,348 | $4,117,348 | $4,117,348 | $ 4,117,348 |
| Mediation and Arbitration | $ 333,000 | $ 333,000 | $ 333,000 | $ 333,000 | $ 333,000 |
| Removal of Annual Audits | $ (306,000) | $ (306,000) | $ (306,000) | $ (306,000) | $ (306,000) |
| Delegate Appeals | $ (833,638) | $ (833,638) | $ (833,638) | $ (833,638) | $ (833,638) |
| Clarification of Facilities Application Process | $ (4,350,000) | $ (4,350,000) | $ (4,350,000) | $ (4,350,000) | $ (4,350,000) |
| Community Assessment | $ (1,152,558) | $ (1,152,558) | $ (1,152,558) | $ (1,152,558) | $ (1,152,558) |
| Managerial Planning | $ (2,298,905) | $ (2,298,905) | $ (2,298,905) | $ (2,298,905) | $ (2,298,905) |
| Data Management | $ - | $ 6,643,811 | $ 6,643,811 | $ 6,643,811 | $ 6,643,811 |
| Participation in QRIS | $ - | $ 1,695,928 | $ 1,695,928 | $ 1,695,928 | $ 1,695,928 |
| Participation in State longitudinal data systems | $ - | $ 824,593 | $ 824,593 | $ 824,593 | $ 824,593 |
| Implementation Planning | $ 3,474,474 | $ 3,474,474 | $ - | $ - | $ - |
| **TOTAL, *Excluding* Duration Funding Appropriated in FY 2016** | **$ (46,320,371)** | **$134,637,446** | **$264,118,036** | **$ 672,906,362** | **$797,951,042** |
| **TOTAL, *Including* Duration Funding** | **n/a** | **n/a** | **n/a** | **$378,906,362** | **$503,951,042** |

| | | | | | |
|---|---|---|---|---|---|
| **Appropriated in FY 2016** | | | | | |

*Year ranges refer Head Start program years, which for these estimates, begin on August 1st of each year and end on or before July 31st.

| **Summary Table of All Costs Years 6-10** | | | | | |
|---|---|---|---|---|---|
| | **Year 6 2021-2022*** | **Year 7 2022-2023*** | **Year 8 2023-2024*** | **Year 9 2024-2025*** | **Year 10 2025-2026*** |
| Increased Head Start CB Program Duration, Excluding Duration Funding Appropriated in FY 2016 | $1,128,990,485 | $1,128,990,485 | $1,128,990,485 | $1,128,990,485 | $1,128,990,485 |
| FY 2016 Funding Appropriated to Expand Head Start CB Duration | ($263,121,940) | ( $263,121,940) | ($263,121,940) | ($263,121,940) | ($263,121,940) |
| **Net Cost of Head Start CB Duration Increase** | **$865,868,545** | **$865,868,545** | **$865,868,545** | **$865,868,545** | **$865,868,545** |
| Increased EHS CB Program Duration, Excluding Duration Funding Appropriated in FY 2016 | $30,878,060 | $ 30,878,060 | $ 30,878,060 | $30,878,060 | $30,878,060 |
| FY 2016 Funding Appropriated to Expand EHS CB Duration | ($30,878,060) | ($30,878,060) | ($30,878,060) | ($30,878,060) | ($30,878,060) |
| **Net Cost of EHS CB Duration Increase** | **$0** | **$0** | **$0** | **$0** | **$0** |
| Increased EHS HB Duration | $8,188,508 | $8,188,508 | $8,188,508 | $ 8,188,508 | $8,188,508 |
| Waiver for Two-Year-Old Ratios | $(24,541,262) | $(24,541,262) | $(24,541,262) | $(24,541,262) | $(24,541,262) |
| Waiver Applications | $ 104,650 | $20,930 | $20,930 | $ 20,930 | $20,930 |
| Home Visit for Frequently Absent Children | $ 463,801 | $ 463,801 | $ 463,801 | $ 463,801 | $ 463,801 |
| Parent Contact -Unexpectedly Absent Children | $ 3,540,199 | $ 3,540,199 | $ 3,540,199 | $ 3,540,199 | $ 3,540,199 |
| Associate's Degree for HS Teachers | $10,472,585 | $10,472,585 | $10,472,585 | $10,472,585 | $10,472,585 |
| Home-visiting CDA for Home Visitors | $5,112,499 | $5,112,499 | $5,112,499 | $5,112,499 | $5,112,499 |
| Credential for New Family Service Workers | $ 549,046 | $ 549,046 | $ 549,046 | $ 549,046 | $ 549,046 |
| Bachelor's Degree for New Management Staff | $ 8,726,123 | $9,370,230 | $10,014,338 | $10,525,534 | $ 10,908,931 |
| Mentor Coaching | $141,978,651 | $141,978,651 | $141,978,651 | $141,978,651 | $141,978,651 |
| Improving Curriculum | $ 4,390,220 | $ 4,390,220 | $ 4,390,220 | $ 4,390,220 | $ 4,390,220 |
| Monitoring Fidelity of Curriculum Implementation | $ 33,983 | $ 33,983 | $ 33,983 | $ 33,983 | $ 33,983 |
| Assessments for Dual Language Learners | $6,082,338 | $6,082,338 | $6,082,338 | $6,082,338 | $ 6,082,338 |
| Removal of Head Start-specific IEPs | $ (41,180,576) | $ (41,180,576) | $ (41,180,576) | $(41,180,576) | $ (41,180,576) |
| Parenting Curriculum | $ 4,055,157 | $ 4,055,157 | $ 4,055,157 | $ 4,055,157 | $ 4,055,157 |
| Memorandum of Understanding (MOU) | $ - | $ - | $ - | $ - | $ - |
| Criminal Background Checks | $ 4,117,348 | $ 4,117,348 | $ 4,117,348 | $ 4,117,348 | $4,117,348 |
| Mediation and Arbitration | $ 333,000 | $ 333,000 | $ 333,000 | $ 333,000 | $ 333,000 |
| Removal of Annual Audits | $ (306,000) | $ (306,000) | $ (306,000) | $ (306,000) | $ (306,000) |
| Delegate Appeals | $ (833,638) | $ (833,638) | $ (833,638) | $ (833,638) | $ (833,638) |
| Clarification of Facilities Application Process | $ (4,350,000) | $ (4,350,000) | $ (4,350,000) | $ (4,350,000) | $ (4,350,000) |
| Community Assessment | $ (1,152,558) | $ (1,152,558) | $ (1,152,558) | $ (1,152,558) | $ (1,152,558) |
| Managerial Planning | $ (2,298,905) | $ (2,298,905) | $ (2,298,905) | $ (2,298,905) | $ (2,298,905) |
| Data Management | $ 6,643,811 | $ 6,643,811 | $ 6,643,811 | $ 6,643,811 | $ 6,643,811 |
| Participation in QRIS | $ 1,695,928 | $ 2,024,583 | $ 2,024,583 | $ 2,024,583 | $ 2,352,595 |
| Participation in State longitudinal data systems | $ 824,593 | $ 965,550 | $ 965,550 | $ 965,550 | $1,106,507 |
| Implementation Planning | $ - | $ - | $ - | $ - | $ - |
| **TOTAL, *Excluding* Duration Funding Appropriated in FY 2016** | **$1,294,396,889** | **$ 1,295,285,932** | **$1,296,895,589** | **$1,297,406,786** | **$1,297,152,645** |
| **TOTAL, *Including* Duration Funding** | **$1,000,396,889** | **$1,001,285,932** | **$1,002,895,58** | **$1,003,406,786** | **$1,003,152,6** |

| | | | | | |
|---|---|---|---|---|---|
| **Appropriated in FY 2016** | | | **9** | | **45** |

*Year ranges refer Head Start program years, which for these estimates, begin on August 1st of each year and end on or before July 31st.

| Summary Table of All Costs Borne by Other Parties and Opportunity Costs Years 1-5 | | | | | |
|---|---|---|---|---|---|
| | **Year 1 2016-2017*** | **Year 2 2017-2018*** | **Year 3 2018-2019*** | **Year 4 2019-2020*** | **Year 5 2020-2021*** |
| ***Costs Borne by Other Parties*** | | | | | |
| Managerial Planning | $(1,043,016) | $(1,043,016) | $(1,043,016) | $(1,043,016) | $(1,043,016) |
| Data Management | $ - | $ 741,978 | $ 741,978 | $ 741,978 | $ 741,978 |
| Memorandum of Understanding (MOU) | $ 28,679 | $ - | $ - | $ - | $ - |
| Community Assessment | $ (352,028) | $ (352,028) | $ (352,028) | $ (352,028) | $ (352,028) |
| Improving Curriculum | $ - | $ 140,396 | $ 140,396 | $ 140,396 | $ 140,396 |
| Implementation Planning | $ 1,624,843 | $ 1,624,843 | $ - | $ - | $ - |
| Waiver Application | $14,023 | $17,758 | $19,731 | $26,537 | $26,537 |
| Bachelor's Degree for New Management Staff | $ 1,036,673 | $1,888,833 | $2,619,603 | $ 3,228,982 | $3,716,971 |
| Participation in QRIS | $ - | $ 888,598 | $ 888,598 | $ 888,598 | $ 888,598 |
| Participation in State longitudinal data systems | $ - | $ 399,268 | $ 399,268 | $ 399,268 | $ 399,268 |
| Removal of Head Start-specific IEPs | $41,180,576 | $41,180,576 | $41,180,576 | $ 41,180,576 | $ 41,180,576 |
| **SUBTOTAL** | **$42,489,751** | **$44,745,228** | **$43,853,127** | **$44,469,312** | **$44,957,301** |
| ***Opportunity Costs*** | | | | | |
| Home Visit for Frequently Absent Children | $ 455,721 | $ 410,149 | $ 364,577 | $ 319,005 | $ 273,433 |
| Criminal Background Checks | $ - | $ 838,985 | $838,985 | $838,985 | $838,985 |
| Data Management | $ - | $ 2,393,194 | $ 2,393,194 | $ 2,393,194 | $ 2,393,194 |
| **SUBTOTAL** | **$455,721** | **$ 4,384,306** | **$ 4,338,734** | **$4,293,161** | **$ 4,247,589** |

*Year ranges refer Head Start program years, which for these estimates, begin on August 1st of each year and end on or before July 31st.

| Summary Table of All Costs Borne by Other Parties and Opportunity Costs Years 6-10 | | | | | |
|---|---|---|---|---|---|
| | **Year 6 2021-2022*** | **Year 7 2022-2023*** | **Year 8 2023-2024*** | **Year 9 2024-2025*** | **Year 10 2025-2026*** |
| ***Costs Borne by Other Parties*** | | | | | |
| Managerial Planning | $ (1,043,016) | $ (1,043,016) | $ (1,043,016) | $ (1,043,016) | $ (1,043,016) |
| Data Management | $ - | $ 741,978 | $ 741,978 | $ 741,978 | $ 741,978 |
| Memorandum of Understanding (MOU) | $ - | $ - | $ - | $ - | $ - |
| Community Assessment | $ (352,028) | $ (352,028) | $ (352,028) | $ (352,028) | $ ( 352,028) |
| Improving Curriculum | $ 140,396 | $ 140,396 | $ 140,396 | $ 140,396 | $ 140,396 |
| Implementation Planning | $ - | $ - | $ - | $ - | $ - |
| Waiver Application | $34,327 | $6,865 | $ 6,865 | $6,865 | $6,865 |
| Bachelor's Degree for New Management Staff | $ 4,144,265 | $4,450,168 | $4,756,072 | $4,998,852 | $5,180,938 |
| Participation in QRIS | $ 888,598 | $ 1,119,660 | $ 1,119,660 | $ 1,119,660 | $ 1,350,409 |
| Participation in State longitudinal data systems | $ 399,268 | $ 469,767 | $ 469,767 | $ 469,767 | $ 540,267 |
| Removal of Head Start-specific IEPs | $ 41,180,576 | $ 41,180,576 | $ 41,180,576 | $ 41,180,576 | $ 41,180,576 |
| **SUBTOTAL** | **$45,392,386** | **$45,972,388** | **$46,278,292** | **$ 46,521,072** | **$46,464,140** |
| ***Opportunity Costs*** | | | | | |
| Home Visit for Frequently Absent Children | $ 227,861 | $ 227,861 | $ 227,861 | $ 227,861 | $ 227,861 |
| Criminal Background Checks | $ 838,985 | $838,985 | $838,985 | $ 838,985 | $838,985 |
| Data Management | $ 2,393,194 | $ 2,393,194 | $ 2,393,194 | $ 2,393,194 | $ 2,393,194 |
| **SUBTOTAL** | **$ 4,207,017** | **$4,202,017** | **$ 4,202,017** | **$4,202,017** | **$4,202,017** |

*Year ranges refer Head Start program years, which for these estimates, begin on August 1st of each year and end on or before July 31st.

| Summary Table of Net Cost to Society Years 1-10 | | | | | |
|---|---|---|---|---|---|
| | **Year 1 2016-2017*** | **Year 2 2017-2018*** | **Year 3 2018-2019*** | **Year 4 2019-2020*** | **Year 5 2020-2021*** |
| ***Net Cost to Society, Excluding* Duration Funding Appropriated Beginning in FY** | **$ (3,374,899)** | **$ 183,367,712** | **$311,910,629** | **$ 721,269,567** | **$ 846,756,665** |

| | | | | | |
|---|---|---|---|---|---|
| **2016** | | | | | |
| ***Net Cost to Society, Including* Duration Funding Appropriated Beginning in FY 2016** | **n/a** | **n/a** | **n/a** | **$427,269,567** | **$552,756,665** |
| | **Year 6 2021-2022*** | **Year 7 2022-2023*** | **Year 8 2023-2024*** | **Year 9 2024-2025*** | **Year 10 2025-2026*** |
| ***Net Cost to Society, Excluding* Duration Funding Appropriated Beginning in FY 2016** | **$1,343,592,024** | **$1,344,990,571** | **$1,346,906,131** | **$1,347,660,108** | **$1,347,818,802** |
| ***Net Cost to Society, Including* Duration Funding Appropriated Beginning in FY 2016** | **$1,049,592,024** | **$1,050,990,571** | **$1,052,906,131** | **$1,053,660,108** | **$1,053,818,802** |

*Year ranges refer Head Start program years, which for these estimates, begin on August 1st of each year and end on or before July 31st.

## Itemized Costs and Cost Savings

In the following sections, we itemize each of the regulatory changes for which we expect there to be associated costs or cost savings in the areas of structural program option provisions, staff quality provisions, curriculum and assessment provisions, and administrative/managerial provisions.

### Structural Program Option Provisions

This final rule includes several provisions that increase the duration of the Head Start experience for children. It also includes provisions intended to improve child attendance. We analyzed costs associated with the following specific requirements: minimum of 1,020 hours of planned class operations for all Head Start center-based programs in §1302.21(c)(2)(iii)-(iv) minimum of 1,380 hours for all Early Head Start center-based programs in §1302.21(c)(1)(i)-(ii); minimum of 46 home visits and 22 group socializations for all Early Head Start home-based programs in §1302.22(c)(1)(i) and (ii); and additional home visits for chronically absent children, as appropriate, and contacting parents when children are unexpectedly absent in §1302.16. In all cases, costs are estimated based on data about whether programs are currently meeting these new minimum requirements.

Increased Head Start Center-Based Program Duration

This final rule increases the minimum annual hours that Head Start programs must provide to 1,020 annual hours. The requirements in §1302.21(c)(2)(iii) and (iv) phase in the minimum annual hour requirement for Head Start such that each grantee must operate 50 percent of its Head Start center-based slots at the 1,020 annual hour minimum by August 1, 2019 and 100 percent of its Head Start center-based slots at this minimum by August 1, 2021. Further, to minimize the potential for slot loss as described above the requirements in §1302.21(c)(3) give the Secretary the authority to reduce these percentages if adequate funding is not available to support the policy.

These changes will increase the amount of exposure to Head Start experiences, which research suggests will, in turn, result in larger impacts on school readiness and long-term outcomes.[136,137] Research suggests that previous Head Start minimums are inadequate to achieve strong child outcomes and effectively promote school readiness. Specifically, research on full school day programs, instructional time, summer learning loss and attendance demonstrates the

[136] Weiland, C., & Yoshikawa, H. (2013). Impacts of a prekindergarten program on children's mathematics, language, literacy, executive function, and emotional skills. *Child Development, 84,* 2112–2130.

[137] Barnett, W.S., Jung, K., Youn, M.J., and Frede, E.C. (2013). *Abbott Preschool Program Longitudinal Effects Study: Fifth Grade Follow-Up.* National Institute for Early Education Research Rutgers—The State University of New Jersey.

importance of extending the minimum hours of early learning in Head Start.[138,139,140,141,142,143,144,145,146,147,148,149,150,151,152,153] Research finds that pre-kindergarten programs that focus on intentional teaching and both small group and one-to-one interactions have larger impacts on child outcomes.

***50 Percent Estimate for the Extension of Head Start Center-Based Program Duration***

---

[138] Logan, J.A.R., Piasta, S.B., Justice, L.M., Schatschneider, C., & Petrill, S. (2011). Children's Attendance Rates and Quality of Teacher-Child Interactions in At-Risk Preschool Classrooms: Contribution to Children's Expressive Language Growth. *Child & Youth Forum 40(6),* 457-477.

[139] Hubbs-Tait, L., McDonald Culp, A., Huey E., Culp, R., Starost, H., & Hare, C. (2002). Relation of Head Start attendance to children's cognitive and social outcomes: moderation by family risk. *Early Childhood Research Quarterly, 17,* 539–558.

[140] Lamdin, D.J. (1996). Evidence of student attendance as an independent variable in education production functions. *Journal of Educational Research, 89*(3), 155-162.

[141]

[142] Wong, V. C., Cook, T. D., Barnett, W. S., & Jung, K. (2008). An effectiveness-based evaluation of five state prekindergarten programs. *Journal of Policy Analysis and Management, 27,* 122-154.

[143] Camilli, G., Vargas, S., Ryan, S., & Barnett, W. S. (2010). Meta-analysis of the effects of early education interventions on cognitive and social development. *The Teachers College Record, 112,* 579-620.

[144] Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M., . . .Zaslow, M. (2013). Investing in our future: The evidence base on preschool education. Foundation for Child Development. New York, NY.

[145] Barnett, W. S., & Hustedt, J. T. (2005). Head start's lasting benefits. *Infants & Young Children, 18*(1), 16-24.

[146] Schweinhart, L. J., Montie, J., Xiang, Z., Barnett, W. S., Belfield, C. R., & Nores, M. (2005*). Lifetime effects: The HighScope Perry Preschool study through age 40.* Ypsilanti, MI: HighScope Press.

[147] Aikens, N., Kopack Klein, A., Tarullo, L., & West, J. (2013). Getting Ready for Kindergarten: Children's Progress During Head Start. FACES 2009 Report. OPRE Report 2013-21a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

[148] The Council of Economic Advisers. (December, 2014). *The Economics of Early Childhood Investments.* Washington, DC: Authors.

[149] Peisner-Feinberg, E. S., Schaaf, J. M., LaForett, D. R., Hildebrandt, L.M., & Sideris, J. (2014). *Effects of Georgia's Pre-K Program on children's school readiness skills: Findings from the 2012-2013 evaluation study.* Chapel Hill: The University of North Carolina, FPG Child Development Institute.

[150] Weiland, C., & Yoshikawa, H. (2013). Impacts of a prekindergarten program on children's mathematics, language, literacy, executive function, and emotional skills. *Child Development, 84,* 2112–2130.

[151] Gormley, W., Gayer, T., Phillips, D.A., & Dawson, B. (2005). The effects of universal Pre-K on cognitive development. *Developmental Psychology, 41,* 872-884.
Campbell, F. A., Ramey, C. T., Pungello, E., Sparling, J., & Miller-Johnson, S. (2002). Early childhood education: Young adult outcomes from the Abecedarian project. *Applied Developmental Science, 6,* 42-57.

[152] Schweinhart, L. J., Montie, J., Xiang, Z., Barnett, W. S., Belfield, C. R., & Nores, M. (2005). *Lifetime effects: The HighScope Perry Preschool study through age 40*. Ypsilanti, MI: HighScope Press.

[153]Ehrlich, S.B., Gwynne, J.A…..Sorice, E. (2014). *Preschool Attendance in Chicago Public Schools: Relationships with Learning Outcomes and Reasons for Absences.* University of Chicago Consortium on Chicago School Research. Reynolds, A.J. (2000). Success in early intervention: The Chicago Child-Parent Centers. Lincoln,

Starting in year four following publication of this rule (program year 2019-2020), programs are required to serve 50 percent of their children in Head Start center-based classrooms for at least 1,020 hours per year. In this section, we estimate costs associated with the additional service provided by these programs. Note that Migrant and Seasonal Head Start programs are excluded from these requirements. We first estimate the marginal cost per child for the Head Start services that exist today, updated to account for teacher salary increases associated with the final rule. These salary increases are discussed later in this analysis. To estimate this cost, we first calculate the Head Start cost per child under the final rule by adding total Head Start grant expenditures in FY 2015 ($6,354,595,188) to teacher salary increases associated with requirements in the final rule in §1302.91(e) ($7,874,124), and divide this sum by FY 2015 Head Start funded enrollment (791,886). This results in a cost per child of $8,035, which is an increase of ten dollars per child from the FY 2015 actual annual Head Start cost per child of $8,025.

We estimate costs for Head Start center-based double session and non-double session programs separately. We assume grantees will move double session and non-double sessions, and three-year-old and four- and five-year-old slots, to 1,020 annual hours proportionately.

Given that double session programs include a morning and afternoon session with the same teacher, we estimate that for every two children in these programs, the marginal cost of providing additional service in line with the rule's requirements will be equivalent to providing Head Start services to an additional child, resulting in a cost of $8,035. Therefore, we estimate for Head Start double session center-based programs, 31,197 new slots would need to be created and we estimate the cost to move these slots to 1,020 hours to be $250,664,993. However, this cost excludes the impact of the funding already provided by Congress in FY 2016 to expand duration. As discussed below, some of these costs will be covered by that funding.

---

Nebraska: University of Nebraska Press

We take a different approach to estimate costs for non-double session programs. We calculate the number of Head Start center-based non-double session slots that operate for fewer than 1,020 annual hours and would need to be increased in order for each grantee to meet the 50 percent requirement (121,116, after inflating values for missing GABI data). Based on GABI data, the average number of hours that a non-double session slot would need to add in order to reach the 1,020 hours annually is 290.354 hours. We assume that programs would choose to increase their service duration to the 1,020 annual hour requirement in a variety of ways, some by adding hours to each day of service and some by adding additional service days. Based on the service duration patterns of programs that currently provide 1,020 or more annual hours of service, we assume 30 percent of programs would decide to add only hours to each day of service already provided, and therefore their costs would be driven entirely by teaching salaries. We assume 70 percent of programs would choose to increase the number of days they operate per year to meet the 1,020 annual hour requirement.

We next estimate the marginal cost per hour per child for Head Start non-double session, center-based slots. This is done using the sum of the average teacher ($18.70) and average assistant teacher ($11.99) hourly wages from the PIR to calculate the cost per classroom per hour for teaching staff on average ($30.69). Then, we increased this cost per classroom per hour for teaching staff by 0.124 percent to account for the marginal increase in teacher salaries associated with all teaching staff meeting the minimum education requirements described later in this analysis ($7,874,124). This increase was calculated by finding the marginal increase in the cost per child after accounting for these salary increases ($8,035) from the FY 2015 actual cost per child for Head Start ($8,025). The new cost per classroom per hour for teaching staff is $30.73, on average. Then, we inflated this cost per classroom per hour by one-third to account for fringe

benefits, which is $40.87 (we assumed no additional costs for overhead). We then assume that children will be served in classroom settings with the maximum allowable group size. To calculate the marginal cost per hour, we divide the hourly wage by the maximum group size for three-year olds (17) and four- and five-year-olds (20) to get an average marginal cost per hour per child for three-year olds ($2.40) and four- and five-year olds ($2.04).

We then use FY 2015 PIR data to calculate the percentage of three-year-olds (42 percent) and four- and five-year-olds (58 percent) served by Head Start center-based programs. To calculate the cost of increasing the proportion of slots at 1,020 hours to 50 percent in each grantee by adding only hours to the day, we take 30 percent of the share of three-year-olds (42 percent) and four- and five-year-olds (58 percent) enrolled in these programs respectively to find the number of three-year-old slots (15,179) and four- and five-year-old slots (21,156) that would need additional hours to meet the requirement. We then calculate the average number of annual hours that non-double session Head Start center-based slots not currently meeting 1,020 annual hours would need to add to reach 1,020 hours, which is 290.354 hours. Finally, we multiply the estimated number of three-year-old slots (15,179) and four- and five-year-old slots (21,156) by their respective average marginal cost per hour per child ($2.40 and $2.04) and by the average number of hours these slots would need to increase to reach 1,020 annual hours (290.354) to get a total estimated cost for this 30 percent of non-double session slots of $23,108,599. However, this cost excludes the impact of the funding already provided by Congress in FY 2016 to expand duration. As discussed below, some of these costs will be covered by that funding.

As discussed above, we anticipate a different marginal cost per hour per child for the 70 percent of Head Start non-double session slots we assume will meet the 1,020 annual hours by adding days, because it would be necessary to extend all of the relevant child and family services

for a longer program year in addition to the cost per classroom for teaching staff. In order to estimate these costs, we divide the average annual Head Start cost per child inflated for teacher salary increases as called for in §1302.91(e) ($8,035) by the average number of hours per year provided across all Head Start center-based slots (956.49 hours) to get an average cost per hour of $8.40 to extend days. Then, to account for fringe benefits, we inflated 80% of this cost per hour by one-third (we assume no additional costs for overhead) because most programs spend approximately 80% of their budget on personnel. This results in an average cost per hour of $10.62 to extend days. We then multiplied the average number of hours these slots would need to increase to reach 1,020 annual hours (290.354) by the marginal cost per hour per child ($10.62), and by the number of slots that we estimated would meet 1,020 annual hours by adding days (84,781) to get an estimated cost of $261,427,256. Finally, we estimate the total cost for all Head Start non-double session center-based slots to meet the 50 percent requirement, using these two approaches, is $284,535,855. However, this cost excludes the impact of the funding already provided by Congress in FY 2016 to expand duration. As discussed below, some of these costs will be covered by that funding.

In sum, the total cost for Head Start double session and non-double session center-based slots to meet the 50 percent requirement is $535,200,848 before accounting for the $294 million in funding Congress has provided in FY 2016 to expand duration. However, because we assume that 5 percent of all programs currently not meeting the 1,020 for 50 percent of their slots will receive a waiver to continue operating at their current level of annual hours, we reduce this estimate by 5 percent for a total cost borne by Head Start of $508,440,805 before accounting for the $294 million in funding Congress has provided in FY 2016 to expand duration. These costs will be realized in years four and five, if the rule is fully implemented. As noted, Congress

appropriated $294 million in FY 2016 to increase the duration of Early Head Start and Head Start programs. Thus, a substantial share of the $508 million in costs will be absorbed by this funding, assuming this funding increase is maintained across the ten year window.

| **50% Extension of Head Start Center-based Duration: Costs Borne by Head Start** | | | | |
|---|---|---|---|---|
| | **Total DS Slots** | **New Slots needed** | **Cost per child (less admin)** | **Cost** |
| **Double Session (DS)** | 62,393 | 31,197 | $8,035 | $**250,664,993** |
| | | | | |
| | **Slots** | **Average cost per child per hour** | **Hours needed** | **Cost** |
| **Non-double session adding hours (30%) 3 year olds** | 15,179 | $2.40 | 290.354 | $10,577,515 |
| **Non-double session adding hours (30%) 4 year olds** | 21,156 | $2.04 | 290.354 | $12,531,084 |
| | | | **Subtotal** | **$23,108,599** |
| **Non-double session adding days (70%)** | 84,781 | $10.62 | 290.354 | **$261,427,256** |
| **Total, *Excluding* Duration Funding Appropriated Beginning in FY 2016** | | | | **$535,200,848** |
| **Less 5% Waiver, *Excluding* Duration Funding Appropriated Beginning in FY 2016** | | | | **$508,440,805** |
| **Total, *Including Duration* Funding Appropriated Beginning in FY 2016** | | | | **$245,318,865** |

***100 Percent Estimate for the Extension of Head Start Center-Based Program Duration***

Starting in year six following publication of the final rule (program year 2021-2022), most programs are required to serve children for at least 1,020 hours. In order to estimate the cost associated with this requirement for each grantee to operate all of their Head Start center-based slots for 1,020 annual hours, we used the same approach described above for the 50 percent requirement. The only difference in the estimate is that we used GABI data to calculate the number of slots for which each grantee would need to increase duration in order to operate all of its center-based Head Start slots for 1,020 annual hours. As above, we estimate the cost of increasing double session and non-double session slots to 1,020 annual hours separately. Therefore, as described above, we estimate for Head Start double session center-based programs, 72,727 new slots would need to be created. As a result, starting in year six following publication

of the final rule, we estimate costs of $584,363,052 associated with providing additional service to these children in line with the requirements of the final rule. However, this cost excludes the impact of the funding already provided by Congress in FY 2016 to expand duration. As discussed below, some of these costs will be covered by that funding.

For Head Start non-double session center-based programs, we estimate 36,355 slots would meet the 100 percent requirement by increasing only hours per day. We estimate the share of three-year-old slots is 35,746, and the share of four- and five-year-old slots is 49,821. Therefore, we estimate the cost of meeting the 100 percent requirement for these programs to be $54,419,668. For Head Start non-double session center-based programs, we estimate 199,656 slots would meet the 100 percent requirement by adding days. Therefore, we estimate the cost of meeting the 100 percent requirement for these programs to be $615,651,152. Finally, we estimate the total cost for all Head Start non-double session center-based slots to meet the 100 percent requirement, using these two approaches, is $670,070,820. However, this cost excludes the impact of the funding already provided by Congress in FY 2016 to expand duration. As discussed below, some of these costs will be covered by that funding.

In sum, the estimated total cost for Head Start double session and non-double session center-based slots to meet the 1,020 requirement is $1,254,433,872 before accounting for the $294 million in funding Congress has provided in FY 2016 to expand duration. This represents an additional $719,233,024 over the 50 percent requirement. However, because we assume that 10 percent of all programs not currently meeting the 1,020 annual hours minimum will receive a waiver to continue operating at their current level of annual hours, we reduce this estimate by 10 percent for a total cost borne by Head Start of $1,128,990,485 before accounting for the $294 million in funding Congress has provided in FY 2016 to expand duration. This represents an

additional $620,549,679 over the 50 percent requirement. These costs will be realized in year six and annually thereafter, if the rule is fully implemented. As noted, Congress appropriated $294 million in FY 2016 to increase the duration of Early Head Start and Head Start programs. Thus, a substantial share of the $1,128,990,485 in costs will be absorbed by this funding, assuming this funding increase is maintained across the ten year window.

| 100% Extension of Head Start Center-based Duration: Costs Borne by Head Start | | | | |
|---|---|---|---|---|
| | **Total DS Slots** | **New Slots needed** | **Cost per child** | **Cost** |
| **Double Session (DS)** | 145,454 | 72,727 | $8,035 | $**584,363,052** |
| | | | | |
| | **Slots** | **Average cost per child per hour (less admin)** | **Hours needed** | **Cost** |
| **Non-double session adding hours (30%) 3 year olds** | 35,746 | $2.40 | 290.354 | $24,909,586 |
| **Non-double session adding hours (30%) 4 year olds** | 49,821 | $2.04 | 290.354 | $29,510,082 |
| | | | **Subtotal** | **$54,419,668** |
| **Non-double session adding days (70%)** | 199,656 | $10.62 | 290.354 | $**615,651,152** |
| **Total, *Excluding* Duration Funding Appropriated Beginning in FY 2016** | | | | **$1,254,433,872** |
| **Less 10% Waiver, *Excluding* Duration Funding Appropriated Beginning in FY 2016** | | | | **$1,128,990,485** |
| **Total, *Including* Duration Funding Appropriated Beginning in FY 2016** | | | | **$865,868,545** |

Extension of Early Head Start Center-Based Program Duration

Similar to the approach to estimating the cost of increasing duration for Head Start, to estimate the costs associated with the requirement that Early Head Start center-based programs provide a minimum of 1,380 annual hours for all slots, we used GABI and PIR data. We excluded all programs not required to meet the 1,380 minimum. Therefore, we calculated the cost using data from Early Head Start center-based programs including American Indian and Alaska Native programs but excluded all other program options and Migrant and Seasonal Head Start. We calculated estimates for Early Head Start center-based double session and non-double session programs separately. Double session programs include a morning and afternoon session with the same teacher, therefore, we used the entire FY 2015 Early Head Start cost per child for center-based services from the GABI ($13,041). Next, we divided the current Early Head Start funded enrollment in double session programs (324, which is inflated for missing GABI data) by 2 to get a total estimated number of new Early Head Start slots that would need to be created to eliminate double sessions (162). We then multiplied the resulting number of slots by the average

marginal cost per child. From these calculations, we estimate the cost of extending duration for all Early Head Start center-based double session slots to be $2,112,642. However, this cost excludes the impact of the funding already provided by Congress in FY 2016 to expand duration of Early Head Start programs. As discussed below, all of these costs will be covered by that funding.

For non-double session programs, we calculated the proportion of Early Head Start center-based non-double session slots that operate fewer than 1,380 annual hours (14,270, which is inflated for missing GABI data). First, we divided the average annual Early Head Start cost per child by the average number of hours per year provided across all Early Head Start non-double session center-based slots (1,627.61 hours) to get an average cost per hour of $8.01. Then, to account for fringe, we inflated 80% of this cost per hour by one-third (we assume no additional costs for overhead) because most programs spend approximately 80% of their budget on personnel. This results in an average cost per hour of $10.12.

Further, we assumed all Early Head Start programs would choose to increase the number of days they operate per year to meet the 1,380 annual hour requirement because most Early Head Start programs already operate for a full day. In order to estimate the costs associated with meeting the requirement for these programs, we assumed they would need the full average cost per child per hour, inflated for fringe. Then we multiplied the adjusted cost per child per hour ($10.12) by the average number of hours programs not currently meeting the 1,380 minimum would need to add (210.443 hours) by the number of slots (14,270) that we estimated would need to move to meet 1,380 annual hours to get an estimated cost of $30,390,579. However, this cost excludes the impact of the funding already provided by Congress in FY 2016 to expand duration. As discussed below, all of these costs will be covered by that funding.

In sum, the total cost for Early Head Start double session and non-double session center-based slots to meet the 1,380 requirement is $32,503,221 before accounting for the $294 million in funding Congress has provided in FY 2016 to expand duration. However, because we assume that 5 percent of all programs currently not meeting the 1,380 will receive a waiver to continue operating at their current level of annual hours, we reduce this estimate by 5 percent for a total cost borne by Head Start of $30,878,060 before accounting for the $294 million in funding Congress has provided in FY 2016 to expand duration. These costs will be realized in year three and annually thereafter. As noted, Congress appropriated $294 million in FY 2016 to increase the duration of Early Head Start and Head Start programs. Thus, the entirety of the $30,878,060 costs will be absorbed by this funding.

| **Extension of Early Head Start Center-based Duration: Costs Borne by Head Start** | | | | |
|---|---|---|---|---|
| | **Total DS Slots** | **New Slots needed** | **Cost per child (less admin)** | **Cost** |
| **Double Session (DS)** | 324 | 162 | $13,041 | $2,112,642 |
| | | | | |
| | **Slots** | **Average cost per child per hour (less admin)** | **Hours needed** | **Cost** |
| **Non-double session** | 14,270 | $10.12 | 210.443 | $30,390,579 |
| **Total, *excluding FY 2016 duration funding*** | | | | **$32,503,221** |
| **Less 5 % Waiver, *excluding FY 2016 duration funding*** | | | | **$30,878,060** |
| **Total, *including FY 2016 duration funding*** | | | | **$0** |

Start-up Costs for Extension of Center-based Programs

In addition to the cost of extending center-based programs estimated for Head Start and Early Head Start above, there are additional costs associated with facilities and other start-up activities for increasing duration. If there is adequate funding to support these requirements, there will be a period of ramp-up that most programs will need to implement the duration requirements, therefore we anticipate that a portion of any first 12-month operational award will be available for the purchase or renovation of facilities and other start-up activities before

programs begin serving children at the higher duration. These costs would be subsumed in the grant awards to cover the costs estimated above. However, if the requirements are implemented in the absence of adequate additional funding, these start-up costs would represent additional costs that should be estimated here.

In order to estimate the amount of start-up costs, we rely on historical information from prior expansions in which approximately one quarter to one third of the total operating budget is needed for start-up activities. However, since non-double session slots will require significantly fewer start-up activities at a significantly lower cost, we assume that, on average, start-up activities will reflect twenty percent of the estimated cost to extend slots to meet the duration requirements. Therefore, we estimate the cost of start-up activities for meeting the Early Head Start requirement to be $6,175,612, the cost of start-up activities for meeting the 50 percent requirement in Head Start to be $101,668,161, the additional cost of start-up activities for meeting the 100 percent requirement in Head Start to be $124,109,936. Finally, we assume start-up costs will be incurred the year prior to the effective date for each duration requirement. We estimate start-up costs for all requirements will total $231,973,709.

| | **Cost of Requirement (Incremental)** | **Start-Up Costs (20%)** | **Year*** |
|---|---|---|---|
| **EHS Requirement** | $30,878,060 | $6,175,612 | Year 2 (2017-2018) |
| **50% HS Requirement** | $508,440,805 | $101,668,161 | Year 3 (2018-2019) |
| **100% HS Requirement** | $620,549,679 | $124,109,936 | Year 5 (2020-2021) |
| | **Total** | **$231,973,709** | |

* Year ranges refer Head Start program years, which for these estimates, begin on August 1st of each year and end on or before July 31st.

Extension of Early Head Start Home-Based Program Duration

The final rule requires that Early Head Start home-based programs operate for a minimum of 46 weeks per year in §1302.22(c)(1). In order to estimate the cost of this provision, we assumed the entire FY 2015 Early Head Start cost per child for home-based services from the

GABI ($9,782). We then calculated the cost per week by dividing the cost per child by the average number of weeks all Early Head Start home-based programs operate (46.28), which we estimate is $211.37. We then multiplied the cost per child per week by the number of weeks programs not providing 46 weeks would need to add to meet the requirement (2.78) to calculate the cost per slot to meet the requirement ($587.60). Finally, we multiplied this cost by the funded enrollment of programs currently not meeting the requirement (15,484). We estimate the total cost of this provision to be $9,098,342. However, we also assume that 10 percent of these programs will receive a waiver to continue providing their current level of service; therefore, we estimate the total cost borne by Head Start of this provision to be $8,188,508. These costs will be realized in year two and annually thereafter.

| **Extension of Early Head Start Home-based Duration: Costs Borne by Head Start** | | | | |
|---|---|---|---|---|
| | **Cost of meeting 46 weeks per slot** | **Funded enrollment not meeting requirement** | **Total Cost** | **Cost reduced by 10% waiver** |
| **46 weeks for EHS home-based** | $587.60 | 15,484 | $9,098,342 | $8,188,508 |

Head Start Home-Based Standard Option

We received comments expressing concern about our proposal in the NPRM to remove home-based services as a standard program option for Head Start. These comments are described in detail in the comment and response portion of this rule. In response to these comments, we have retained home-based services as a standard option for preschoolers in the final rule and no longer estimate costs associated with the removal of the home-based option for Head Start.

Waiver Authority for Ratios in Early Head Start Two-year-old Groups

This rule allows, for the first time, programs to request a waiver of ratios for groups with two-year-old children. We believe that programs in states that allow higher ratios for two-year-

olds groups or mixed age groups may request waivers to allow them to serve more children and support continuity as children approach pre-school. We anticipate awarding waivers to programs who propose to serve two-year-old children at a ratio of 1:5 rather than 1:4, provided they have sufficient space to meet square footage requirements and can demonstrate it meets the needs of the community, the learning needs of children, and can ensure the change in ratio poses no health and safety risk. We estimate the savings associated with receipt of this waiver here.

First, we estimated the savings associated with all two-year old groups operating with a 1:5 ratio. We used the total number of two-year-olds currently being served (61,752 from PIR data) to find the number of teachers that would no longer be needed by dividing the number of two-year-olds by the current ratio of 1:4 (which yields 15,438 teachers); and then by the 1:5 ratio that would now be allowed (which yields 12,350 teachers); and taking the difference (3,088). We then multiply this number of teachers that would no longer be needed (3,088) by the average Early Head Start teacher salary of $26,491, doubled to account for fringe and overhead ($52,982) to get a total potential savings of $163,608,416. However, while we assume that 20 percent of programs will apply to waive the ratio requirements for two-year olds given our experience with the Early Head Start- Child Care Partnership grantees, we assume that only approximately 15 percent of programs currently serving two-year-olds have adequate space to accommodate the larger group size associated with a 1:5 ratio. As such, we estimate only 15 percent of programs will receive the waiver. Therefore, we estimate that the actual total savings for this provision would be $24,541,262. These costs will be realized in year one and annually thereafter. While we recognize it is possible that programs will opt to purchase, lease, or renovate new space to become eligible for this waiver, we believe the costs of such purchase, lease, or renovation would offset the savings estimated here and we lack data to support a reasonable assumption

about the proportion of programs who would do so, therefore we have not estimated these costs and cost savings here.

| **Waiver for Two-Year-Old Ratio: Cost Savings Borne by Head Start** | | | | | | |
|---|---|---|---|---|---|---|
| **Total Number of 2 year olds** | **Current Number of Teachers (1:4)** | **New Number of Teachers (1:5)** | **Number of Teachers no longer needed** | **Average EHS Teacher Salary** | **Salary Inflated for Fringe and Overhead** | **Total Savings** |
| 61,752 | 15,438 | 12,350 | 3,088 | $26,491 | **$52,982** | **$163,608,416** |
| **Total** (Reduced by 85% for programs without adequate space) | | | | | | **$24,541,262** |

Waiver Application Process for Locally-Designed Program Options

As discussed above, this rule includes a provision in §1302.24 that would require any program wishing to operate a locally-designed program option to submit a waiver application explaining why the local design better meets community needs. As discussed in further detail in the discussion of the rule for §1302.24, this waiver option will strengthen program accountability while maintaining local flexibility. The rule also includes a provision, as described above, to allow programs to request a waiver of teacher to child ratios for groups serving two-year-old children. The application process itself has a cost to grantees which is the focus of this cost estimate.

In order to estimate the cost associated with preparing and submitting waiver applications as allowed in other sections, we used GABI data to determine the total number of grantees that do not meet the new service duration minimums. Among the 1,412 Head Start grantees (which is 1,271 inflated by 11% for missing GABI data), 966 (which is 870 inflated by 11 percent for missing GABI data) do not meet the requirement to provide 1,020 annual hours to 50 percent of slots and 1,036 (which is 933 inflated by 11 percent for missing GABI data) do not meet the requirement to provide 1,020 annual hours to 100 percent of slots. Among all Early Head Start grantees, 822 programs provide center-based or family childcare services (which is 727 inflated

by 13 percent for missing GABI data) and 739 programs provide home-based services (which is 656 inflated by 13 percent for missing GABI data), 275 (which is 243 inflated by 13 percent for missing GABI data) do not meet the 1,380 hours for center-based and family child care programs, and 263 (which is inflated by 13 percent for missing GABI data) do not meet the minimums for home-based programs. Finally, PIR data indicates there are 995 all Early Head Start and Migrant or Seasonal Head Start programs that currently serve two-year-olds.

We anticipate more waiver requests will be submitted than will be granted and estimate that half of the waiver requests received will be approved, which is reflected in the above calculations on increasing program duration and group ratios. Given the flexibility built into the duration requirements in the final rule, we assume that only 10 percent of Head Start grantees not meeting the 50 percent requirement will apply for a waiver (97), 20 percent of Head Start not meeting the 100 percent requirement will apply for a waiver (207), 10 percent of Early Head Start center-based grantees not meeting the new minimums will apply for a waiver (28), and 20 percent of Early Head Start home-based grantees not meeting the new minimums will apply for a waiver (53). Finally, we assume that 20 percent of programs serving two-year-olds will apply for a waiver (199), even though only 15 percent of programs will receive it. Based on these assumptions we expect a total of 199 waiver applications in year one, 252 waiver applications in year 2, 280 waiver applications in year three, 377 waiver applications in years four and five, and 487 waiver applications in year 6. Finally, we assume upon full implementation of the rule, programs would choose to reapply once every five years, resulting in an estimated 97 waiver applications annually in year 7 and ongoing.

In order to calculate the costs associated with these applications, we assume that each waiver application will require 8 hours of a program director's time at $35.36 per hour.

Therefore, we calculate the cost associated with the applications by multiplying the number of applications by 8 hours of a center director's hourly wage ($285.30). Using this method, we calculate the total cost associated with these waiver provisions for each year in the table below. Then we applied the proportion of Head Start center director's salary paid for with Head Start funds (75.3 percent) to the cost by year to find the costs borne by Head Start and the costs borne by other parties in the table below.

| **Waiver Applications: Total Cost to Society** | | | | |
|---|---|---|---|---|
| | **Number of Programs** | **Hours** | **Cost per Hour** | **Cost** |
| **50% HS Center-based duration** | 97 | 8 | $35.36 | $27,551 |
| **100% HS Center-based duration** | 207 | 8 | $35.36 | $59,093 |
| **EHS Center-based duration** | 28 | 8 | $35.36 | $7,988 |
| **EHS Home-based duration** | 53 | 8 | $35.36 | $15,121 |
| **Two-year-old ratio** | 199 | 8 | $35.36 | $56,775 |

The table below describes the cost to society disaggregated by costs borne by Head Start and costs borne by other parties for years three through ten. We assumed that programs would only apply for waivers once the compliance date of the provision they are requesting a waiver for has passed. Therefore, we assumed that the cost of applying for a waiver from the 50 percent Head Start center-based duration requirement would be borne in years three through five; the cost of applying for a waiver from the 100 percent Head Start center-based duration requirement would be borne in year 6; the cost of applying for a waiver from the Early Head Start center-based would be borne beginning in year 3; the cost of applying for a waiver from the Early Head Start home-based duration requirement would be borne beginning in year 2; and the cost of applying for a waiver from the Early Head Start ratio requirement would be borne beginning in

year 1. Finally, we assume upon full implementation of the rule, programs would choose to reapply once every five years, resulting in the costs for years seven through ten.

| Waiver Applications: Costs Borne by Head Start and by Other Parties | | | | | | | |
|---|---|---|---|---|---|---|---|
| | **Year 1** | **Year 2** | **Year 3** | **Year 4** | **Year 5** | **Year 6** | **Years 7 -10** |
| **Cost to Society** | $56,775 | $71,896 | $79,884 | $107,435 | $107,435 | $138,977 | $27,795 |
| **Cost to Head Start (75.3%)** | $42,751 | $54,137 | $60,153 | $80,899 | $80,899 | $104,650 | $20,930 |
| **Cost borne by other parties** | $14,023 | $17,758 | $19,731 | $26,537 | $26,537 | $34,327 | $6,865 |

Home Visits for Frequently Absent Children

The rule includes a new provision in §1302.16 that requires programs to provide additional services to families of children who are frequently absent (for non-illness or IFSP/IEP related reasons), which may include a home visit. This requirement will improve consistent attendance, which is important because research demonstrates that attendance is predictive of school success. For example, one study conducted in the Chicago Public Schools shows that preschool attendance is important for several reasons: (1) it sets up patterns for long-term school attendance; (2) children who regularly attend preschool perform better on kindergarten entry assessments tests; and 3) regular attendance enhances social-emotional development.[154] Another study in Tulsa found that preschoolers who attended regularly showed more growth in literacy skills than their peers who were frequently absent.[155] In Baltimore, researchers found that 25 percent of children who were chronically absent in pre-kindergarten and kindergarten were

[154] Allensworth, E. M., Ehrlich, S. B., Gwynne, J. A., & Pareja, A. S. (2013). Preschool Attendance in Chicago Public Schools: Relationships with Learning Outcomes and Reasons for Absences.

[155] Community Action Project Tulsa County. (2012). *Attendance Works Peer Learning Network Webinar*.

retained in later grades, compared to nine percent of their peers who regularly attended in these early years.[156]

We considered both monetary costs as well as opportunity costs in estimating the total cost of this new provision in §1302.16. In order to estimate the associated monetary costs, we used data from the Family and Child Experience Survey (FACES) and babyFACES, which are federally funded nationally representative surveys of Head Start and Early Head Start programs, respectively. These studies provided estimates of the proportion of children in both Head Start and Early Head Start who are absent for more than 20 days in a given school year. For Head Start, FACES data suggests 5.6 percent of children are absent for more than 20 days. We used this proportion as a proxy for the proportion of children who are frequently absent, and would trigger the requirement in the rule for an additional home visit. For Early Head Start, we assumed approximately half of this proportion would be children for whom absences were explained, given the frequency of illness among very young children and thus would not trigger this requirement. Therefore, we used half (17 percent) of the proportion from babyFACES data (34 percent) as a proxy for children in Early Head Start who are chronically absent and would thus trigger additional services, which could include an extra home visit. Then, we estimated the number of extra home visits this requirement will trigger by multiplying cumulative enrollment for center-based programs in Head Start and Early Head Start, respectively, by these proxy proportions. We estimated the monetary cost of this provision by multiplying the number of extra home visits by the average wage of a teacher and an assistant teacher for two hours, because we expect some home visits will be conducted by teachers or home visitors and others may be conducted by the family service worker (usually paid on par with assistant teachers).

[156] Connolly, F., & Olson, L. S. (2012). Early Elementary Performance and Attendance in Baltimore City Schools' Pre-Kindergarten and Kindergarten. *Baltimore Education Research Consortium*.

Finally, we assumed that only half of families would receive an additional home visit rather than other direct contact as allowed under the requirement. Using this method, we estimate the total monetary cost of this requirement to be $927,603 starting in year one. However, we also expect the activities that programs engage in to address frequent and chronic absenteeism, including home visits, will reduce the number of children who are frequently and chronically absent over time. Therefore, we have estimated a 10% reduction in the number of frequently and chronically absent children every year for the first five years this policy is in place. This results in a cost of $834,842 in year two, $742,082 in year three $649,322 in year four, $556,562 in year five and $463,801 in year six and on an ongoing basis thereafter.

To calculate the opportunity cost, we use foregone wages as an estimate for the value of parents' time spent meeting this requirement of one additional home visit. This represents the value of their time when they participate in an additional home visit rather than working. However, we acknowledge this is likely an overestimate of opportunity cost, given the potential for opportunity cost savings associated with parents' time if their children resume regular program attendance. We used the number from our estimate of children experiencing chronic absenteeism (62,858) and assumed one parent per child. Because Head Start families are primarily families from low-income backgrounds, we used the federal minimum wage and assumed two hours of time for each parent to meet this additional requirement for half of parents of chronically absent children (because parents of the other half of these children would receive other direct contact), which would result in a monetized opportunity cost of $455,721. These opportunity costs will be realized in year one. However, as discussed above, we expect these activities will reduce the number of parents of frequently and chronically absent children over time. Therefore, we estimate an opportunity cost of $410,149 in year two, $364,577 in year

three $319,005 in year four, $273,433 in year five and $227,861 in year six and on an ongoing basis thereafter.

| Home Visits for Frequently Absent Children: Costs Borne by Head Start | | | | | | |
|---|---|---|---|---|---|---|
| **Program Type** | **National Survey Proxy %** | **FE** | **Estimated Number of Additional HVs** | **Avg. Wage/ 2 Hours** | **Estimated Cost of all potential additional HVs** | **Estimated cost of additional HVs provided** |
| HS | 5.6 | 874,604 | 48,978 | $30.70 | $1,503,625 | $751,812 |
| EHS | 17 | 81,649 | 13,880 | $25.33 | $351,580 | $175,790 |
| | | | | | **Total** | **$927,603** |

| | **Year 1 2016/2017** | **Year 2 2017/2018** | **Year 3 2018/2019** | **Year 4 2019/2020** | **Year 5 2020/2021** | **Year 6 2021/2022** |
|---|---|---|---|---|---|---|
| **Reduction Over Time** | $927,603 | $934,842 | $742,082 | $649,322 | $556,562 | $463,801 |

| Home Visits for Frequently Absent Children: Opportunity Costs | | | | |
|---|---|---|---|---|
| **Total Number of Parents** | **Hourly Wage Forgone** | **Number of Hours** | **Estimated Cost for all parents** | **Estimated Cost for parents receiving HV** |
| 62,858 | $7.25 | 2 | $911,441 | $455,721 |
| | | | **Total** | **$455,721** |

| | **Year 1 2016/2017** | **Year 2 2017/2018** | **Year 3 2018/2019** | **Year 4 2019/2020** | **Year 5 2020/2021** | **Year 6 2021/2022** |
|---|---|---|---|---|---|---|
| **Reduction Over Time** | $455,721 | $410,149 | $364,577 | $319,005 | $273,433 | $227,861 |

Parent Contact for Unexpectedly Absent Children

The rule includes a new provision in §1302.16 that requires programs to attempt to contact parents if they have not notified the program that their children will be absent. This requirement will ensure child safety and facilitate more consistent attendance for all children. The NPRM included a similar requirement, though the requirement in the final rule has been revised in response to comments. However, the Regulatory Impact Analysis in the NPRM did not account for costs associated with this requirement. In response to comments, we estimated the costs associated with contacting parents when they have not notified the program that their children will be absent in this section. In order to estimate the cost of this requirement, we assumed that 10 percent of children would be absent on any given day, which is 91,216 children when applied to the funded enrollment number for Head Start and Early Head Start programs.

Then we found the proportion of Head Start children who would be absent each day (83.8% or 76,439), and the proportion of Early Head Start children who would be absent each day (16.2% or 14,777). We further assumed one-quarter of these children, 19,110 in Head Start and 3,694 in Early Head Start, would be unexpectedly absent or that their parent would not contact the program within an hour to report the absence that day. To estimate the cost of making phone calls, we assume 5 minutes of administrative staff or family service worker time per phone call resulting in 1,592 hours of staff time per day across all Head Start programs and 308 hours of staff time per day across all Early Head Start programs. As a proxy for the hourly wage of this staff person, we averaged the hourly wage of Head Start and Early Head Start assistant teachers ($11.72). Then we estimate the cost associated with this provision per day to be this hourly wage multiplied by the number of hours of staff time, which is $18,650 for Head Start programs and $3,608 for Early Head Start programs. Finally, in order to estimate the cost of this provision annually, we multiplied the cost per day by the average number of days currently provided by Head Start (146.8) for a cost of $2,737,861 per year in Head Start, and by the average number of days currently provided by Early Head Start (222.364) for a cost of $802,338 per year in Early Head Start. Finally, we summed these costs for a total cost per year across all programs of $3,540,199.

| **Parent Contact for Unexpectedly Absent Children** | | | | | |
|---|---|---|---|---|---|
| | **Number of Absent Children** | **Number of Unexpectedly Absent Children** | **Hours of Staff Time (5 mins per call)** | **Cost Per Day** | **Cost Per Year** |
| **Head Start** | 76,439 | 19,110 | 1,592 | $18,650 | $2,737,861 |
| **Early Head Start** | 14,777 | 3,694 | 308 | $3,608 | $802,338 |
| | | | | **Total** | **$3,540,199** |

**Staff Quality Provisions**

This rule also includes several provisions to improve the quality of staff in Head Start and Early Head Start programs. Specifically, we analyzed costs associated with the following requirements: minimum of associate's degree for all Head Start teachers in §1302.91(e)(2)(ii); minimum of CDA or equivalent credential for all home visitors in §1302.91(e)(6)(i); credentials for newly hired family services workers in §1302.91(e)(7); credentials for newly hired management staff in §1302.91(d)(1)(i); and mentor coaching in §1302.92(d).

Associate's Degree (AA) for Head Start Teachers

The Act detailed new degree requirements for all Head Start teachers. Specifically, 648A(a)(3)(B) of the Act codified a minimum requirement that all Head Start teachers have at least an associate's degree. While progress towards meeting this requirement has been substantial, according to PIR data, a small percentage of Head Start teachers in 2015 (4.2%) did not have such a degree. In this rule, we added this requirement into the staff qualifications section of the performance standards in §1302.91(e)(2)(ii). Given that some teachers do not have the minimum degree, we estimated the cost associated with this requirement by finding the respective differences in average salaries for teachers with no credential and teachers with a Child Development Associate (CDA), compared to teachers with associate's degrees. We then multiplied the number of teachers who currently have no credential or the number of teachers who currently have only a CDA by the additional salary for each group. Finally, we increased the estimated salary for these teachers by one-third to account for fringe benefits (we assumed no additional overhead costs). Using this method, we estimate the total cost for Head Start programs to meet this requirement to be $10,472,585. These costs will be realized in year one and annually thereafter.

| **Associate's Degree for Head Start Teachers: Costs Borne by Head Start** |
|---|

| Current Credential | Salary Differential (between current and AA) | Inflated for Fringe | Number of Teachers | Cost of Additional Salary After Obtaining AA |
|---|---|---|---|---|
| CDA | $4,535 | $6,032 | 1,314 | $7,925,457 |
| None | $3,426 | $4,557 | 559 | $2,547,128 |
| | | | **Total** | **$10,472,585** |

Home-Visiting Child Development Associate for Home Visitors

In this rule, we also propose to require that all home visitors have, at a minimum, a home-based CDA credential or equivalent in §1302.91(e)(6)(i). This change will ensure that all home visitors are equipped with the critical content knowledge offered through a home-based CDA that will support their competency to implement a research-based curriculum and ensure children served in this model receive high-quality learning experiences. Because our current PIR data does not differentiate between credential types for home visitor salaries, we used a proxy of the differential percentage of salary for teachers with associate's degrees compared to teachers with CDAs. We then applied this differential percentage to the average home visitor's salary to estimate the increase in salary for home visitors who would obtain a CDA which is $6,029 when inflated by one-third to account for fringe benefits (we assumed no additional overhead costs). Finally, we multiplied this additional salary by the number of home visitors who currently have no credential. This approach gives us an estimate of the total cost of requiring higher credentials for home visitors. Using this method, we estimate the total cost of meeting this new requirement to be $5,112,499.

| **Home-visiting CDA: Costs Borne by Head Start** | | | | | | |
|---|---|---|---|---|---|---|
| **Current Credential** | **Proportion of Salary Differential (Teachers: CDA to AA)** | **Avg. HV Salary** | **Additional Salary** | **Salary Inflated for Fringe** | **Number of HVs w/o Any Credential** | **Cost of Additional Salary for Credentialed HVs** |
| None | 14.91% | $30,397 | $4,533 | $6,029 | 848 | $5,112,499 |

Credential for New Family Service Workers

The final rule includes a requirement in §1302.91(e)(7) for new family services staff who work directly with families on the family partnership process to earn a credential in family services within 18 months of hire. In order to calculate the cost associated with this requirement, we found the number of family services staff who currently do not have a credential or higher qualification (6,196) and assumed that approximately half of all family service workers work directly with families on the family partnership process for an estimate of 3,098 staff members whose replacement would need to earn a credential if the current worker left their job. We then calculated an estimate of new staff who would need to earn a credential by applying the average turnover rate of 17 percent for teachers and home visitors as a proxy (because we do not have data on turnover of family services staff) for an annual estimate of 542 staff turning over. Then we assumed the average cost for each staff person to get the necessary credential within 18 months would be $1,013, based on an average of costs for common family development credentials. Therefore, we estimate the cost of this provision at $549,046 annually. Given the difficulty, programs may face in the future finding staff that already have this credential, we have assumed this cost will be an ongoing annual cost. Therefore, these costs will be realized in year one and annually thereafter.

| **Credential for New Family Service Workers: Costs Borne by Head Start** | | | | | |
|---|---|---|---|---|---|
| **Number of Family Service Workers w/o Credential** | **Proportion of Staff working directly on Family Partnerships** | **Estimated Turnover rate** | **Total Staff Affected Annually** | **Cost of Credential** | **Total Estimated Cost** |
| 6,196 | 3,098 | 17% | 542 | $1,013 | $549,046 |

Bachelor's Degree for New Management Staff

In response to comments described in the preamble of this rule, the final rule includes a requirement in §1302.91(d)(1) that newly hired staff who oversee health, disabilities, and family support services must have a bachelor's degree (BA). If a grantee assigns a separate area

manager for each of these three service areas, it would result in three additional managers being required to hold a BA or higher. However, it is currently common practice for programs to assign the duties associated with the oversight of two service areas to a single manager. We assume that half of programs assign oversight of disabilities services to their Education Coordinator (who is already required to have a BA), which would lead to two managers (one for health and one for family support services) needing to possess BAs, and that half of programs would assign oversight of disabilities and family services or health to a single manager. Therefore, we estimate that two managers at each program will need to possess BAs to meet this requirement.

We then estimated the number of supervisors or management staff affected by the requirement who do not currently have a BA. We used data from the PIR on the education level of family services supervisors because we do not collect data on the educational attainment of other service area managers. Data indicate that 1,255 family services supervisors do not have a B.A. or higher. This estimate was then doubled based on the calculations and assumptions above for an estimate of 2,510 supervisory staff who do not currently have a B.A. or higher. Because we do not have turnover information on management staff, we then applied the average turnover rate for teachers and home visitors (17 percent) as a proxy, to the number of service managers without a B.A., in order to estimate the total number of managers without a BA that would turn-over each year (accounting for those who acquired a BA in prior years, through year ten).

Then, in order to determine the anticipated salary increase for managers with a B.A,, we averaged the current salaries for family services, health, and disabilities managers from the PIR ($44,583) and found the difference between this salary and the average salary of education coordinators ($50,252) who are currently required to have a B.A. to estimate the average

increase in salary for new managers with a B.A. ($5,669). We then inflated this additional salary by one-third to account for fringe benefits (we assumed no additional overhead) which is $7,540. We then applied this difference to the number of staff affected annually. Further, we applied the average proportion of management staff salaries' borne by Head Start (67.8%) to find the cost borne by Head Start and the cost borne by other parties in years one through ten.

| **Bachelor's Degree for New Management Staff: Costs Borne by Head Start and by Other Parties** | | | |
|---|---|---|---|
| **Family Service Supervisors without BA or higher** | **Inflated for other service areas (2)** | **Estimated Annual Turnover Rate** | **Estimated increase in salary** |
| 1,255 | 2,510 | 17% | $7,540 |
| | **Cost to Society** | **Costs Borne by HS** | **Costs Borne by Other Parties** |
| **Year 1** | $ 3,219,482 | $ 2,182,809 | $ 1,036,673 |
| **Year 2** | $ 5,865,941 | $ 3,977,108 | $ 1,888,833 |
| **Year 3** | $ 8,135,412 | $ 5,515,809 | $ 2,619,603 |
| **Year 4** | $ 10,027,894 | $ 6,798,912 | $ 3,228,982 |
| **Year 5** | $ 11,543,388 | $ 7,826,417 | $ 3,716,971 |
| **Year 6** | $ 12,870,387 | $ 8,726,123 | $ 4,144,265 |
| **Year 7** | $ 13,820,398 | $ 9,370,230 | $ 4,450,168 |
| **Year 8** | $ 14,770,409 | $ 10,014,338 | $ 4,756,072 |
| **Year 9** | $ 15,524,386 | $ 10,525,534 | $ 4,998,852 |
| **Year 10** | $ 16,089,869 | $ 10,908,931 | $ 5,180,938 |

Mentor Coaching

In this rule, we require programs to have a system of professional development in place that includes an intensive coaching strategy for teachers. As described in further detail in the discussion of the rule for §1302.92(d), this change will ensure teaching staff receive effective professional development, based on a growing body of research demonstrating the effectiveness of intensive professional development for improving teacher practices in early care and

education settings [157,158,159] and research demonstrating that such strategies support improved teacher practice in the classroom and an increase in classroom quality.[160,161] This provision also gives programs some flexibility to identify the education staff that would benefit most from this form of intensive professional development and direct their efforts accordingly.

There are various ways that programs can secure the services of mentor coaches in order to meet this requirement. For example, grantees could hire a full-time mentor coach(es), mentor coaches could work part time in multiple programs, or geographically defined consortiums could be created to enable grantees to access the services of mentor coaches. However, for the purposes of this estimate, we use a caseload of one coach per 15 teachers or teaching teams, and an overall salary comparable to that of an education manager ($50,252 from PIR), doubled for fringe benefits and overhead, which is estimated at $100,504 for each mentor coach. We assumed a caseload of 15 teachers based on a review of the literature that suggests caseloads vary across coaching models but that full-time coaches, on average, usually reported caseloads ranging from 13 to 22, though some coaches had much higher or much lower caseloads.[162,163,164]

[157] Buysse, V., & Wesley, P. W. (2005). *Consultation in Early Childhood Settings*. Baltimore, MD: Paul H. Brookes Publishing.

[158] Tout, K., Halle, T., Zaslow, M., & Starr, R. (2009). *Evaluation of the Early Childhood Educator Professional Development Program: Final Report*: Report prepared for the U.S. Department of Education.

[159] Zaslow, M., Tout, K., Halle, T., Vick, J., & Lavelle, B. (2010). *Towards the identification of features of effective professional development for early childhood educators: A review of the literature.* Report prepared for the U.S. Department of Education.

[160] Isner, T., Tout, K., Zaslow, M., Soli, M., Quinn, K., Rothenberg, L., & Burkhauser, M. (2011). *Coaching in early care and education programs and Quality Rating and Improvement Systems (QRIS): Identifying promising features*. Child Trends.

[161] Lloyd, C. M., & Modlin, E. L. (2012). *Coaching as a key component in teachers' professional development: Improving classroom practices in Head Start settings.* Administration for Children and Families.

[162] Howard, E. C., Rankin, V. E., Fishman, M., Hawkinson, L. E., McGroder, S. M., Helsel, F. K., et al. (2013). *The Descriptive Study of the Head Start Early Learning Mentor Coach Initiative.* OPRE Report #2014-5a; Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Planning, Research and Evaluation.

[163] Isner, Tout, Zaslow, Soli, Quinn, Rothenberg and Burkhauser (2011). Coaching in Early Care and Education Programs and Quality Rating and Improvement Systems (QRIS): Identifying Promising Features. *www.childtrends.org/wp.../2011-35**Coaching**QualityImprovement.pdf*

[164] Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M. R., Espinosa, L. M., Gormley, W. T., ... & Zaslow, M. J. (2013). Investing in our future: The evidence base on preschool education. *Ann Arbor, MI: Society for*

We then calculated the total number of mentor coaches needed to support all education staff by using 62,495 teachers (the number of lead Head Start and Early Head Start teachers) as a proxy for the total number of teachers and teaching teams that would receive mentor coaching. We estimated the cost of providing 4,238 coaches for 63,566 teachers or teaching teams at $425,935,952. We then assume that programs will utilize their flexibility to identify education staff or teaching teams who would most benefit from this type of professional development. We believe that while the proportion of teachers and teaching teams receiving coaching will vary by program, overall this will result in approximately one-third of teaching staff receiving intensive coaching on average. Therefore, our final estimate for the cost of the requirement is $141,978,651.

Given the lack of data regarding the quality and scope of coaching strategies programs may currently be using, we do not give any credit for programs that may already utilize mentor coaches in this estimate. Further, we acknowledge that this estimate may be an underestimate if Congress appropriates the necessary additional funds to support increased duration of Head Start and Early Head Start programs because additional teaching staff will need to be hired to support the transition of double session slots to full school day and full school year slots. We estimate that an additional 3,906 teachers would need to be hired to transition all programs from double sessions, which would be associated with an additional cost of $8,723,452 and a new total cost of $150,702,102. However, this estimate may be an overestimate if the rule is fully implemented without additional funding and the Secretary does not exercise the discretion to reduce the duration requirements because the number of teachers would not increase. Therefore, a reasonable assumption for calculating this estimate is to use the status quo as the basis of the total number of education staff who may receive mentor coaching.

---

*Research in Child Development*.

These costs will be realized in year two and annually thereafter.

| Mentor Coaching: Costs Borne by Head Start | | | | |
|---|---|---|---|---|
| **Mentor Coach Salary, Fringe and Overhead** | **Number of Teachers and FCC providers** | **Number of Coaches** | **Estimate for all Teachers** | **Estimate for 1/3 of Teachers** |
| $100,504 | 63,566 | 4,238 | $425,935,952 | $141,978,651 |

## Curriculum and Assessment Provisions

This rule includes several provisions to improve curriculum and assessments. We analyzed costs associated with the following specific requirements: improving curriculum in §1302.32(a)(1); monitoring the fidelity of curriculum implementation in §1302.32(a)(2); language assessment in home language and English for all dual language learners in §1302.33(c)(2), and opportunities for parents to participate in a parenting curriculum in §1302.51(b). We analyzed savings associated with the removal of Head Start designed IEPs from part 1308 of the previous standards.

### Improving Curriculum

In this rule, we include several provisions intended to improve the quality of curricula that programs select in §1302.32(a)(1). Specifically, these new provisions will require programs to critically analyze the curricula they use to determine whether they are appropriately aligned with and sufficiently content-rich to support growth in the domains outlined in the Head Start Early Learning Outcomes Framework: Ages Birth to Five. This change will ensure all programs select and implement curricula with the key qualities that research suggests are critical to

promoting child outcomes.[165,166,167,168,169,170,171,172,173] For some programs, these new provisions may require purchasing new curricula, or purchasing curricular add-ons or enhancements.

In order to estimate the cost associated with these provisions, we assumed that education managers would need to allocate an additional thirty hours of analysis and planning time. We estimated the average hourly rate from the average annual salary of education managers and determined the total cost per manager for thirty hours. We then multiplied the cost by the total number of all programs to find a total cost to society of $1,477,847. We then found the cost borne by Head Start ($1,056,660) by applying the proportion of education manager salaries borne by Head Start funds of 71.5 percent, and then found the cost borne by other parties ($421,187). In addition, we estimated the cost of a curricular enhancement to be $4,500 for a three year multi-site license. We know that most programs routinely upgrade their curriculum or purchase a new curriculum. For this cost estimate, we assumed an average of two-thirds of programs (1,346) would identify the need to purchase additional curricular enhancements, and

---

[165] Clements, D. H., & Sarama, J. (2008). Experimental Evaluation of the Effects of a Research-Based Preschool Mathematics Curriculum. *American Educational Research Journal*, *45*(2), 443–494.

[166] Starkey, P., Klein, A., & Wakeley, A. (2004). Enhancing young children's mathematical knowledge through a pre-kindergarten mathematics intervention. *Special issue on Early Learning in Math and Science*, *19*(1), 99–120.

[167] Bierman, K. L., Domitrovich, C. E., Nix, R. L., Gest, S. D., Welsh, J. A., Greenberg, M. T., … Gill, S. (2008). Promoting Academic and Social-Emotional School Readiness: The Head Start REDI Program. *Child Development*, *79*(6), 1802–1817.

[168] Clements, D. H. (2007). Curriculum research: Toward a framework for "Research-based Curricula". *Journal for Research in Mathematics Education, 38*(1), 35-70.

[169] Fantuzzo, J. W., Gadsden, V. L., & McDermott, P. A. (2011). An integrated curriculum to improve mathematics, language, and literacy for Head Start children. *American Educational Research Journal, 48*, 763-793

[170] Lonigan, C. J., Farver, J. M., Phillips, B. M., & Clancy-Menchetti, J. (2011). Promoting the development of preschool children's emergent literacy skills: A randomized evaluation of a literacy-focused curriculum and two professional development models. *Reading and Writing, 24*, 305-337.

[171] Preschool Curriculum Evaluation Research Consortium (2008). Effects of preschool curriculum programs on school readiness (NCER 2008-2009). Washington, DC: National Center for Education Research, Institute of Education Sciences, U.S. Department of Education. Washington, DC: U.S. Government Printing Office.

[172] Wasik, B. A., Bond, M. A., & Hindman, A. H. (2006). The effects of a language and literacy intervention on Head Start children and teachers. *Journal of Educational Psychology, 98*, 63-74.

[173] Riggs, N. R., Greenberg, M. T., Kusché, C. A., & Pentz, M. A. (2006). The mediational role of neurocognition in the behavioral outcomes of a social-emotional prevention program in elementary school students: Effects of the PATHS curriculum. *Prevention Science, 7*, 91-102.

multiplied that number of programs by the average cost of an enhancement to estimate its total cost ($12,114,000). We then summed the cost of managerial time and curricular enhancements ($13,591,847). Since most licensing will be for three years, we assumed grantees will conduct a curriculum assessment process every three years and divided the cost by three. This results in an estimated annual cost of improving curriculum of $4,530,616, and the annual cost borne by Head Start is $4,390,220 with an annual cost borne by other parties of $140,396. These costs will be realized in year two and annually thereafter.

| **Improving Curriculum: Costs Borne by Head Start and by Other Parties** | | | | | | |
|---|---|---|---|---|---|---|
| | **Avg. Ed Manager Salary** | **Cost of 30 Hours** | **Number of Programs** | **Estimated Cost to Society** | **Costs Borne by Head Start** | **Costs Borne by Other Parties** |
| Additional Staff Time | $50,252 | $724.79 | 2,039 | $1,477,847 | $1,056,660 | $421,187 |
| | **Avg. Cost of Enhancement** | **Number of Programs** | **66% of Programs** | **Estimated Cost to Society** | | |
| Curricular Enhancement | $9,000 | 2,039 | 1,346 | $12,114,000 | | |
| | | | | **Estimated Cost to Society** | **Costs Borne by Head Start** | **Costs Borne by Other Parties** |
| | | | **Total** | **$13,591,847** | **$13,170,660** | **$421,187** |
| | | | **Annual Total** | **$4,530,616** | **$4,390,220** | **$140,396** |

Monitoring Fidelity of Curriculum Implementation

In addition to the curriculum quality requirements described in the previous section, this rule also requires in §1302.32(a)(2) that programs provide adequate supervision and regular monitoring of curriculum use to ensure effective curriculum implementation, which is critical to reaping the benefits of using high quality curricula described above. [174,175]

[174] Lieber, J., Butera, G., Hanson, M., Palmer, S., Horn, E., Czaja, C., ... & Odom, S. (2009). Factors that influence the implementation of a new preschool curriculum: Implications for professional development. *Early Education and Development*, *20*(3), 456-481.

[175] Landry, S. H., Anthony, J. L., Swank, P. R., & Monseque-Bailey, P. (2009). Effectiveness of comprehensive professional development for teachers of at-risk preschoolers. *Journal of Educational Psychology*, *101*(2), 448.

In order to estimate the cost associated with this provision, we researched the cost of curriculum fidelity kits, which help programs assess how well their teachers are implementing a particular curricula through planned activities. At present, few curricula offer such a kit. However, based on those that are available, we assessed the average cost of an implementation tool kit at $50. We then multiplied that estimate by the number of programs to find the total cost of this provision. We did not estimate additional staff time, because monitoring and staff supervision was required in the previous rule and individualization of this information is included in our mentor coaching estimate. Using this method, we estimate the cost of fidelity tools for all programs to be $101,950. However, in response to comments, we modified the requirement in the final rule to provide additional flexibility for programs to determine how well their curriculum is being implemented. Therefore, we assume approximately one-third of programs will use a fidelity tool and estimate the total cost of this requirement to be $33,983. These costs will be realized in year two and annually thereafter.

| **Monitoring Fidelity of Curriculum Implementation: Costs Borne by Head Start** | | | |
|---|---|---|---|
| **Avg. Cost of Implementation Tool Kit** | **Number of Programs** | **Estimated Cost for all programs** | **Estimated Cost of Requirement** |
| $50 | 2,039 | $101,950 | $33,983 |

Assessments for Dual Language Learners

In this rule, we also codify best practice in assessing dual language learners (DLL) in §1302.33(c)(2) by requiring programs to administer language assessments to dual language learners in both English and their home language, as needed, either directly or through interpreters. These requirements will ensure that screening and assessment data is collected in both languages to ensure a more complete understanding of these children's knowledge, skills and abilities.[176] In order to estimate the costs associated with this proposal, we first determined

[176] Barrueco, S., Lopez, M., Ong, C., & Lozano, P. (2012). *Assessing Spanish-English bilingual preschoolers: A guide to best approaches and measures.* Baltimore, MD: Brookes.

the number of DLLs across Head Start and Early Head Start by assuming all children who speak a language other than English in the home are DLLs. We then determined the proportion of DLL children who speak Spanish in the home and the number of children who speak other languages. For the purposes of this estimate, we assume that all DLLs who speak Spanish in the home will receive a direct assessment in Spanish, and for all DLLs who speak any language other than Spanish in the home will be assessed through an interpreter. For Spanish-speaking DLLs (265,209 children), we assumed the average cost of a Spanish-language assessment tool-kit (using the most frequently reported assessment as our proxy) is $200 and the average cost per pack of 25 assessment forms is $50. We determined the total number of tool-kits needed by finding the number of programs serving at least one Spanish-speaking child (1,651). We determined the number of packs of assessment forms needed by dividing the total number of Spanish-speaking children by 25 (10,610). We then multiplied the cost of the tool-kit by the number of programs and the cost of the assessment forms by the number of children and summed them to find the total cost of this provision for children who can be directly assessed. For DLLs speaking languages other than Spanish (56,658 children), we found the average hourly rate for an interpreter from the Bureau of Labor Statistics and assumed two hours for each assessment. Finally, we doubled this hourly wage to account for fringe and overhead ($46.08) even though we assume that programs will utilize the services of interpreters on a case-by-case basis rather than employing them as program staff. We then multiplied that cost by the number of non-Spanish-speaking DLLs to find the cost of this provision for children who need to be assessed through an interpreter. Finally, we summed these two estimates to produce a total cost estimate for the provision: $3,471,519. These costs will be realized in year two and annually thereafter.

| **Assessments for Dual Language Learners: Costs Borne by Head Start** | | | | | |
|---|---|---|---|---|---|
| **Type of DLL** | **Avg. Cost of Spanish Assessment** | **Avg. Cost of 25 Forms** | **Number of Programs** | **Number of Form Packs** | **Estimated Cost** |

| | | | | | |
|---|---|---|---|---|---|
| **Spanish-speaking** | $200 | $50 | 1,651 | 10,610 | $860,700 |
| | **Avg. Hourly Wage for Interpreter Inflated for Fringe and Overhead** | **Cost/ Assessment** | **Number of Children** | | **Estimated Cost** |
| **Other** | $46.08 | $92.16 | 56,658 | | $5,221,638 |
| | | | | **Total** | **$6,082,338** |

Screenings for Children with IEPs and IFSPs

In §1302.33(a)(3) of the NPRM, we explicitly stated Head Start programs were not required to perform initial developmental screenings for children who enter the program with a current IEP or IFSP. However, in response to public comments expressing concern about this provision, it has been removed from the final rule and we have reinstated the existing requirement that programs must perform initial developmental screenings for all children, including those with a current IEP or IFSP. Therefore, we do not have estimates associated with this provision.

Removal of Head Start-specific IEPs

The reauthorization of the Head Start Act in 2007 removed previously held authority for Head Start programs to create their own IEPs for children with disabilities. As a result, no programs currently create their own IEPs for children. Prior to 2007, Head Start programs frequently created such IEPs at great cost to programs. In accordance with OMB Circular A-4, we estimate the cost/savings associated with all new provisions in this final rule, including the removal of this authority and the extensive regulatory requirements that accompany it in part 1308 of the previous rule.

In order to estimate the savings associated with the removal of these provisions, we first estimated the number of children in the 2004-2005 program year whose IEP was created by Head Start, which was the last year in which the PIR collected this data. PIR data from that year indicate 14,758 children had IEPs but were not eligible for services under IDEA. We assumed, at a minimum, that the IEPs for all of these children were created through the Head Start process. In order to estimate the cost of an IEP, we first assumed 2 hours of staff time for both the Education Manager and the Disabilities Coordinator. We also assumed 4 hours of Special Education Specialist consultant work, at $50 per hour on average. We then multiplied this staff time by the number of IEPs. We also researched the cost of a multi-disciplinary evaluation and estimated, based on a sample of state estimates, the cost per IEP to be $2,500 on average. We multiplied this cost by the number of IEPs and then added it to the estimated cost of staff time to determine our total cost savings to Head Start for this policy change at $41,180,576. The entire cost savings associated with the removal of Head Start-specific IEPs is considered a transfer, because these costs will be borne by other parties, leading to a net cost to society of zero dollars. The transfer of these costs will be realized in year one and annually thereafter.

| **Removal of Head Start-specific IEPs: Cost Savings to Head Start and Transfer Cost** | | | | | | |
|---|---|---|---|---|---|---|
| | **Cost/ Hour for Staff** | **Cost of Consultation** | **Number of IEPs** | **Cost Savings Borne by Head Start** | **Transfer Cost** | **Net Cost to Society** |
| **Staff/Consultant Time** | $90.39 | $200 | 14,758 | $4,285,576 | $4,285,576 | $0 |
| | **Cost of Evaluation** | | **Number of IEPs** | **Cost Savings Borne by Head Start** | **Transfer Cost** | **Net Cost to Society** |
| **Multi-disciplinary Evaluation** | $2,500 | | 14,758 | $36,895,000 | $36,895,000 | $0 |
| | | | **Total** | **$41,180,576** | **$41,180,576** | **$0** |

Parenting Curriculum

This rule includes a requirement in §1302.51(b) that programs provide parents with opportunities to participate in a parenting curriculum. The NPRM proposed this requirement but the Regulatory Impact Analysis in the NPRM did not account for any costs associated with the requirement. We have added this cost estimate in response to comments that suggested we should acknowledge the costs associated with providing these opportunities to parents here.

In order to estimate the costs associated with this provision, we researched the cost of parenting curricula online and found and average cost of $1,087 for program-level materials and $14.25 per parent booklet. We then estimated that programs would provide opportunities such that one-third of parents would participate in a parenting curriculum, which assuming one parent per child is 318,751 parent participants. We then found the total program-level cost to be $2,216,393 and the total parent-level cost to be $4,542,202, for a total cost of $6,758,595. However, given recent data[177] that suggests that 41% of Head Start and Early Head Start parents already participate in parenting classes, we reduce this estimate by 40% for a total cost of $4,055,157.

| **Parenting Curriculum** | | | | |
|---|---|---|---|---|
| **Average Program-Level Cost of Curriculum** | **Number of Programs** | **Average Cost per Parent** | **Participating Parents (One-Third)** | **Total Cost** |
| $1,087 | 2,039 | $14.25 | 318,751 | $6,758,595 |
| | | | **Reduced by 40%** | **$4,055,157** |

## Administrative/Managerial Provisions

This rule includes several provisions to improve important managerial and administrative responsibilities, and to reduce unnecessary administrative burden. We analyzed costs associated with the following specific requirements: memoranda of understanding in §1302.53(b)(1); background checks in §1302.90(b); mediation and arbitration of disputes between the governing

[177] Auger, A. (2015). *Child Care and Community Services: Characteristics of Service Use and Effects on Parenting and the Home Environment*, PhD dissertation. University of California-Irvine School of Education.

body and policy council in §1301.6; data management requirements in §1302.53(b)(2) and (3), participation in Quality Rating Improvement Systems and participation in State longitudinal data systems in §1302.53. We analyzed savings associated with the following specific requirements: removal of annual audits; removal of delegate appeal process at the federal level; clarification of the facilities application process in §1303.40; revision of community needs assessment in §1302.11(b)(1); and revision of managerial planning in §1302.101(b).

Memoranda of Understanding (MOU)

This rule includes a new requirement that programs establish formal agreements with the local entity responsible for publicly funded preschool in §1302.32. This change reflects a provision of the Act that requires MOUs and has been in effect since 2008. Nonetheless, per the OMB Circular Requirements for Regulatory Impact Analysis, we must estimate the costs associated with the provision, as though no programs have implemented the statutory change.

In order to estimate the costs associated with meeting this new requirement, we first estimated that establishing an MOU with such entities will require approximately 2 hours of management time, based on grantee experience implementing similar MOUs. To estimate the cost of that time, we multiplied the average hourly salary of all management positions by 2. We then multiplied that cost by the total number of programs. Using this method, we estimated the total cost associated with this requirement to be $90,185. We then estimated the proportion of the estimated cost borne by Head Start by applying the average proportion of these management wages borne by Head Start (68.2 percent), and found $61,506 is borne by Head Start and the remaining $28,679 is borne by other parties. This may be an over-estimate of cost given that one purpose of the MOU is to better coordinate and share local resources, which may lead to savings, associated with implementation of the MOU. These costs will be realized in year one only.

| **Memoranda of Understanding: Costs Borne by Head Start and by Other Parties** |
|---|

| Avg. Wage for 2 Hours of Management Time | Avg. Cost of Wage Borne by Head Start | Number of Programs | Estimated Total Cost | Costs borne by Head Start | Costs borne by Other Parties |
|---|---|---|---|---|---|
| $44.23 | $30.23 | 2,039 | $90,185 | $61,506 | $28,679 |

Criminal Background Checks

This rule includes two new provisions that strengthen the requirements programs currently must meet with regard to criminal background checks for staff in §1302.90(b). These changes will provide alignment across federal programs about the importance and key characteristics of comprehensive background checks, which are critical to ensuring child safety in all early care and education settings. Specifically, the first provision requires programs perform both a state and FBI criminal background check on all new employees prior to hire, whereas the previous rule only required programs to perform one of the two checks. The second provision requires programs to renew criminal background checks for all employees once every five years. The FBI estimates the average cost of a criminal background check is $30. The cost of state background checks varies significantly, with some states charging more than $30. However, some states cover costs of the checks for early care providers and other states reduce costs for a combined FBI and state check. Therefore, we assume $50 to be the average cost of both the FBI and state background check, together, based on information from the Office of Child Care's CCDF State Plans, in producing our cost estimate. We also assume a $5 cost for checks of Child Abuse and Neglect registries. The national sex offender registry can be checked online, free of charge.

We considered both monetary costs and opportunity costs when estimating the cost of the first provision. To estimate the monetary cost of requiring both FBI and state background checks for new hires, we used the average turnover rate of teachers and home visitors from the PIR data (17 percent) and applied it to all staff to estimate the average number of new hires due to

turnover per year. We then multiplied the number of new hires (36,438) by the average cost of the FBI background check ($30) to estimate the cost associated with this provision ($1,275,330).

In addition to these monetary costs, we also estimated the opportunity cost for new employees prior to hire to meet this requirement. This represents the value of time (measured as forgone earnings) of a prospective employee during the time, they spend to complete a background check. To calculate the opportunity cost, we averaged the hourly wage for a teacher and an assistant teacher of $15.35, multiplied it by 1.5 hours for the estimated time it would take, and multiplied that by the average number of new hires due to turnover per year. We estimate the total opportunity cost for this provision to be $838,985.

To estimate the cost of the second provision, we estimated the number of staff that would need a background check renewal every five years by dividing the total number of staff for all grantees by 5. Then we multiplied the cost of a full background check ($55) by number of staff needing a background check renewal per year (48,584) for a total cost of $2,672,120.

In addition, we estimated the cost associated with administrative staff time to process each additional background check. To calculate this, we used the applicable number of staff that would need additional background checks per year both through renewal and additional checks as staff turnover (85,022) and divided that number by 6 assuming each application will take approximately 10 minutes to process. This provided an estimate for the number of hours that administrative staff time to process additional background checks (12,265) annually. Finally, we multiplied the number of hours by the hourly wage of an administrative assistant, which we assumed to be the same rate as teacher assistants ($11.99), to estimate the total cost of processing at $169,898.

Using this method, we estimate the total monetary costs associated with the background check provisions to be $4,117,348 and the total opportunity cost to be $838,985. These costs will be realized in year two and annually thereafter.

| **Criminal Background Checks: Costs borne by Head Start** | | | | |
|---|---|---|---|---|
| **Provision** | **Avg. Cost of Check** | **Total Number of Staff** | **Applicable Staff** | **Estimated Cost** |
| Initial Comprehensive Background Check | $35 | 242,918 | 36,438 | $1,275,330 |
| 5-year Renewal | $55 | 242,918 | 48,584 | $2,672,120 |
| | **Hourly wage** | **Applicable Staff** | **Number of Hours** | **Estimated Cost** |
| Staff time to process checks | $11.99 | 85,022 | 14,170 | $169,898 |
| | | | **Total** | $4,117,348 |

| **Criminal Background Checks: Opportunity Costs** | | | | | |
|---|---|---|---|---|---|
| **Provision** | **Avg. Hourly Wage** | **Estimated Time in Hours** | **Total Wage Cost** | **Applicable Staff** | **Estimated Cost** |
| FBI and State Check | $15.35 | 1.5 | $23.03 | 36,438 | $838,985 |
| | | | | **Total** | $838,985 |

Mediation and Arbitration

The rule includes a requirement in §1301.6(b) and (c) that agencies unable to resolve impasses through their own decision-making process must participate in a formal process of mediation. If agencies do not reach a resolution with a mediator, they must pursue arbitration and the arbitrator's decision is final. We assume few grantees will reach an impasse and fewer grantees will be unable to resolve the impasse with their own decision-making process. For purposes of estimating the costs of these provisions, we assume one percent of programs, or 20 programs, will pursue mediation – likely an overestimate – and ten percent of those, or 2 programs, will go on to pursue arbitration. According to data from the National Arbitration Association, the costs of mediation vary but are significantly lower than arbitration. They cite the costs of arbitration services range from $200 to $700 per hour. To estimate the cost, we average the hourly cost and assume $450 per hour. The National Arbitration Association also

states that arbitration usually takes no more than two weeks. Therefore, we assume 80 hours at $450 per hour for three programs for a total cost of $72,000. For mediation, we assume half the cost of arbitration (both hourly rate ($225) and length of time (40 hours)), which is consistent with estimates we saw elsewhere. We assumed 20 programs would pursue mediation for a total cost of $261,000. The total for these two provisions is $333,000. These costs will be realized in year one and annually thereafter.

| **Mediation and Arbitration: Costs Borne by Head Start** | | | | |
|---|---|---|---|---|
| **Provision** | **Avg. Hourly Cost** | **Number of Hours** | **Number of Programs** | **Estimated Cost** |
| Mediation | $225 | 40 | 20 | $261,000 |
| Arbitration | $450 | 80 | 2 | $72,000 |
| | | | **Total** | $333,000 |

Removal of Annual Audits

This rule eliminates the separate audit requirement for Head Start programs in the previous standards in §1301.12 in favor of aligning with the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (Uniform Guidance, 2 CFR part 200).This change will eliminate unnecessary burden on small grantees and the Office of Head Start. The Omni Circular requires a Single Audit of entities if their total federal expenditures exceed $750,000. As a result of this $750,000 threshold, there are 18 grantees that will no longer be required to have an audit. Using an estimate of $17,000 per audit per the suggestion of regional grants management staff who oversee audit procedures, we estimate a savings of $306,000. These costs will be realized in year one and annually thereafter.

| **Removal of Annual Audits: Cost Savings Borne by Head Start** | | |
|---|---|---|
| **Cost per Audit** | **Number of Programs** | **Estimated Savings** |
| $17,000 | 18 | $306,000 |

Parent Committees

We received comments expressing concern about the removal of the requirement that agencies establish parent committees. As a result, we restored this requirement in the final rule. Therefore, there are no monetary or opportunity cost savings associated with the removal of parent committees in the final rule.

Delegate Appeals

This rule aligns with section 641A(d) of the Act, by only requiring grantees to establish procedures for a delegate agency to appeal a defunding decision, which the Act established. As a result, we eliminate the process by which current delegates can appeal grantee decisions to HHS, as outlined in §1303.21. This change will eliminate unnecessary burden on grantees and the Office of Head Start. To estimate the savings associated with the removal of this process, we determined the number of delegate appeals that have occurred across ACF's 12 regions over two years (25) and then divided that number by two to find the average number of appeals annually (12.5). We obtained an estimate from a grantee on the costs of their individual appeal ($66,691) and multiplied it by two to factor in both the cost to the grantee and the delegate agency of the appeal process. We then divided that total by two based on the assumption that half of the costs are spent on the HHS phase of the appeal, which we removed. We then multiplied the average cost by the average number of appeals per year (12.5) to arrive at the annual savings. We estimate savings of $833,638 because of this change. These savings will be realized in year one and annually thereafter.

| **Delegate Appeals: Cost Savings Borne by Head Start** | | |
|---|---|---|
| **Average Savings from Removal of HHS Phase per Appeal** | **Number of Delegate Appeals/Year** | **Estimated Savings** |
| $66,691 | 12.5 | $833,638 |

Clarification of Facilities Application Process

This rule reorders the application requirements for funds to purchase, construct or renovate facilities to align with typical project development in §1303.40. In doing so, we anticipate savings associated with grantees who are likely to identify unfeasible projects more quickly prior to soliciting costly professional advice or unnecessary testing (e.g. environmental), referred to as soft costs. To estimate the savings associated with these revisions, we assumed a per project cost for facilities projects of $500,000, based on our experience with facilities costs.

Since the savings would come from the soft costs that grantees incur at the beginning of a project – which under our reordered application process could be avoided for projects that grantees realize more quickly are not fundable – we assume that approximately 30 percent of the average per project costs, or $150,000 are for soft costs. Our data systems do not capture the number of applications for facility projects each year, so as a proxy, we used the total number of facilities with federal interest for the past 11 years, which is the timeframe for which we have data, with that total (4,051) divided by 11 for the number of facilities with federal interest per year (368). Based on historical data, we then estimate that 8 percent of the 368 facilities with federal interest (29 facilities projects) submit un-fundable applications annually. As a result, we then multiplied the $150,000 in estimated soft costs by 29 projects to determine the savings that would result if those grantees realized the unfeasibility of their projects earlier and never spent those funds. We estimate the total savings associated with these revisions to total $4,350,000. These costs will be realized in year one and annually thereafter.

| **Clarification of Facilities Application Process: Cost Savings Borne by Head Start** | | | | |
|---|---|---|---|---|
| **Avg. Cost of Facility Project** | **Avg. "Soft" Costs** | **Facilities with Federal Interest/ Year** | **Unfundable Facility Applications/ Year** | **Estimated Savings** |
| $500,000 | $150,000 | 368 | 29 | $4,350,000 |

Community Assessment

This rule also includes provisions that change the previous requirement for programs to conduct full community assessments from every three years to every five years in §1302.11(b)(1). This change will streamline the community assessment process and eliminate unnecessary burden on grantees and the Office of Head Start. We estimated the current cost of the community assessment and assumed a reduction in costs of 40 percent, based on the change from three to five years. To determine the average cost of a community assessment, we incorporated grantee feedback about both the frequency with which they choose to perform the assessment internally versus hiring consultants, and the average cost, in staff time and consultant fees, respectively of those assessments. From this feedback, we assumed 75 percent of programs (1,529) perform their community assessments using Head Start staff, while the remaining 25 percent (510) hire consultants.

We estimated the costs associated with Head Start staff time for 75 percent of programs by calculating the average hourly wage of the entire management team (for the director, education manager, health services manager, family services manager and disabilities coordinator combined), and assumed 40 hours of the entire management team's time to complete the assessment ($4,965). Note, this is likely an overestimate because many programs do not have discrete managers for each service type. We then multiplied the cost of these 40 hours by the number of programs using Head Start staff to complete their assessments for a total estimated cost to complete the assessment of $7,591,485. We then divided this cost by 3 to get the previous annual cost ($2,530,495) and by 5 to get the new annual cost ($1,518,297) and found the difference to determine the total annual savings for this approach ($1,012,198).

We estimated the costs associated with consultants for 25 percent of programs by the average cost for a consultant to perform the community assessment at $6,000 and assumed an

additional 10 hours of the management team's time to support the completion of the assessment ($1,241). We then multiplied these costs by the number of programs who choose to hire consultants for their community assessment for a total estimated cost to complete the assessment of $3,692,910. We then divided this cost by 3 to get the previous annual cost ($1,230,970) and by 5 to get the new annual cost ($738,582) and found the difference to determine the total annual savings for this approach ($492,388). Finally, we summed the savings from these approaches to find the estimated the savings for this policy change to be $1,504,586. We then applied the proportion of management staff salaries paid for with Head Start funds of 67.9 percent to find the total estimated savings borne by Head Start of $1,152,558 and the estimated savings borne by other parties of $352,028. These cost savings will be realized in year one and annually thereafter.

| **Community Assessment: Cost Savings Borne by Head Start and by Other Parties** | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **Option** | | **Cost** | **Number of Programs** | **Total Cost** | **Previous Annual Cost** | **New Annual Cost** | **Difference (Total Savings)** | **Cost Savings borne by Head Start** | **Cost Savings borne by Other Parties** |
| **External** | *Staff time* | $1,241 | 510 | $632,910 | $210,970 | $126,582 | $84,388 | $57,324 | $27,064 |
| | *Consult Time* | $6,000 | 510 | $3,060,000 | $1,020,000 | $612,000 | $408,000 | $408,000 | - |
| **Internal** | *Staff time* | $4,965 | 1,529 | $7,591,485 | $2,530,495 | $1,518,297 | $1,012,198 | $687,234 | $324,964 |
| | | | | | | **Total** | $1,504,586 | $1,152,558 | $352,028 |

Managerial Planning

This rule includes two new provisions that lessen the administrative planning burden on programs by reducing the number and prescriptiveness of planning processes that are required in §1302.101(b). Specifically, the first provision reduces current planning topics from four in the previous rule (education, health, family and community partnerships, and program design and management) to two. The second provision significantly reduces the prescriptiveness of the disabilities services plan and as a result significantly reduces the costs associated with the requirement for that planning.

In order to estimate the costs associated with the first provision, we assumed the four plans required in the existing rule took approximately two weeks of the education manager's time to develop. Our proposed provision would reduce the number of required plans by half. As a result, we assume one week of the education manager's salary as cost savings for each program. Then we multiplied this salary by the number of programs to estimate the savings associated with this provision. Further, we applied the proportion of the education manager's salary paid for with Head Start funds (71.5 percent) to determine the cost savings to Head Start and the cost savings borne by other parties. For the second provision, we assumed the disabilities service plan as outlined in the previous rule took an average of one week of the disabilities coordinator's time. We also assume that the changes to this provision will result in an 80 percent decrease in burden, and as such, estimate the cost savings per program to be 80 percent of the disabilities coordinator's average weekly wage. We then find estimated cost savings associated with this provision both to Head Start and to other parties by multiplying this amount by the total number of programs and applying the proportion of disabilities coordinator's salaries paid for with Head Start funds (64.9 percent). Finally, we sum these two cost savings to find the total estimated cost savings for this policy change to be $3,341,921, the total cost savings borne by Head Start to be $2,298,905, and the total cost savings borne by other parties to be $1,043,016. These costs will be realized in year one and annually thereafter.

| **Managerial Planning: Cost Savings Borne by Head Start and by Other Parties** | | | | | | |
|---|---|---|---|---|---|---|
| **Cost** | **Cost of Staff Time/ Week** | **Savings per Program** | **Number of Programs** | **Estimated Cost Savings** | **Cost Savings Borne by Head Start** | **Cost Savings Borne by Other Parties** |
| **Reduction of Plans** | $966 | | 2,039 | $1,969,674 | $1,408,317 | $561,357 |
| **Revision of Disabilities Plan** | $841 | $673 | 2,039 | $1,372,247 | $890,588 | $481,659 |
| | | | **Total** | **$3,341,921** | **$2,298,905** | **$1,043,016** |

Data Management

This rule includes several new requirements related to data management, privacy, and data governance in §1302.53(b)(2) and (3), §1302.101(b)(4), and part 1303, subpart C. Specifically, these provisions require that programs establish procedures related to the availability, usability, integrity, and security of data and communicate, cooperate, and share information among agencies and their community partners. For the purposes of estimating the costs of these provisions, we focus on three major elements: designing and implementing a program-wide coordinated approach to data management and sharing data with other programs and systems through parental consent and memoranda of understanding.

First, we estimated the cost to programs of designing and implementing a program-wide coordinated approach to data management. We assumed one full day (eight hours) of planning time, using a cumulative hourly wage of $123.81 for management staff for all 2,039 programs. This resulted in a cost of $2,019,589. We then applied the proportion of management salaries paid for with Head Start funds (67.9 percent) to estimate the total cost borne by Head Start and the costs borne by other parties for this provision. We estimate the total cost to Head Start to be $1,371,301 and the cost to other parties to be $648,288.

Second, we estimated the cost of sharing data in order to coordinate with other programs and systems. We assumed these costs entail costs associated with Head Start staff time requesting parental consent to share data and establishing Memoranda of Understanding (MOU). We assume that the parental consent process would be performed by family services workers; however, since we do not have PIR data on a family service worker's hourly wage, we averaged the hourly wage of Head Start teachers and assistant teachers as a proxy for the family service worker wage ($15.35). To calculate the cost of the parental consent process, we further assumed

that each consent process would take 20 minutes of the family service workers' time and divided that hourly wage by three to arrive at the cost of each parental consent ($5.12). Then, we multiplied the cost per consent by the number of parents from the PIR (988,923), for an estimated cost of $5,063,286.

We also estimated the cost of the MOU process for all programs. To do so, we averaged the hourly wages of management staff and assumed an average of three MOUs per program. We chose three MOUs based on the assumption that most programs would have an MOU with an educational agency, a local social services agency, and some other community partner. We assumed two hours of a management staff time per MOU. We used an average hourly wage for managers of $24.76 and multiplied it by two hours per each of three MOUs for an estimated cost of $148.56 per program. Then we multiplied this cost by the total number of programs (2,039) for an estimated cost of $302,914 for the MOU process. We then applied the proportion of management salaries paid for with Head Start funds (67.9 percent) to estimate the total cost borne by Head Start and the total cost borne by other parties for the MOU process. The cost borne by Head Start is $205,680, and the cost borne by other parties is $97,234.

In sum, the total estimated cost of this provision is $7,385,789, the total estimated cost borne by Head Start is $6,643,811, and the total estimated cost borne by other parties is $741,978. These costs will be realized in year two and annually thereafter.

In addition to monetary costs, we also estimated the opportunity cost associated with parents' time spent completing the parental consent process. To calculate this opportunity cost, we use foregone wages as an estimate for the value of parents' time. This represents the value of their time when they participate in an additional home visit rather than working. Because Head Start families are primarily families from low-income backgrounds, we used the federal

minimum wage and assumed twenty minutes of time for one parent from each family served (988,923 according to 2015 PIR data) to meet this requirement. Therefore, we estimate the opportunity cost associated with this provision to be $2,393,194. This cost will be realized in year two and annually thereafter.

| **Data Management: Costs Borne by Head Start and by Other Parties** | | | | | |
|---|---|---|---|---|---|
| | **Cost of Staff Time** | **Number of Program/ Families** | **Total Estimated Cost** | **Costs Borne by Head Start** | **Costs Borne by Other Parties** |
| **Coordinated Approach** | 990.48 | 2,039 | $2,019,589 | $1,374,845 | $644,744 |
| **Consent Process** | $5.12 | 988,923 | $5,063,286 | $5,063,286 | - |
| **MOU Process** | $148.56 | 2,039 | $302,914 | $205,680 | $97,234 |
| | | **Total** | **$7,385,789** | **$6,643,811** | **$741,978** |

| **Data Management: Opportunity Cost** | | | | |
|---|---|---|---|---|
| | **Value of Parent Time/ Hour** | **Number of Parents** | **Time Spent per Parent** | **Opportunity Cost** |
| **Consent Process** | $7.25 | 988,923 | 20 minutes | $914,216 |
| | | | **Total** | **$2,393,194** |

Participation in Quality Rating Improvement Systems

This rule includes a new requirement that programs participate in their State's Quality Rating and Improvement System if it meets several indicators described in §1302.53, including that the State accepts Head Start monitoring data as evidence that programs meet requirements to be assigned a rating in the State's tiered system. As a result, we estimate costs associated with both management staff time spent determining whether their state QRIS meets the indicators which would trigger participation and management staff time spent preparing monitoring reports and filling out paperwork to file with the State. We also estimate a cost to States associated with reviewing Head Start program documentation and assigning a rating to each program. While we acknowledge that there may be additional costs to Head Start and other parties associated with Head Start programs who seek to move up within a state's tiered system, for example by opting

to participate in observational ratings such as the Early Childhood Environmental Rating Scale (ECERS), programs are not required to do so by this provision and we do not have data to support a reasonable assumption of how many programs would choose to do so. Therefore we have not estimated these costs here. Further, we assume that programs that choose to participate in such activities to move up within a state's system would do so in order to reap benefits such as increased subsidy reimbursement rates or access to professional development opportunities, which would, from the program's perspective, offset the costs involved. (From the perspective of society as a whole, changes in reimbursement amounts are transfers, increased resources devoted to professional development are costs, and any improved outcomes for Head Start students that result from the professional development are benefits.)

In order to calculate the costs associated with each program determining whether the QRIS in their State meets the indicators, we assumed eight hours of assessment time for the entire management team, using a cumulative hourly wage of $124.13 for management staff for all 2,039 programs. This resulted in a cost of $2,024,809. We then applied the proportion of management salaries paid for with Head Start funds (67.9 percent) to estimate the total cost borne by Head Start and the costs borne by other parties for this provision. We estimate the total cost to Head Start to be $1,367,272 and the cost to other parties to be $657,537.

Then to estimate the cost of program participation in QRIS in states that meet the indicators described in §1302.53, we first assumed that the Program Director and the Education Manager (whose hourly wage is a total of $59.82, $40.28 of which is borne by Head Start and $19.55 of which is borne by other parties) in programs participating in QRIS would spend 16 hours (or two full days) preparing monitoring reports and filling out paperwork to file with the State. This calculation results in an estimated cost borne by Head Start of $644.42 per program

and an estimated cost borne by other parties of $312.73 per program. Then, to estimate the cost per year, we had to make assumptions about what percent of programs would be in States that meet the described in §1302.53. Although we do not think most States currently meet these indicators, we assume that States who want Head Start programs to participate in QRIS will make adjustments to their systems over time to meet the indicators such that the Head Start performance standards require participation. Therefore, we assumed that 25% of programs would participate in the first year this requirement is in place (2017/2018), 50% would participate five years after the requirement is in place (2022/2023) and that by 2025/2026 75% of programs would participate. To estimate the cost in each year, we multiplied the number of programs participating (510 in 2017/2018, 1,020 in 2022/2023, and 1,529 in 2025/2026). This results in costs borne by Head Start of $328,656 in 2017/2018, $657,311 in 2022/2023, and $985,323 in 2025/2026; and costs borne by other parties of $159,493 in 2017/2018, $318,985 in 2022/2023, and $478,165 in 2025/2026.

Then, we further assume additional costs borne by other parties, in costs to the State associated with reviewing Head Start program documentation and assigning a rating to each program. In order to estimate these costs, we assumed 8 hours of administrative staff time using the average hourly wage for administrative assistants from the Bureau of Labor Statistics 2015 data ($17.55) for a cost of $140.40 per program participating in QRIS. We then applied this cost per program to the number of programs participating in each year as described above to find the cost borne by States to be $71,569 in 2017/2018, $143,138 in 2022/2023, and $214,707 in 2025/2026.

In sum, the total costs associated with meeting this requirement which are borne by Head Start programs are $1,695,928 in 2017/2018, $2,024,583 in 2022/2023, and $2,352,595 in

2025/2026. Finally, the total costs associated with meeting this requirement which are borne by other parties are $888,598 in 2017/2018, $1,119,660 in 2022/2023, and $1,350,409 in 2025/2026.

| Participation in QRIS: Costs Borne by Head Start and by Other Parties | | | | | |
|---|---|---|---|---|---|
| | Cost of Staff Time Per Program | Number of Programs | Total Estimated Cost | Costs Borne by Head Start (67.9%) | Costs Borne by Other Parties |
| Determining Participation | $993.04 | 2,039 | $2,024,809 | $1,367,272 | $657,537 |

| Participation in QRIS: Costs Borne by Head Start and by Other Parties | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Cost of Staff Time Per Program | Number of Programs | Estimated Cost for 25% of Programs | | Estimated Cost for 50% of Programs | | Estimated Cost for 75% of Programs | |
| | | | To Head Start | To Other Parties | To Head Start | To Other Parties | To Head Start | To Other Parties |
| HS Management Staff for Participating Programs | $957.15 | 2,039 | $328,656 | $159,493 | $657,311 | $318,985 | $985,323 | $478,165 |
| State Administrative Staff | $140.40 | 2,039 | n/a | $71,569 | n/a | $143,138 | n/a | $214,707 |

| Participation in QRIS: Costs Borne by Head Start and by Other Parties | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Year 2 2017-2018 | Year 3 2018-2019 | Year 4 2019-2020 | Year 5 2020-2021 | Year 6 2021-2022 | Year 7 2022-2023 | Year 8 2023-2024 | Year 9 2024-2025 | Year 10 2025-2026 |
| Total Costs to Head Start | $1,695,928 | $1,695,928 | $1,695,928 | $1,695,928 | $1,695,928 | $2,024,583 | $2,024,583 | $2,024,583 | $2,352,595 |
| Total Costs to Other Parties | $888,598 | $888,598 | $888,598 | $888,598 | $888,598 | $1,119,660 | $1,119,660 | $1,119,660 | $1,350,409 |

Participation in State Longitudinal Data Systems

This rule includes a new requirement in §1302.53 that programs should participate in State longitudinal data systems if they can participate and benefit in a similar fashion to other early childhood programs. As a result of the conditions for participation to be required, we estimate costs associated with both management staff time spent determining whether they should participate in State longitudinal data systems and qualified staff (such as a data analyst or

the Education Manager) time spent preparing program data to be shared with the State. We also estimate a cost to States associated with integrating Head Start data into the state system. While we acknowledge that the cost of maintaining State longitudinal data systems can be costly to States, there is no evidence to suggest that States have passed these costs on to programs that contribute their data to the system. In this estimate, we have not estimated costs to Head Start programs associated with any fee for participation. If States began to pass these maintenance costs on to participating programs the costs presented below would represent an underestimate of the actual costs to Head Start programs and an equal-magnitude overestimate of the costs to other parties.

In order to calculate the costs associated with each program determining whether the to participate in State longitudinal data systems, we assumed four hours of assessment time for the entire management team, using a cumulative hourly wage of $124.13 for management staff for all 2,039 programs. This resulted in a cost of $1,012,404. We then applied the proportion of management salaries paid for with Head Start funds (67.9 percent) to estimate the total cost borne by Head Start and the costs borne by other parties for this provision. We estimate the total cost to Head Start to be $683,636 and the cost to other parties to be $328,768.

Then to estimate the cost of program participation in State longitudinal data systems, we first assumed that staff with qualifications and a salaries equivalent to the Education Manager, who may or may not be the Education Manager (whose hourly wage is a total of $24.16, $17.27 of which is borne by Head Start and $6.89 of which is borne by other parties) in programs participating in State longitudinal data systems would spend 40 hours (or one full week) preparing program data to be shared with the State. This calculation results in an estimated cost borne by Head Start of $690.97 per program and an estimated cost borne by other parties of

$275.42 per program. Then, to estimate the cost per year, we had to make assumptions about what percent of programs would participate. Given the costly nature of maintaining State longitudinal data systems for States, and the scarcity of grant funds to support these activities, we have assumed only a small proportion of programs will be in States who have longitudinal data systems that meet the conditions described in §1302.53 the first year this requirement is in place. Further, we assume only modest growth in the proportion of programs in such States over time. Therefore, we assumed that 10% of programs would participate in the first year this requirement is in place (2017/2018), 20% would participate five years after the requirement is in place (2022/2023) and that by 2025/2026 30% of programs would participate. To estimate the cost in each year, we multiplied the number of programs participating (204 in 2017/2018, 408 in 2022/2023, and 612 in 2025/2026). This results in costs borne by Head Start of $140,957 in 2017/2018, $281,914 in 2022/2023, and $422,871 in 2025/2026; and costs borne by other parties of $56,186 in 2017/2018, $112,371 in 2022/2023, and $168,557 in 2025/2026.

Then, we further assume additional costs borne by other parties, in costs to the State associated with integrating Head Start data into the state system. In order to estimate these costs, we assumed 4 hours of administrative staff time using the average hourly wage for administrative assistants from the Bureau of Labor Statistics 2015 data ($17.55) for a cost of $70.20 per program participating in State longitudinal data systems. We then applied this cost per program to the number of programs participating in each year as described above to find the cost borne by States to be $14.314 in 2017/2018, $28,628 in 2022/2023, and $42,941 in 2025/2026.

In sum, the total costs associated with meeting this requirement which are borne by Head Start programs are $824,593 in 2017/2018, $965,550 in 2022/2023, and $1,106,507 in

2025/2026. Finally, the total costs associated with meeting this requirement which are borne by other parties are $399,268 in 2017/2018, $469,767 in 2022/2023, and $540,267 in 2025/2026.

| Participation in State longitudinal data systems: Costs Borne by Head Start and by Other Parties | | | | | |
|---|---|---|---|---|---|
| | Cost of Staff Time Per Program | Number of Programs | Total Estimated Cost | Costs Borne by Head Start (67.9%) | Costs Borne by Other Parties |
| Determining Participation | $496.52 | 2,039 | $1,012,404 | $683,636 | $328,768 |

| Participation in State longitudinal data systems: Costs Borne by Head Start and by Other Parties | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Cost of Staff Time Per Program | Number of Programs | Estimated Cost for 10% of Programs | | Estimated Cost for 20% of Programs | | Estimated Cost for 30% of Programs | |
| | | | To Head Start | To Other Parties | To Head Start | To Other Parties | To Head Start | To Other Parties |
| HS Management Staff for Participating Programs | $690.97 | 2,039 | $140.957 | $56,186 | $281,914 | $112,371 | $422,871 | $168,557 |
| State Administrative Staff | $70.20 | 2,039 | n/a | $14,314 | n/a | $28,628 | n/a | $42,941 |

| Participation in State longitudinal data systems: Costs Borne by Head Start and by Other Parties | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Year 2 2017-2018 | Year 3 2018-2019 | Year 4 2019-2020 | Year 5 2020-2021 | Year 6 2021-2022 | Year 7 2022-2023 | Year 8 2023-2024 | Year 9 2024-2025 | Year 10 2025-2026 |
| Total Costs to Head Start | $824,593 | $824,593 | $824,593 | $824,593 | $824,593 | $965,550 | $965,550 | $965,550 | $1,106,507 |
| Total Costs to Other Parties | $399,268 | $399,268 | $399,268 | $399,268 | $399,268 | $469,767 | $469,767 | $469,767 | $540,267 |

Implementation of Changes in the Program Performance Standards

This rule includes numerous changes to Head Start's Program Performance Standards. As a result, we have included provisions in §1302.103 that require programs to develop a program-wide approach to prepare for and implement these changes, in order to ensure their effectiveness. In order to estimate the cost associated with these provisions, we estimated the costs associated with Head Start staff time by calculating the average hourly wage of the entire management team (for the director, education manager, health services manager, family services

manager, and disabilities coordinator combined), and assumed 40 hours of the entire management team's time to develop the approach ($4,965). Note, this is likely an overestimate because many programs do not have discrete managers for each service type. Using this method we estimate the total cost of this provision at $10,123,635. We then applied the average proportion of management salaries paid for with Head Start funds (67.9 percent) to estimate the total cost borne by Head Start ($6,873,948) and the total cost borne by other parties ($3,249,687) for planning.

Further, we expect there will be costs associated with printing and distribution of hardcopies of the standards to every grantee. We estimate the cost of printing and distribution will be $75,000, based on the cost associated with printing and distributing the new Head Start Early Learning Outcomes Framework: Birth to Five, which was similar in length and was distributed to the same entities at a cost of $75,000. Including this cost, the total estimated cost of implementation planning is $10,198,635, the cost borne by Head Start is $6,948,948 and the cost borne by other parties is $3,249,687. We then divided the cost borne by Head Start and the cost borne by other parties in half, because we believe implementation planning will be spread across two years. Therefore, these costs will be realized in years one and two only.

| **Implementation Planning: Costs Borne by Head Start and by Other Parties** | | | | | | | |
|---|---|---|---|---|---|---|---|
| | **Hourly Rate of Management Team** | **Cost 40 of Hours** | **Number of Programs** | **Estimated Cost** | **Estimated Cost per Year** | **Annual Costs Borne by Head Start** | **Annual Costs Borne by Other Parties** |
| **Management Time** | $124.13 | $4,965 | 2,039 | $10,123,635 | $5,061,818 | $3,436,974 | $1,624,843 |
| **Printing and Distribution** | - | - | - | $75,000 | $32,500 | $32,500 | $0 |
| | | | **Total** | **$10,198,635** | **$5,099,318** | **$3,474,474** | **$1,624,843** |

3. Benefits Analysis

Overall, the policies included in this final rule are designed to strengthen Head Start quality, improve child outcomes, and increase the return on taxpayer dollars. As discussed in more detail in the preamble for this final rule, these policies will improve teaching practices, through implementation of content-rich curriculum, effective use of assessment data, and strong professional development. These improvements are central to our effort to ensure every child in Head Start receives high quality early learning experiences that will build the skills they need to succeed in school and beyond. In order to maximize the effectiveness of Head Start and yield a high rate of return on investment, we believe it is essential to pair these improvements to the early learning experiences provided by Head Start with increases in program duration.

In this section, as part of our full regulatory analysis, we describe our expectation that this rule will result in a greater return on the federal investment in Head Start and outline our rationale. To do so, we first consider long-standing economic analysis of the return on investment through benefits to society of high quality early education and summarize the research linking the most costly provisions—extending program duration—to the expectation for increased return on investment. Then, we describe the expected effect of the final rule on society by exploring the benefits of the quality and duration improvements on children enrolled in Head Start and their parents and the potential opportunity costs for children who might not have access to Head Start in the future, as well as other unquantified benefits. Further, we discuss the implications of both Congressional and Secretarial actions on the costs and benefits of this rule to society as a whole. Finally, we provide estimates of additional federal funding needed for overtime, adjusted for cost of living increases, to support the full implementation of this rule and we estimate the potential slot loss and education staff job loss that may arise from this rule if the

service duration policies described in part 1302, subpart B, are fully implemented without adequate additional funds.

**Return on Investment in Early Childhood**

There is no question that high-quality early learning programs yield significant benefits to children and society.[178] Early learning programs provide a unique opportunity to intervene and support children's development during a period in which learning and growth is at its most rapid.[179,180,181] Early learning programs have short and long term effects on children's math, reading and behavior skills, can reduce grade retention, teen pregnancy, and the need for special education services, and in the long-term can increase lifetime earnings and reduce

[178] Heckman, J. J., Moon, S. H., Pinto, R., Savelyev, P. A., & Yavitz, A. (2010). The rate of return to the HighScope Perry Preschool Program. *Journal of Public Economics, 94,* 114-128.
[179] National Scientific Council on the Developing Child (2007). *The Timing and Quality of Early Experiences Combine to Shape Brain Architecture: Working Paper No. 5*. Retrieved from www.developingchild.harvard.edu
[180] Anda R.F., Felitti V.J., Bremner J.D., Walker J.D., Whitfield C., Perry, B.D., Dube, S.R., & Giles, W.H. (2006). The enduring effects of abuse and related adverse experiences in childhood. A convergence of evidence from neurobiology and epidemiology. *European Archives of Psychiatry and Clinical Neuroscience, 256(3),* 174-186.
[181] National Scientific Council on the Developing Child (2010). *Early Experiences Can Alter Gene Expression and Affect Long-Term Development: Working Paper No. 10*. Cambridge, MA: Author.

crime.[182,183,184,185,186,187,188,189,190,191,192,193] Numerous evaluations of both small-scale and large-scale early education programs demonstrate that the benefits to children and our society outweigh the financial costs of funding these programs. Studies examining the return on investment for early learning programs find a range of levels for positive returns. For example, the Perry Preschool project, a two-year early learning intervention for children from low-income families, netted approximately 7-10 dollars back for every dollar spent on the program, with a baseline estimate of $8.60.[194,195] Most of these financial benefits came from later reductions in crime. Evaluations of the Chicago Child-Parent Center program (CPC) also show benefits from medium and long-

[182] Aikens, N., Kopack Klein, A., Tarullo, L., & West, J. (2013). Getting Ready for Kindergarten: Children's Progress During Head Start. FACES 2009 Report. OPRE Report 2013-21a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

[183] Schweinhart, L. J., Montie, J., Xiang, Z., Barnett, W. S., Belfield, C. R., & Nores, M. (2005*). Lifetime effects: The HighScope Perry Preschool study through age 40.* Ypsilanti, MI: HighScope Press.

[184] Barnett, W. S., & Hustedt, J. T. (2005). Head start's lasting benefits. *Infants & Young Children*, *18*(1), 16-24.

[185] Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M., . . .Zaslow, M. (2013). Investing in our future: The evidence base on preschool education. Foundation for Child Development. New York, NY.

[186] Camilli, G., Vargas, S., Ryan, S., & Barnett, W. S. (2010). Meta-analysis of the effects of early education interventions on cognitive and social development. *The Teachers College Record, 112,* 579-620.

[187] Wong, V. C., Cook, T. D., Barnett, W. S., & Jung, K. (2008). An effectiveness-based evaluation of five state prekindergarten programs. *Journal of Policy Analysis and Management, 27,* 122-154.

[188] Reynolds, A.J. (2000). Success in early intervention: The Chicago Child-Parent Centers. Lincoln, Nebraska: University of Nebraska Press.

[189] Schweinhart, L. J., Montie, J., Xiang, Z., Barnett, W. S., Belfield, C. R., & Nores, M. (2005). *Lifetime effects: The HighScope Perry Preschool study through age 40*. Ypsilanti, MI: HighScope Press.

[190] Gormley, W., Gayer, T., Phillips, D.A., & Dawson, B. (2005). The effects of universal Pre-K on cognitive development. *Developmental Psychology, 41,* 872-884.
Campbell, F. A., Ramey, C. T., Pungello, E., Sparling, J., & Miller-Johnson, S. (2002). Early childhood education: Young adult outcomes from the Abecedarian project. *Applied Developmental Science, 6,* 42-57.

[191] Weiland, C., & Yoshikawa, H. (2013). Impacts of a prekindergarten program on children's mathematics, language, literacy, executive function, and emotional skills. *Child Development, 84,* 2112–2130.

[192] Peisner-Feinberg, E. S., Schaaf, J. M., LaForett, D. R., Hildebrandt, L.M., & Sideris, J. (2014). *Effects of Georgia's Pre-K Program on children's school readiness skills: Findings from the 2012-2013 evaluation study.* Chapel Hill: The University of North Carolina, FPG Child Development Institute.

[193]The Council of Economic Advisers. (December, 2014). *The Economics of Early Childhood Investments.* Washington, DC: Authors

[194] Heckman, J.J., Moon, S.H., Pinto, R., Savalyev, P.A. & Yavitz, A. (2010). The Rate of Return to the High/Scope Perry Preschool Program. Journal of Public Economics, 94(1-2), 114–128.

[195] The Council of Economic Advisers. (December, 2014). *The Economics of Early Childhood Investments.* Washington, DC: Authors.

term positive effects. When CPC participants reach age 21, analyses demonstrates that one and a half years of CPC preschool participation yielded a return for society of $7.10. In comparison to preschool children who did not participate in CPC, the preschool participants had lower rates of special education placement and grade retention and a higher rate of high school completion. They also had lower rates of juvenile arrests and lower arrest rates for a violent offense.[196] A recent analysis by some of the country's premier child development and early intervention experts conclude universal pre-kindergarten returns $3-5 in benefits for every dollar spent.[197] Nobel Prize winning economist James Heckman concludes that educational interventions in the first five years of life show much greater benefits than later interventions.[198]

Taken together, this research suggests that participation in early learning programs can help support optimal child development, particularly for children from low-income families, with benefits for society lasting well into adulthood. However, early learning programs must be sufficiently high quality to reap these benefits. The congressionally mandated, randomized control trial study of Head Start's impact did not show lasting effects on the outcomes measured beyond the end of the Head Start program years.[199] However, recent reanalysis of data from the Head Start Impact Study suggests that those programs that were high-quality had greater effects on children, providing further confidence in the benefits of participation in high-quality Head Start programs.[200] In addition, based on monitoring data, including Classroom Assessment

[196] Reynolds, A.J., Temple, J.A., Robertson, D.L., Mann, E.A. (2002). Age 21 Cost-Benefit Analysis of the Title I Chicago Child-Parent Centers. *Educational Evaluation and Policy Analysis.* 24(4), 267-303.
[197] Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M., . . .Zaslow, M. (2013). Investing in our future: The evidence base on preschool education. Foundation for Child Development.
[198] Heckman, J. J., Moon, S. H., Pinto, R., Savelyev, P. A., & Yavitz, A. (2010). The rate of return to the HighScope Perry Preschool Program. *Journal of Public Economics, 94*, 114-128.
[199]Puma, M., Bell, S., Cook, R., Heid, C., Broene, P., Jenkins, F., & Downer, J. (2012). Third grade follow-up to the Head Start impact study final report. *US Department of Health and Human Services Office of Planning, Research and Evaluation*.
[200] Walters, C. (2014). *Inputs in the production of early childhood human capital: Evidence from Head Start.* Working paper. http://eml.berkeley.edu/~crwalters/papers/HS_2_2014.pdf

Scoring System (CLASS), and findings from FACES and the Head Start Impact Study, we also know that there is significant variance in quality among Head Start programs.[201,202,203] Further, longer program duration may allow more Head Start parents to work, which would have benefits to Head Start children and to society.[204,205] In order for Head Start to achieve its mission to be an effective tool in supporting children's success in kindergarten and beyond, and for society to reap the full benefits of this investment, every Head Start program is providing high quality services that will promote strong and lasting child outcomes.

**Review of Research on Early Education Duration**

The Secretary's Advisory Committee recommended Head Start look to "optimize dosage," and our new requirements will ensure Head Start programs become more aligned with state pre-kindergarten programs that have shown strong effects over time.[206,207] For example, North Carolina pre-kindergarten, which is offered to lower income families and operates 6.5 hours per day and 180 days per year, demonstrates strong effects. Children who attend the program make gains in language, literacy, math, general knowledge and social skills. At the end

[201] Office of Head Start (2014). *A National Overview of Grantee CLASS(TM) Scores in 2013.* Washington, DC: Office of Head Start, Administration for Children and Families, U.S. Department of Health and Human Services.
[202] Aikens, N., Kopack Klein, A., Tarullo, L., & J. West. (2013). Getting Ready for Kindergarten: Children's Progress During Head Start. *FACES 2009 Report.* OPRE Report 2013-21a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.
[203] Puma, M., Bell, S., Cook, R., Heid, C., Broene, P., Jenkins, F., & Downer, J. (2012). Third grade follow-up to the Head Start impact study final report. *US Department of Health and Human Services Office of Planning, Research and Evaluation*.
[204] Huston, A. C., Duncan, G. J., McLoyd, V. C., Crosby, D. A., Ripke, M. N., Weisner, T. S., & Eldred, C. A. (2005). Impacts on children of a policy to promote employment and reduce poverty for low-income parents: new hope after 5 years. *Developmental psychology*, *41*(6), 902.
[205] Huston, A. C., Duncan, G. J., Granger, R., Bos, J., McLoyd, V., Mistry, R., ... & Ventura, A. (2001). Work-based antipoverty programs for parents can enhance the school performance and social behavior of children. *Child Development*, 318-336.
[206] Weiland, C., & Yoshikawa, H. (2013). Impacts of a prekindergarten program on children's mathematics, language, literacy, executive function, and emotional skills. *Child Development, 84,* 2112–2130.
[207] Barnett, W.S., Jung, K., Youn, M.J., and Frede, E.C. (2013). *Abbott Preschool Program Longitudinal Effects Study: Fifth Grade Follow-Up.* National Institute for Early Education Research Rutgers—The State University of New Jersey.

of 3rd grade, children from low-income families who had attended state pre-kindergarten scored higher on math assessments than children from low income families who did not attend. Moreover, children who are dual language learners make gains at even faster rates than other children.[208] New Jersey's state pre-kindergarten, which operates between 6-10 hours per day and 180-245 days per year shows significant impacts for child learning. Children who attend New Jersey pre-kindergarten show improvements in language, print awareness, and math at kindergarten entry, 1st grade, and 2nd grade. Gains still exist in language arts, literacy, math, and science at 4th and 5th grade. They also show a 40 percent decrease in grade retention and a 31 percent decrease in special education placement.[209]

Other states with service duration consistent with our minimum annual hours find strong results for children. For example, Georgia pre-kindergarten, which operates 6.5 hours per day and typically runs 180 days per year, finds medium to large effects on children's language, literacy, and math skills at kindergarten entry.[210] Tulsa pre-kindergarten also shows strong effects for children in language and math skills. This program operates 180 days per year and is mainly a full-day program for low-income children. There is some evidence that full-day attendance in Tulsa supports better outcomes for low income and minority children.[211] Boston

[208] Peisner-Feinberg, E. S., Schaaf, J. M., LaForett, D. R., Hildebrandt, L.M., & Sideris, J. (2014). *Effects of Georgia's Pre-K Program on children's school readiness skills: Findings from the 2012–2013 evaluation study.* Chapel Hill: The University of North Carolina, FPG Child Development Institute.
[209] Barnett, W.S., Jung, K., Youn, M.J., and Frede, E.C. (2013). *Abbott Preschool Program Longitudinal Effects Study: Fifth Grade Follow-Up.* National Institute for Early Education Research Rutgers—The State University of New Jersey.
[210] Peisner-Feinberg, E. S., Schaaf, J. M., LaForett, D. R., Hildebrandt, L.M., & Sideris, J. (2014). *Effects of Georgia's Pre-K Program on children's school readiness skills: Findings from the 2012–2013 evaluation study.* Chapel Hill: The University of North Carolina, FPG Child Development Institute.
[211] Gormley, G.T., Gayer, T., Phillips, D., & Dawson, B. (2005). The effects of universal pre-k on cognitive development. *Developmental Psychology, 4(6),* 872-884.

pre-kindergarten, which also operates for a full school day and school year, demonstrates large effects on children's language and math skills.[212]

Only a small amount of research with young children has been able to isolate the impact of service duration on child learning, but what does exist links increasing the length of the program day and program year to improved children's outcomes. For example, a randomized control study in which one group of children attended pre-kindergarten for 8 hours per day for 45 weeks and another group of children attended the same program for 2.5-3 hours per day for 41 weeks found that by the spring of kindergarten, the children who had attended full-day pre-kindergarten had improved almost twice as much on vocabulary and math skills compared to the children who attended half day.[213] Research with children in child care settings found 30 hours of participation each week to be necessary for low and middle income children to see stronger learning outcomes.[214]

Moreover, research on effective teaching practices for children at risk of school difficulties also support the need for full-day operation. A meta-analysis of pre-kindergarten programs found that those that focused on intentional teaching and small group and one-to-one interactions had larger impacts on child outcomes.[215] It is very difficult for a half-day program to provide sufficient time for teachers to conduct learning activities and intentional instruction in small group and one-on-one interactions in the areas of skill development experts believe are important to later school success.

---

[212] Weiland, C., & Yoshikawa, H. (2013). Impacts of a prekindergarten program on children's mathematics, language, literacy, executive function, and emotional skills. *Child Development, 84,* 2112–2130.

[213] Robin, K.B., Frede, E.C., Barnett, W.S. (2006). Is More Better? The Effects of Full-Day vs. Half-Day Preschool on Early School Achievement. *NIEER Working Paper.*

[214] Loeb, S., Bridges, M., Bassok, D., Fuller, B., Rumberger, R., (2005). How much is too much? The influence of preschool centers on children's social and cognitive development. Working paper. National Bureau Of Economic Research.

[215] Camilli, G., Vargas, S., Ryan, S., & Barnett, W.S. (2010). Meta-analysis of the effects of early education interventions on cognitive and social development. *Teachers College Record, 112(3),* 579-620.

Researchers believe meaningful skill development in language, literacy, and math requires intentional, frequent, and specific methods of instruction and teacher-child interactions. These types of interactions are often complex, require a variety of types of interactions and intensities, and for many children in Head Start, need to be conducted in small groups to allow sufficient individualized scaffolding and skill development.[216] Experts believe math curriculum and instruction must support development of broad and deep mathematical thinking and knowledge, including development of abstract thought and reasoning. [217] Targeted instruction and small group activities are teaching practices that are particularly important to include for supporting the learning of children who are behind.[218,219] Language and literacy experts believe teachers must take an active role in supporting language and literacy development for children at risk of reading difficulties. That requires systematic and explicit instruction to foster vocabulary breadth and depth. Research with toddlers and preschool age children also finds that greater exposure to rich vocabulary enrichment allows for better scaffolding that can lead to improved language and literacy.[220,221] As such, experts recommend in addition to integration into group

---

[216] Justice, L.M., Mcginty, A., Cabell, S.Q., Kilday, C.R., Knighton, K., & Huffman, G. (2010). Language and literacy curriculum supplement for preschoolers who are academically at risk: A feasibility study. *Language, Speech, and Hearing Services in Schools, 41,* 161-178.

[217] Ginsburg, H.P., Ertle, B., & Presser, A.L. (2014). Math curriculum and instruction for young children. Chapter 16 in *Handbook of Response to Intervention in Early Childhood*, Buysee, V., & Peisner-Feinberg, E. (Eds.). Baltimore: Paul H. Brookes Publishing.

[218] Buysse, V., Peisner-Feinber, E.S., Saikakou, E., & LaForett, D.R. (2014). Recognition & response: A model of response to Intervention to promote academic learning in early education. Chapter 5 in *Handbook of Response to Intervention in Early Childhood*, Buysee, V., & Peisner-Feinberg, E. (Eds.). Baltimore: Paul H. Brookes Publishing.

[219] Justice, L.M., McGinty, A., Cabell, S.Q., Kilday, C.R., Knighton, K., & Huffman, G. (2010). Language and literacy curriculum supplement for preschoolers who are academically at risk: A feasibility study. *Language, Speech, and Hearing Services in Schools, 41,* 161-178.

[220] Harris, Golinkoff, & Hirsh-Pasell (2011). Lessons for the Crib for the Classroom: How Children Really Learn Vocabulary. In *Handbook of Early Literacy Research, Vol 3*. Ed by D. Dickinson and S. Neuman (NY: Guilford). 49-65.

[221] Dickinson, D.K., Flushman, T.R., & Freiberg, J.B. (2009). Learning, reading, and classroom supports: Where we are and where we need to be going. In B. Richards, M.H. Daller, D.D. Malvern, P. Meara, J. Milton, & Trefers-Daller (Eds.). *Vocabulary Studies in First and Second Language Acquisition: The Interface Between Theory and Application.* (pp. 23-38). Hampshire, England: Palgrave-McMillan.

learning and free play, language and literacy instruction should be explicitly structured and sequenced in 15-20 minutes small group session at least three times per week.[222] Math experts have similar time estimates for supporting adequate high quality learning experiences.[223,224]

Research on summer learning loss demonstrates the importance of extending the minimum days of operation in Head Start. Research on reading skills found high-income students gained skills over summer break, middle-income students maintained their skill level, and children from lower income families lost skills.[225] Experts conclude the average student loses one month worth of skills and development over the summer break.[226] The amount of learning loss is even greater for children from low income families who may not have as much access to educational resources and experiences during the summer and who are already behind their more advantaged peers and need extra time to learn skills and strengthen development.[227,228,229,230,231] This pattern is also true for the youngest children in elementary school. Analysis of the ECLS finds that children from families with higher incomes learn more

---

[222] Curenton, S.M., Justice, L.M., Zucker, T.A., & McGinty, A.S. (2014). Language and literacy curriculum and instruction. Chapter 15 in in *Handbook of Response to Intervention in Early Childhood*, Buysee, V., & Peisner-Feinberg, E. (Eds.). Baltimore: Paul H. Brookes Publishing.

[223] Clements, D.H., Sarama, J., Wolfe, C.B., & Spitler, M.E. (2012). Longitudinal evaluation of a scale-up model for teaching mathematics with trajectories and technologies: persistence of effects in the third. *American Educational Research Journal.*

[224] Clements, D.H., & Sarama, J., (2008). Experimental evaluation of the effects of a research-based preschool mathematics curriculum. *American Educational Research Journal, 45*(2), 443-494.

[225] Benson, J., & Borman, G.D. (2010). Family, Neighborhood, and School Settings Across Seasons: When Do Socioeconomic Context and Racial Composition Matter for the Reading Achievement Growth of Young Children? *Teacher's College Record, 112*(5), 1338–1390.

[226] Sloan McCombs, J. et al., (2011). *Making Summer Count. How Summer Programs Can Boost Children's Learning.* Santa Monica, Calif.: RAND Corporation.

[227] Alexander, K. L., Entwisle D. R., & Olson L. S. (2007). Lasting consequences of the summer learning gap. *American Sociological Review, 72*, 167-180.

[228] *Ibid.*

[229] Sloan McCombs, J. et al., (2011). *Making Summer Count. How Summer Programs Can Boost Children's Learning*. Santa Monica, Calif.: RAND Corporation.

[230] Allington, R.L. & McGill-Franzen, A. (2003). The Impact of Summer Setback on the Reading Achievement Gap. *The Phi Delta Kappan, 85(1),* 68-75.

[231] Fairchild, R. & Noam, G. (Eds.) (2007). *Summertime: Confronting Risks, Exploring Solutions.* San Francisco: Jossey-Bass/Wiley.

over the summer between kindergarten and 1st grade than do children from families with lower incomes.[232] In fact, researchers believe the effects of summer learning loss for children from low-income families is cumulative and that the disparity in summer gains and losses over the first four summers of elementary school is greater than the differential between children from high and low income families at school entry.[233] Experts also conclude summer learning loss in elementary school predicts poor academic achievement in high school.[234]

Research on attendance also finds exposure to additional learning time is important for skill development.[235,236] Research with elementary school children has shown an increase in school attendance predicted improved reading scores.[237] A recent study of preschool attendance in Chicago found that even when accounting for children's skill level at the beginning of preschool, attendance predicted better academic outcomes at the end of preschool and beyond and that attendance was most beneficial for children starting preschool with the lowest skills. Children who missed more preschool had lower math, letter recognition, and social-emotional skills and were also rated as lower on work habits by their teachers.[238]

In sum, providing high-quality early education is not a simple task. Standards must be high to create learning environments that allow teachers to facilitate effective early learning

---

[232] Burkam, D.T., Ready, D.D., Lee, V.E. & LoGerfo, L.F. (2004). Social-Class Differences in Summer Learning Between Kindergarten and First Grade: Model Specification and Estimation. *Sociology of Education, 77*, 1–3

[233] Alexander, K. L., Entwisle D. R., & Olson L. S. (2007). Lasting consequences of the summer learning gap. *American Sociological Review, 72,* 167-180.

[234] *Ibid.*

[235] Logan, J.A.R., Piasta, S.B., Justice, L.M., Schatschneider, C., & Petrill, S. (2011). Children's Attendance Rates and Quality of Teacher-Child Interactions in At-Risk Preschool Classrooms: Contribution to Children's Expressive Language Growth. *Child & Youth Forum 40(6),* 457-477.

[236] Hubbs-Tait, L., McDonald Culp, A., Huey E., Culp, R., Starost, H., & Hare, C. (2002). Relation of Head Start attendance to children's cognitive and social outcomes: moderation by family risk. *Early Childhood Research Quarterly, 17,* 539–558.

[237] Lamdin, D.J. (1996). Evidence of student attendance as an independent variable in education production functions. *Journal of Educational Research*, *89*(3), 155-162.

[238] Ehrlich, S.B., Gwynne, J.A…..Sorice, E. (2014). *Preschool Attendance in Chicago Public Schools: Relationships with Learning Outcomes and Reasons for Absences.* University of Chicago Consortium on Chicago School Research. Research Report.

experiences and support must be provided that continuously builds teachers' skills and knowledge. Taken together this research clearly indicates previous Head Start minimums for program operations are inadequate to achieve the results researchers and economists have shown are possible. Although the evidence does not point to a particular threshold for the length of the day or length of the year that is necessary to ensure positive child outcomes, the research is clear that children will benefit from more exposure to early learning experiences than our previous minimums provide.

**Costs and Benefits to Society**

It is our expectation that this rule will be implemented with sufficient funds to avoid slot loss resulting from costs associated with this rule. In FY 2016, Congress appropriated $294 million specifically to increase service duration for Early Head Start and Head Start programs, which cover some of the costs of the duration requirements in this final rule. The President's FY 2017 Budget includes a request for an additional $292 million. Collectively these funds would allow all programs to increase service duration so that at least 50 percent of their Head Start center-based slots and 100 percent of their Early Head Start center-based slots would meet the respective new minimums of 1,020 and 1,380 annual hours by August 1, 2018, as required in this rule. Congress would need to appropriate additional funds to support the full implementation of the Head Start center-based service duration requirement by February 1, 2020, the date by which the Secretary will decide whether to lower the percentage of slots required to increase duration based on an assessment of the availability of sufficient appropriations to mitigate substantial slot loss. If fully funded, this rule would result in a significant increase in the quality of Head Start and the associated benefits of Head Start participation for all children. Ample research, also

discussed above, demonstrates the potential for early education programs to produce large returns on investment to society through benefits associated with short and long term effects on children's math, reading and behavior skills; reduced grade retention, teen pregnancy, need for special education services, crime, and delinquency; and increased lifetime earnings.[239,240,241,242,243,244,245,246,247,248,249,250] This research, coupled with research indicating the importance of adequate duration in early learning programs, would suggest that extending program duration and increasing program quality will result in additional benefits for any child enrolled in a Head Start program that does not already meet or exceed the bar set for program quality in this rule. The relative size of these additional benefits will likely vary from program to program and it is not possible for this analysis to quantify the precise benefit. Additionally, if

[239] Aikens, N., Kopack Klein, A., Tarullo, L., & West, J. (2013). Getting Ready for Kindergarten: Children's Progress During Head Start. FACES 2009 Report. OPRE Report 2013-21a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

[240] Schweinhart, L. J., Montie, J., Xiang, Z., Barnett, W. S., Belfield, C. R., & Nores, M. (2005*). Lifetime effects: The HighScope Perry Preschool study through age 40.* Ypsilanti, MI: HighScope Press.

[241] Barnett, W. S., & Hustedt, J. T. (2005). Head start's lasting benefits. *Infants & Young Children*, *18*(1), 16-24.

[242] Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M., . . .Zaslow, M. (2013). Investing in our future: The evidence base on preschool education. Foundation for Child Development. New York, NY.

[243] Camilli, G., Vargas, S., Ryan, S., & Barnett, W. S. (2010). Meta-analysis of the effects of early education interventions on cognitive and social development. *The Teachers College Record, 112,* 579-620.

[244] Wong, V. C., Cook, T. D., Barnett, W. S., & Jung, K. (2008). An effectiveness-based evaluation of five state prekindergarten programs. *Journal of Policy Analysis and Management, 27,* 122-154.

[245] Reynolds, A.J. (2000). Success in early intervention: The Chicago Child-Parent Centers. Lincoln, Nebraska: University of Nebraska Press.

[246] Schweinhart, L. J., Montie, J., Xiang, Z., Barnett, W. S., Belfield, C. R., & Nores, M. (2005). *Lifetime effects: The HighScope Perry Preschool study through age 40*. Ypsilanti, MI: HighScope Press.

[247] Gormley, W., Gayer, T., Phillips, D.A., & Dawson, B. (2005). The effects of universal Pre-K on cognitive development. *Developmental Psychology, 41,* 872-884.
Campbell, F. A., Ramey, C. T., Pungello, E., Sparling, J., & Miller-Johnson, S. (2002). Early childhood education: Young adult outcomes from the Abecedarian project. *Applied Developmental Science, 6,* 42-57.

[248] Weiland, C., & Yoshikawa, H. (2013). Impacts of a prekindergarten program on children's mathematics, language, literacy, executive function, and emotional skills. *Child Development, 84,* 2112–2130.

[249] Peisner-Feinberg, E. S., Schaaf, J. M., LaForett, D. R., Hildebrandt, L.M., & Sideris, J. (2014). *Effects of Georgia's Pre-K Program on children's school readiness skills: Findings from the 2012-2013 evaluation study.* Chapel Hill: The University of North Carolina, FPG Child Development Institute.

[250]The Council of Economic Advisers. (December, 2014). *The Economics of Early Childhood Investments.* Washington, DC: Authors

the rule is fully implemented with adequate funding, there may be benefits associated with additional teacher jobs, higher staff salaries, and increased support for parental work. Finally, this rule increases clarity of Head Start requirements which should lead to greater compliance, which should in turn, result in improved child safety and stronger child and family outcomes. However, it is also not possible for this analysis to quantify these benefits.

If the Secretary exercises this authority, the final rule would result in a smaller benefit to society than the fully funded rule, because fewer children would benefit from greater exposure to high-quality early learning experiences. However, if the Secretary does not exercise this authority, this rule could result in a decrease of as many as 123,000 slots, depending upon appropriations and whether programs are able to absorb any costs of the rule within their current operating budgets. This slot loss has costs to society because fewer children will have access to Head Start in the future; although these costs have been estimated in preceding portions of this regulatory impact analysis, the quantification does not account for the relative size of these potential costs, which likely vary from program to program and from child to child (perhaps most notably in the form of diminishing returns to Head Start exposure). Additionally, if the rule is fully implemented without adequate funding, there may be costs associated with job loss, however it is not possible for this analysis to quantify them.

Further, this cost to society may be mitigated by the availability of other early learning programs, given findings from the Head Start Impact Study that indicate a wide range of early childhood education utilization among children who do not have access to Head Start.[251] In this case, determining how the loss of slots impacts society depends on how benefits differ between Head Start and the alternative early childhood education programs. Among children whose

[251] Puma, M., Bell, S., Cook, R., Heid, C., Broene, P., Jenkins, F., & Downer, J. (2012). Third grade follow-up to the Head Start impact study final report. *US Department of Health and Human Services Office of Planning, Research and Evaluation*.

future Head Start slots are eliminated, children who enroll in alternative early childhood education programs of similar quality would not experience a loss of benefits, while children who enroll in programs of lower quality or no program at all would experience lost benefits. To be sure, quality and affordable early learning programs for poor families are limited and there is significant unmet need. A reduction in Head Start slots may is unlikely to not be fully absorbed by other programs given that other early learning programs are not universally available to all children and these programs only currently serve a fraction of the eligible population. The total benefit to society of the rule would depend upon the relative size of the benefits to children who receive greater exposure to high-quality early learning experiences compared to the lost benefits for children who no longer have access to Head Start.

Continuing to operate under widely varying minimums for program duration, in the face of the mounting evidence provided here, limits Head Start's overall effectiveness and undermines Head Start's mission. This rule is designed to ensure every child in Head Start receives the highest quality program. The requirements to extend program duration are inextricably linked to reaping the full range of benefits that researchers and economists have demonstrated are possible.

**Implications of Congressional and Secretarial Actions**

The costs of this rule vary over the next ten years of implementation based upon compliance dates and staff turnover. In FY 2016, Congress appropriated $294 million to pay for programs to increase service duration. As a result and as explained throughout this analysis, the costs associated with increasing the service duration requirements in this rule are reduced. Further, the President's FY 2017 Budget requests an additional $292 million to further support quality improvements. If Congress provides additional resources in FY 2017 and beyond, the

costs associated with this rule would be borne, in part or whole, by the federal government rather than by Head Start programs. In this scenario, there may not be any slot loss associated with the requirements in this rule. Rather, the full additional potential benefits of higher quality services would be realized for all children who attend Head Start.

In the table below, we have estimated the amounts Congress would need to appropriate in order to support the full implementation of the requirements to increase Head Start center-based program duration. Note that we have assumed Early Head Start center-based duration will be fully funded using the FY 2016 appropriation for expansion of program duration. In order to capture the full cost of the Head Start center-based requirements over time, we have adjusted the necessary funding levels to account for cost of living increases as forecasted in the OMB Economic Assumptions for MSR. As the table demonstrates, in order to fully support the requirements to increase program duration, Congress would need to appropriate $264 million in FY 2018 or earlier to support the 50% requirement and an additional $711 million in FY 2020 or earlier to support the 100% requirement.

| | **Appropriation Year** | **Effective Date** | **Secretarial Determination Date** | **Cost of Policy (less the FY16 Appropriation), before Adjustment for COLAs** | **Appropriation Needed, Adjusted for COLAs (In addition to FY16 Appropriation)** | **Additional Appropriation, Adjusted for COLAs (if $264 received by FY2018)** |
|---|---|---|---|---|---|---|
| **50% Requirement for HS CB programs** | Fiscal Year 2018 | August 1, 2019 | February 1, 2018 | $245 million | $264 million | - |
| **100% Requirement for HS CB programs** | Fiscal Year 2020 | August 1, 2021 | February 1, 2020 | $866 million | $975 million | $711 million |

If Congress does not appropriate adequate funds, §1302.21(c)(3) of the final rule gives the Secretary the authority to reduce the requirements for service duration based on an assessment of what available funds can support. In this scenario, as in the scenario where

adequate funds are appropriated, there would be no slot or teacher job loss associated with the duration requirements in this rule.

However, if the Secretary does not exercise this authority, the duration requirements in this rule could result in a decrease of as many as 107,762 slots slots (full estimate described below), depending upon appropriations and whether programs are able to absorb any costs of the rule within their current operating budgets. This slot loss has costs to society because fewer children will have access to Head Start in the future. The total benefit to society of the rule would depend upon the relative size of the benefits to children who receive greater exposure to high-quality early learning experiences compared to the lost benefits for children who no longer have access to Head Start. Both Congressional and Secretarial decisions have important implications for the number of children served by the program and the characteristics of the program.

Although we are unable to quantify the associated costs and benefits that would arise from these implementation scenarios, it is important to keep these factors in mind as we consider both the societal costs and savings and the cost-benefit analysis of this final rule.

**Potential Slot Loss**

In order to estimate slot loss as programs adjust their budgets in the absence of additional funding, we first determined the proportion of current funded enrollment that are Head Start slots (83.8 percent) and Early Head Start slots (16.2 percent), respectively. We then applied this proportion to the total monetary cost associated with this rule, in each out-year, in FY 2016 dollars, and divided the cost that would be borne in Head Start slots by the average cost per slot for Head Start in FY 2015 ($8,035) and the cost that will be borne in Early Head Start by the average cost per slot for Early Head Start in FY 2015 ($12,189), which is inclusive of the cost

per child for Early Head Start-Child Care Partnerships. We use FY 2015 average costs because it is the most recent year for which we have final data. In this case, we did not inflate the Head Start cost per child to incorporate teacher salary increases or additional service hours because we believe the current cost per child is the best indicator for the number of slots programs would need to cut to absorb new costs. We also assumed that the additional $294 million appropriated in FY 2016 will fully fund Early Head Start duration ($30,878,060) and support some proportion of all Head Start grantees slots serving children for 1,020 hours.

Without additional funding, the net costs of this rule borne by Head Start, if fully implemented could be associated with a reduction in slots (number of children served) of as many as 123,614 by year ten. However, it is important to note that we believe these are overestimates of the actual potential slot loss, because many of the costs estimated in this section, aside from the increases in duration, represent changes in how programs will use existing funds rather than additional new costs that would result in slot loss. As stated earlier, this slot loss would not occur if the Secretary exercises discretion provided in the rule to reduce the duration requirements or if sufficient appropriations are provided by Congress to support the policy. This would also be an overestimate if Congress appropriates additional funds to support the full implementation of this rule or if the Secretary exercises the authority to reduce the service duration requirements.

The table below describes the share of costs in years one through ten borne by Head Start and Early Head Start programs and the potential slot loss associated with those costs in each year. Costs vary by year based upon effective dates of individual provisions and whether those costs are one-time or ongoing.

| **Potential Slot Loss (If Congress does not appropriate sufficient funding in future years and the Secretary does not use the discretion provided in the Final Rule to lower the duration requirements)** | | | | | |
|---|---|---|---|---|---|
| | **Year 1 2016/2017*** | **Year 2 2017/2018*** | **Year 3 2018/2019*** | **Year 4 2019/2020*** | **Year 5 2020/2021*** |
| **Share of Costs, *Including FY 2016 Funding Appropriated for Duration Increases*** | | | | | |
| *HS* | $0 | $105,964,210 | $188,593,130 | $350,403,218 | $455,190,660 |
| *EHS* | $0 | $28,673,236 | $44,646,846 | $28,503,144 | $48,760,382 |
| **Potential Slot Loss** | | | | | |
| *HS* | 0 | 13,188 | 23,471 | 43,610 | 56,651 |
| *EHS* | 0 | 2,352 | 3,663 | 2,338 | 4,000 |
| **Total** | **0** | **15,540** | **27,134** | **45,948** | **60,651** |
| | **Year 6 2021/2022*** | **Year 7 2022/2023*** | **Year 8 2023/2024*** | **Year 9 2024/2025*** | **Year 10 2025/2026*** |
| **Share of Costs *Including FY 2016 Funding Appropriated for Duration Increases*** | | | | | |
| *HS* | $971,741,327 | $972,486,346 | $973,835,238 | $974,263,621 | $974,050,651 |
| *EHS* | $28,655,562 | $28,799,587 | $29,060,351 | $29,143,165 | $29,101,994 |
| **Potential Slot Loss** | | | | | |
| *HS* | 120,939 | 121,031 | 121,199 | 121,252 | 121,226 |
| *EHS* | 2,351 | 2,363 | 2,384 | 2,391 | 2,388 |
| **Total** | **123,289** | **123,394** | **123,583** | **123,643** | **123,614** |

*Year ranges refer Head Start program years, which for these estimates, begin on August 1st of each year and end on or before July 31st.
**The costs and slot loss estimates in this table take into account the $294 million appropriated for increased duration, and assume that this funding is applied beginning in Year 3 for Early Head Start and Year 4 for Head Start, when the initial duration requirement would be effective, and is maintained throughout the ten year window. This table also assumes that the share of HS and EHS slots is stable over time.

## Potential Education Staff Job Loss

In order to estimate the total potential number of education staff jobs that may be lost if a slot reduction occurs as a result of full policy implementation without additional funding, we first reduced the costs of the rule borne by Head Start by the cost of eliminating the option for double sessions for Head Start and Early Head Start. Double session programs typically have the same teacher operate a morning and afternoon session with different groups of children. Therefore, we assume double session teachers would not lose their jobs, even if fewer children are served in those programs because they would teach one group of children for a longer session. We also assumed that the additional $294 million appropriated in FY 2016 will fully fund Early Head Start center-based duration increase (estimated at $30,878,060). To determine the costs borne by Head Start (not including duration) that may be associated with education

staff job loss for Early Head Start, we subtracted center-based duration costs from the total costs borne by Early Head Start programs ($59,980,054), which is $29,101,994.

In order to estimate the education staff job loss for Head Start that would be associated with costs borne by Head Start programs, we assumed that an equal distribution of double session and non-double session Head Start center-based slots will be increased using supplemental duration funds out of the FY 2016 appropriation of $294 million which will support all grantees providing 1,020 hours for at least one-third of their slots. Based on this assumption, we divided the $263,121,940 appropriated in FY 2016 for duration (less the cost of the Early Head Start center-based duration increase) by two, which is $131,560,970. We then subtracted the $131,560,970 from the non-double session Head Start share of the total costs ($652,809,539) to find the cost of non-double session slots not supported by FY 2016 appropriations, which is $521,248,569. Then, we divided the $521,248,569 for Head Start by the average cost per child for Head Start, or $8,035, and the non-duration costs for Early Head Start ($29,101,994) by the average cost per slot for Early Head Start, or $12,189, to find the number of slots in Head Start (64,872) and Early Head Start (2,388) associated with these costs.

Then, to account for education staff to child ratios and caseloads that differ by the program option and the age of the child, we applied current percentages from the Program Information Report (PIR) for the proportion of Head Start slots that are center-based, home-based, and other program options (including family child care, locally designed, and combination programs), which are 96 percent, 2.2 percent, and 1.8 percent respectively. These proportions result in 62,277 Head Start center-based slots, 1,427 home-based, and 1,168 other program option slots, assuming programs would reduce center-based, home-based, and other program options proportionately in the face of insufficient funds. Finally, we applied the proportion of

three- versus four- year olds in Head Start from the PIR to find 27,679 three-year-old and 34,599 four-year old center-based slots.

We also applied the proportion of Early Head Start slots that are center-based, home-based/ pregnant women, and other program options (including family child care, locally designed, and combination programs), 47 percent, 48 percent, and 5 percent respectively, to calculate that there would be 1,122 Early Head Start center-based slots, 1,146 home-based/ pregnant women slots, and 119 other program option slots, assuming programs would reduce center-based, home-based/pregnant women, and other program options proportionately in the face of insufficient funds. Finally, we applied the appropriate education staff to child ratios and caseloads for center-based program options by age, home-based, other program options to determine the total number of Head Start and Early Head Start education staff jobs that would potentially be lost.

If fully implemented without additional funding, this rule could result in a reduction of as many as 7,372 education staff jobs by year ten.

4. Accounting Statement – Table of Quantified Costs, and Transfers

As required by the Office of Management and Budget (OMB) Circular A-4, we have prepared an accounting statement table showing the classification of the impacts associated with implementation of this final rule. We decided to use a 10-year window for this regulatory impact analysis. As required by OMB, we discount costs at 3 percent and 7 percent and have included total present value as well as annualized value of these estimates in our analyses below.

We also include costs borne by other parties, opportunity costs and cost transfer, separate from costs borne by Head Start, here, because they impact the total cost to society of the rule.

| **Summary of Costs and Discounting (in millions)** | | | | | |
|---|---|---|---|---|---|
| | **Year 1 2016/2017** | **Year 2 2017/2018** | **Year 3 2018/2019** | **Year 4 2019/2020** | **Year 5 2020/2021** |

| | | | | | |
|---|---|---|---|---|---|
| **Costs Borne by Head Start, *excluding duration funding appropriated beginning in FY 2016*** | $(46) | $135 | $264 | $673 | $798 |
| **Net Costs Borne by Head Start, *including duration funding appropriated beginning in FY 2016*** | $(46) | $135 | $264 | $379 | $504 |
| **Costs Borne by Other Parties** | $42 | $45 | $44 | $44 | $45 |
| **Opportunity Costs** | $0.5 | $4 | $4 | $4 | $4 |
| **Costs to Society (Undiscounted), *excluding duration funding appropriated beginning in FY 2016*** | $(3) | $183 | $312 | $721 | $847 |
| **3% Discount** | $(3) | $178 | $294 | $660 | $752 |
| **7% Discount** | $(3) | $171 | $272 | $589 | $646 |
| **Costs to Society (Undiscounted), *including duration funding appropriated beginning in FY 2016*** | $(3) | $183 | $312 | $427 | $553 |
| **3% Discount** | $(3) | $178 | $294 | $391 | $491 |
| **7% Discount** | $(3) | $171 | $272 | $349 | $422 |
| | **Year 6 2021/2022** | **Year 7 2022/2023** | **Year 8 2023/2024** | **Year 9 2024/2025** | **Year 10 2025/2026** |
| **Costs Borne by Head Start, *excluding duration funding appropriated beginning in FY 2016*** | $1,294 | $1,295 | $1,297 | $1,297 | $1,297 |
| **Net Costs Borne by Head Start, *including duration funding appropriated beginning in FY 2016*** | $1,000 | $1,001 | $1,003 | $1,003 | $1,003 |
| **Costs Borne by Other Parties** | $45 | $46 | $46 | $47 | $46 |
| **Opportunity Costs** | $4 | $4 | $4 | $4 | $4 |
| **Cost to Society (Undiscounted), *excluding duration funding appropriated beginning in FY 2016*** | $1,344 | $1,345 | $1,347 | $1,348 | $1,348 |
| **3% Discount** | $1,159 | $1,126 | $1,095 | $1,064 | $1,033 |
| **7% Discount** | $958 | $896 | $839 | $784 | $733 |
| **Costs to Society (Undiscounted), *including duration funding appropriated beginning in FY 2016*** | $1,050 | $1,051 | $1,053 | $1,053 | $1,053 |
| **3% Discount** | $905 | $880 | $856 | $832 | $808 |
| **7% Discount** | $748 | $700 | $656 | $613 | $573 |

*Year ranges refer Head Start program years, which for these estimates, begin on August 1st of each year and end on or before July 31st.
**Note these costs do not include the potential lost benefits of children who may no longer have access to Head Start or the impact on children who attend other early education programs.

In total, we estimate the 10-year present value of the costs associated with new requirements in this final rule to be $7,358 million when discounted at 3 percent, and $5,886 million when discounted at 7 percent before accounting for the $294 million in funding Congress has provided in FY 2016 to expand duration. We estimate the annualized costs of new requirements in this final rule to be $838 million when discounted at 3 percent, and $783 million when discounted at 7 percent before accounting for the $294 million in funding Congress has provided in FY 2016 to expand duration. As noted, Congress appropriated $294 million in FY 2016 to increase the duration of Early Head Start and Head Start programs. Thus, a substantial share of the costs in this rule will be absorbed by this funding. Accounting for the funding

Congress has already provided in FY 2016 to increase duration, we estimate the 10-year present value of the costs to be $5,632 million when discounted at 3 percent, and $4,502 when discounted at 7 percent. The annualized costs of new requirements in this final rule, when taking into these amounts already appropriated for duration, would be $641 million when discounted at 3 percent and $599 million when discounted at 7 percent.

| **Costs to Society Discounted and Annualized (in millions)** | | | | |
|---|---|---|---|---|
| | **Annualized (Years 1-10)** | | **10 Year Total** | |
| | **Discounted 3%** | **Discounted 7%** | **Discounted 3%** | **Discounted 7%** |
| **Cost to Society, *excluding duration funding appropriated beginning in FY 2016*** | $838 | $783 | $7,358 | $5,886 |
| **Cost to Society, *including duration funding appropriated beginning in FY 2016*** | $641 | $599 | $5,632 | $4,502 |

5. Distributional effects

As part of our regulatory analysis, we considered whether the final rule will disproportionately benefit or harm a particular subpopulation. If adequate funds are not appropriated, the final rule has the potential to result in a reduction in the number of children being served by Head Start and an improvement in quality for the much larger group of low-income children who continue to participate. We do not expect the children who may lose access to Head Start if the funding is not provided to be systematically different in terms of meaningful subpopulations from the children who will be receiving greater benefits from higher quality services. We also acknowledge that if adequate funds are not appropriated, as many as 7,372 teachers, assistant teachers, and home visitors could no longer be employed. Again, while these teachers would be economically harmed, the remaining 110,933 teachers, assistant teachers, and home visitors whose employment is not terminated, should receive pay increases because of working longer hours and longer program years. We do not expect the teachers who

are no longer employed to be systematically different in terms of meaningful subpopulations from the teachers who will see increased pay because of this rule.

We also considered whether there would be a differential impact of the final rule, specifically the requirements to increase duration, on either children or teachers based upon geographic location or tribal affiliation. While we found significant variation at the state level with regard to the proportion of slots that provide 1,020 annual hours in Head Start and 1,380 annual hours in Early Head Start, there are no systematic differences based on the region of the country (e.g., North vs. South; Midwest vs. West, etc.). Further, if the rule is fully implemented, some children in every state will benefit from increased duration. We also found no systematic differences between tribal programs and non-tribal programs with regard to meeting the new minimums.

6. Regulatory Alternatives

As part of our full regulatory analysis, we have considered several regulatory alternatives, which we outline below. Specifically, we have considered alternatives to the policy changes we have determined to be our largest cost-drivers: extension of Head Start center-based program duration and mentor coaching. We consider alternatives to these policy changes by analyzing the effect of the net cost in dollars, slots, and education staff jobs of making no change to the existing rule, as well as other more costly policy changes. In fact, the requirements in this rule for Head Start center-based duration represent an alternative to the requirements proposed in the NPRM. Justifications for the policies set by this rule are embedded throughout the discussion of comments received. However, we do provide additional rationale for not opting to propose or finalize the more costly regulatory alternatives in this section.

**Extension of Head Start Center-based Program Duration**

The rule requires Head Start center-based programs to provide a minimum of 1,020 annual hours for all children by August 1, 2021, but gives the Secretary authority to reduce this requirement to mitigate slot loss from the duration requirements in the event that Congress does not appropriate adequate funds to support the policy. As described in great detail above, these requirements will increase the amount of instructional time in Head Start programs, which research suggests is critical to reaping the full benefits of the other quality improvements in the rule.[252,253] In our cost analysis, we estimated the cost of the Head Start center-based duration requirement, if fully implemented to be $1,128,990,485. Once the expected proportion of the FY 2016 appropriation to increase program duration in Head Start is applied, the cost of these requirements is $865,868,544. These requirements are associated with a potential loss of between 0 and 107,762 slots and between 0 and 5,475 education staff jobs, depending upon appropriations and Secretarial action. As part of our full regulatory analysis, we considered three alternatives to this policy change.

First, we considered the alternative of making no change to our previous minimums, thus eliminating the associated cost of $865,868,544. Using the methodology enumerated above, making no change to this policy would be associated with up to 107,762 fewer slots lost and 5,475 fewer education staff no longer employed. However, not making this change would also prevent the significant predicted increase in impacts on child outcomes we have described in the Benefits Analysis section. We believe that strong child outcomes are best fostered through high-quality early education programs that provide at least a full school day and full school year of services and that children are best served if Head Start programs continue to move toward this

[252] Weiland, C., & Yoshikawa, H. (2013). Impacts of a prekindergarten program on children's mathematics, language, literacy, executive function, and emotional skills. *Child Development, 84,* 2112–2130.
[253] Barnett, W.S., Jung, K., Youn, M.J., and Frede, E.C. (2013). *Abbott Preschool Program Longitudinal Effects Study: Fifth Grade Follow-Up.* National Institute for Early Education Research Rutgers—The State University of New Jersey.

goal and there is ample research that points to increased duration in achieving positive child outcomes.[254,255,256,257,258,259,260,261,262,263,264] Therefore we have not included this alternative in the final rule.

We also considered the alternative proposed in the NPRM to extend the minimum Head Start year to 180 days and the Head Start day to 6 hours. Using the same method employed in our original cost analysis in the NPRM. We updated the original cost analysis by using 2015 data, inflating for missing GABI data, and inflating by 20% to reflect changes made to the final rule cost estimate in response to comments that account for fringe benefits and remove the assumption that additional administrative costs will not be necessary to support increased duration). These changes provide comparable estimates for weighing the potential impacts of regulatory alternatives. Using this method, the total costs of this alternative (NPRM proposal)

[254] Lee, V. E., Burkam, D. T., Ready, D. D., Honigman, J., & Meisels, S. J. (2006). Full-Day versus Half-Day Kindergarten: In Which Program Do Children Learn More? *American Journal of Education, 112(2),* 163-208.

[255] Walston, J.T., and West, J. (2004). *Full-day and Half-day Kindergarten in the United States: Findings from the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99 (NCES 2004–078)*. U.S. Department of Education, National Center for Education Statistics. Washington, DC: U.S. Government Printing Office.

[256] Sloan McCombs, J. et al., (2011). Making Summer Count. How Summer Programs Can Boost Children's Learning. Santa Monica, Calif.: RAND Corporation.

[257] Downey, D.B., von Hippel, P.T. & Broh, B.A. (2004). Are Schools the Great Equalizer? Cognitive Inequality During the Summer Months and the School Year. American Sociological Review, 69(5), 613–635.

[258] Ehrlich, S.B., Gwynne, J.A…,..Sorice, E. (2014). *Preschool Attendance in Chicago Public Schools: Relationships with Learning Outcomes and Reasons for Absences.* University of Chicago Consortium on Chicago School Research. Research Report.

[259] Peisner-Feinberg, E. S., Schaaf, J. M., LaForett, D. R., Hildebrandt, L.M., & Sideris, J. (2014). *Effects of Georgia's Pre-K Program on children's school readiness skills: Findings from the 2012–2013 evaluation study.* Chapel Hill: The University of North Carolina, FPG Child Development Institute.

[260] Barnett, W.S., Jung, K., Youn, M.J., and Frede, E.C. (2013). *Abbott Preschool Program Longitudinal Effects Study: Fifth Grade Follow-Up.* National Institute for Early Education Research Rutgers—The State University of New Jersey.

[261] Gormley, G.T., Gayer, T., Phillips, D., & Dawson, B. (2005). The effects of universal pre-k on cognitive development. *Developmental Psychology, 4*(6), 872-884.

[262] Weiland, C., & Yoshikawa, H. (2013). Impacts of a prekindergarten program on children's mathematics, language, literacy, executive function, and emotional skills. *Child Development, 84,* 2112–2130.

[263] Walters, C. R. (2015). Inputs in the Production of Early Childhood Human Capital: Evidence from Head Start, *American Economic Journal: Applied Economics, 7*(4), 76–102.

[264] Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M.R., Espinosa, L.M., Gormley, W.T., Ludwig, J., Magnuson, K.A., Phillips, D., & Zaslow, M.J. (2013). *Investing in Our Future: The Evidence Base on Preschool Education.* Policy Brief. Foundation for Child Development.

would be $ 1,308,629,691. Once the expected proportion of the FY 2016 appropriation to increase program duration in Head Start is applied, the cost of these requirements is $1,045,507,751. These costs would result in a total of 130,119 slots lost and 10,392 education staff no longer employed as a result of this provision alone. The additional associated costs of this alternative, compared to the requirements in the final rule, would be $179,639,207, which would result in as many as 22,357 additional slots lost and 4,917 additional education staff no longer employed.

Again, research clearly demonstrates that strong child outcomes are best fostered through high-quality early education programs that provide at least a full school day and full school year of services, however, research does not specify a threshold for this effect.[265,266,267,268,269,270,271,272,273,274,275] Given this, we believe it is important to allow programs to

[265] Lee, V. E., Burkam, D. T., Ready, D. D., Honigman, J., & Meisels, S. J. (2006). Full-Day versus Half-Day Kindergarten: In Which Program Do Children Learn More? *American Journal of Education, 112(2),* 163-208.

[266] Walston, J.T., and West, J. (2004). *Full-day and Half-day Kindergarten in the United States: Findings from the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99 (NCES 2004–078)*. U.S. Department of Education, National Center for Education Statistics. Washington, DC: U.S. Government Printing Office.

[267] Sloan McCombs, J. et al., (2011). Making Summer Count. How Summer Programs Can Boost Children's Learning. Santa Monica, Calif.: RAND Corporation.

[268] Downey, D.B., von Hippel, P.T. & Broh, B.A. (2004). Are Schools the Great Equalizer? Cognitive Inequality During the Summer Months and the School Year. American Sociological Review, 69(5), 613–635.

[269] Ehrlich, S.B., Gwynne, J.A…,..Sorice, E. (2014). *Preschool Attendance in Chicago Public Schools: Relationships with Learning Outcomes and Reasons for Absences.* University of Chicago Consortium on Chicago School Research. Research Report.

[270] Peisner-Feinberg, E. S., Schaaf, J. M., LaForett, D. R., Hildebrandt, L.M., & Sideris, J. (2014). *Effects of Georgia's Pre-K Program on children's school readiness skills: Findings from the 2012–2013 evaluation study.* Chapel Hill: The University of North Carolina, FPG Child Development Institute.

[271] Barnett, W.S., Jung, K., Youn, M.J., and Frede, E.C. (2013). *Abbott Preschool Program Longitudinal Effects Study: Fifth Grade Follow-Up.* National Institute for Early Education Research Rutgers—The State University of New Jersey.

[272] Gormley, G.T., Gayer, T., Phillips, D., & Dawson, B. (2005). The effects of universal pre-k on cognitive development. *Developmental Psychology, 4*(6), 872-884.

[273] Weiland, C., & Yoshikawa, H. (2013). Impacts of a prekindergarten program on children's mathematics, language, literacy, executive function, and emotional skills. *Child Development, 84,* 2112–2130.

[274] Walters, C. R. (2015). Inputs in the Production of Early Childhood Human Capital: Evidence from Head Start, *American Economic Journal: Applied Economics, 7*(4), 76–102.

[275] Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M.R., Espinosa, L.M., Gormley, W.T., Ludwig, J., Magnuson, K.A., Phillips, D., & Zaslow, M.J. (2013). *Investing in Our Future: The Evidence Base on Preschool Education.* Policy Brief. Foundation for Child Development.

design a variety of different schedules within the minimum requirements that meet the specific needs of their families, communities, and staff. We believe the flexibility of the annual hours, rather than the specified hours per day and days per year of this regulatory alternative will allow programs to address many of the concerns that were raised in the comments, such as alignment of the summer break with the local education agency's calendar, the availability of facilities, the continuation of partnerships, and state licensing requirements.

Finally, we considered the alternative of requiring Head Start center-based programs to provide a minimum of 1,020 annual hours for all children by August 1, 2021, but not giving the Secretary authority to reduce this requirement to mitigate slot loss in the event that adequate funds to support the policy are not appropriated. This policy would guarantee, in the event that Congress does not appropriate adequate funds to support the policy, at least some children would lose access to Head Start and some education staff would no longer be employed by Head Start.

However, the negative effects of implementing this model in such a way that could lead to significant reductions in the number of children and families served by Head Start programs, may outweigh the benefits. Therefore, we specify an incremental timeline and process for grantees to shift their programs to provide at least a full school day and a full school year of services to all preschoolers in center-based settings, which will allow programs to extend their service duration models thoughtfully. Further, we gave the Secretary the discretion to lower the required percentage of funded enrollment slots for which grantees must offer 1,020 annual hours of planned class operations to the percentage the Secretary estimates available appropriations can support. This balances the important policy goal of providing all preschoolers with a full school day and a full school year of services in Head Start with the disruption and potential slot loss

such a policy might create in the absence of sufficient funding in a way that this regulatory alternative would not.

We believe the policy set by this final rule represents a balance between empowering Head Start programs to ensure all Head Start children receive enough high quality early learning experiences to improve their outcomes, and ensuring as many children from low-income families as possible are served by Head Start.

| **Regulatory Alternatives: Head Start Center-Based Duration** | | | | |
|---|---|---|---|---|
| | **Status quo** | **NPRM Proposal*** | **100% to 1,020 for Head Start Center-based without Sec. authority** | **Final Rule** |
| **Costs Borne by Head Start, excluding FY 2016 duration funding** | 0 | $ 1,308,629,691 | $1,128,990,485 | $1,128,990,485 |
| **Costs Borne by Head Start, including FY 2016 duration funding** | | $1,045,507,751 | $865,868,544 | $865,868,544 |
| **Slot Loss** | 0 | 130,119 | 107,762 | 0-107,762 |
| **Job Loss** | 0 | 10,392 | 5,475 | 0-5,475 |

* Note the NPRM proposal cost estimate has been inflated to reflect changes made to the final rule cost estimate that account for fringe benefits and remove the assumption that additional administrative costs will not be necessary to support increased duration.

## Mentor coaching

In this rule, we require programs to have a system of professional development in place that includes an intensive coaching strategy. As with our other largest cost drivers, as part of our full regulatory analysis, we considered two alternatives to this policy change. Specifically, we considered the alternative of not requiring mentor coaches for any teaching staff, thus eliminating the associated cost of $141,978,651. This alternative would be associated with 16,694 fewer slots potentially lost and 1,902 fewer educations staff potentially no longer employed. However, a growing body of research demonstrates the effectiveness of intensive

professional development for improving teacher practices in early care and education settings [276,277,278] and that such strategies support improved teacher practice in the classroom and an increase in classroom quality.[279,280] This alternative would not allow children to reap the benefits of higher quality early learning programs, through improved teaching practices.

We also considered the alternative of requiring mentor coaches for all teaching staff, rather than allowing programs to allocate mentor coaches to the teachers who need intensive professional development, most (an estimated one-third of all teaching staff). Using the same method employed in our original cost analysis, the additional associated costs of this alternative would be $425,935,952 total or $283,957,301 more than our final policy, which would result in 50,083 total or 33,389 additional slots potentially lost and 5,707 total or 3,805 additional education staff potentially no longer employed. As described in previous sections, we strongly believe that more intensive, focused professional development is critical to improving teaching quality and thereby increasing impacts on child outcomes. However, we believe it would be inefficient to mandate that every teacher receive intensive individualized coaching when local professional development needs may need to be met.

Our requirement will achieve our goal of improving teacher practices by targeting teachers most in need of coaching to improve their teaching practices while still maintaining local flexibility for individualized professional development.

[276] Buysse, V., & Wesley, P. W. (2005). *Consultation in Early Childhood Settings*. Baltimore, MD: Paul H. Brookes Publishing.

[277] Tout, K., Halle, T., Zaslow, M., & Starr, R. (2009). *Evaluation of the Early Childhood Educator Professional Development Program: Final Report*: Report prepared for the U.S. Department of Education.

[278] Zaslow, M., Tout, K., Halle, T., Vick, J., & Lavelle, B. (2010). *Towards the identification of features of effective professional development for early childhood educators: A review of the literature.* Report prepared for the U.S. Department of Education.

[279] Isner, T., Tout, K., Zaslow, M., Soli, M., Quinn, K., Rothenberg, L., & Burkhauser, M. (2011). *Coaching in early care and education programs and Quality Rating and Improvement Systems (QRIS): Identifying promising features*. Child Trends.

[280] Lloyd, C. M., & Modlin, E. L. (2012). *Coaching as a key component in teachers' professional development: Improving classroom practices in Head Start settings.* Administration for Children and Families.

| Regulatory Alternatives: Mentor Coaching | | | |
|---|---|---|---|
| | **Status quo (No coaching)** | **Coaching for all teachers** | **Final Rule (Coaching for one-third of teachers)** |
| **Cost** | 0 | $425,935,952 | $141,978,651 |
| **Potential slot loss** | 0 | 50,083 | 16,694 |
| **Potential job loss** | 0 | 5,707 | 1,902 |

c. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (UMRA)[281] was enacted to avoid imposing unfunded federal mandates on state, local, and tribal governments, or on the private sector. Most of UMRA's provisions apply to proposed and final rules for which a general notice of proposed rulemaking was published, and that include a federal mandate that may result in expenditures by state, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $146 million, using the most current (2015) implicit price deflator for the gross domestic product. This final rule does not impose unfunded mandates on state, local, and tribal governments, or on the private sector.

d. Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This rule does not have any impact on the autonomy or integrity of the family as an institution. Accordingly, we concluded it was not necessary to prepare a family policymaking assessment.[282]

e. Federalism Assessment Executive Order 13132

[281] 2 U.S.C. §1501 *et seq*.

[282] Pub. L. 105–277

Executive Order 13132 requires federal agencies to consult with state and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This final rule does not have substantial direct impact on the states, on the relationship between the federal 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 final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

f. Congressional Review

The Congressional Review Act (CRA) allows Congress to review "major" rules issued by federal agencies before the rules take effect.[283] The CRA defines a major rule as one that has resulted or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[284] This regulation is a major rule because it will likely result in an annual effect of more than $100 million on the economy.

g. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (PRA), P.L. 104-13, minimizes government imposed burden on the public. In keeping with the notion that government information is a

[283] 5 U.S.C. 802(a)

[284] 5 U.S.C. Chapter 8

valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed.

Regulations at 5 CFR part 1320 implemented the provisions of the PRA and §1320.3 of this part defines a "collection of information," "information," and "burden." A "collection of information" is broadly defined and includes any requirement or request for persons to collect, maintain, or publicly disclose information. "Information" is defined in as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic or other media. "Burden" means the total time, effort, or financial resources expended by persons to collect, maintain, or disclose information. Burden includes actions for the purposes of information request such as reviewing instructions, acquiring and using technology and systems, adjusting the existing ways to comply with any previously applicable instructions and requirements, completing and reviewing the collection of information, and transmitting the information. The PRA only counts as burden the net additional burden needed to comply with information request. Time, effort, and resources to collect information that would be incurred by persons in the normal course of their activities are excluded from the burden.

Section 1320.11(f) of 5 CFR part 1320 requires an agency to explain in the final rule how information collections proposed in an NPRM respond to any comments received or the reasons such comments were rejected. We did not receive any comments directly related to information collections we proposed in the NPRM. Therefore, we did not make any changes here.

Below, we describe information collections and their burden estimates:

Title: Head Start Grants Administration

Description: We require information collections related to the protection for the privacy of child records. We require programs to collect parents' written consent before they disclose personally identifiable information from a child's records. We require programs to notify parents annually of their rights described in §§1303.20 through 1303.24 and of applicable definitions in part 1305. We also require programs to maintain, with each child record, information on all individuals, agencies, or organizations that have obtained access to personal identifiable information from child records.

Title: Head Start Performance Standards

Description: We require a new information collection to codify best practice in assessing dual language learners. Specifically, we require programs to administer language assessments to dual language learners in both English and their home language, either directly or through interpreters.

We also strengthen background check procedures to require state/tribal or federal criminal background checks, as well as clearance through available child abuse and neglect and sex offender registries. This requirement is consistent with the Office of Child Care's requirement to minimize burden on programs that operate with both Head Start and Child Care Development Funds. This increases the record-keeping burden related to criminal record checks.

Description of Respondents and Burden Estimate: The total annual burden hours estimated is 1,019,473 hours. For some items, we calculated burden hours for individual children and families, for other items, we calculated burden hours for staff.

The table below lists burden hour estimates and indicates our bases for these estimations. See the Regulatory Impact Analysis section for cost estimations.

| Information Collection | OMB Control Number | No. of Respondents | No. of Responses per Respondent | Average Burden per Response | Total Burden Hours |
|---|---|---|---|---|---|
| | *Annual Reporting Burden Estimates* | | | | |
| *N/A* | *N/A* | *N/A* | *N/A* | *N/A* | *N/A* |
| | *Annual Recording Keeping Burden Estimates* | | | | |
| *Head Start Grants Administration –*<br><br>§ 1303.22, 1303.24 Parental Consent, Annual Notice, and Recordkeeping of PII Disclosure | 0970-0423 | 988,923 (F) | 1 | 20 minutes | 329,641 |
| *Head Start Performance Standards –*<br><br>§1302.33 Language Assessments of Dual Language Learners | 0970-0148 | 332,651 (C) | 1 | 2 hours | 665,302 |
| *Head Start Performance Standards –*<br><br>§1302.90 Background Checks | 0970-0148 | 73,591 (S) | 1 | 20 minutes | 24,530 |
| | *Annual Third-Party Disclosure Burden Estimates* | | | | |
| *N/A* | *N/A* | *N/A* | *N/A* | *N/A* | *N/A* |
| | *Total Burden Hours* | | | | 1,019,473 |

Key: C = Children, F = Families, S = Staff

For informational purposes, currently approved collections of information that will no longer be required are described below:

Head Start Grants Administration. This rule removed certain requirements for grantee agencies including the submission of audits, accounting systems certifications, and provisions applicable to personnel management.

Appeal Procedures for Head Start. Grantees and Current or Prospective Delegate Agencies – This rule removed the appeal procedures by delegate agencies that came from denials or failure to act by grantees. It also removed the appeal procedures by a grantee of a suspension continuing for more than 30 days.

Head Start Program Performance Standards. Numerous record-keeping requirements were removed which will result in a decrease in burden, i.e. documentation of the level of effort undertaken to establish community partnerships, written records of roles and responsibilities for each governing body members, the annual written and approval of plans for implementation services for each program area, provisions applicable to personnel management, and record-keeping and sharing of a set of community services and resources.

Purchase, Construction and Major Renovation of Head Start Facilities. We removed some requirements that involved collection of information that will result in a reduction in burden, including the submission of drawings and specifications, costs related to installation of modular unit, statement of procurement procedure for modular units, and obtaining an independent analysis of the cost comparison.

**Tribal Consultation Statement**

The Office of Head Start conducts an average of 5 Tribal Consultations each year for those tribes operating Head Start and Early Head Start. The consultations are held in geographic areas across the country – Southwest, Northwest, Midwest (Northern and Southern), and Eastern. The

consultations are often held in conjunction with other tribal meetings or conferences, to ensure the opportunity for most of the 150 tribes served through OHS to be able to attend, and voice their concerns and issues for their HS/EHS programs. A report is completed after each consultation, and then a final report is compiled and submitted to the Secretary at the end of the year, summarizing the consultations. For the past several years, the primary issues raised have been around Head Start requirements which are the subject of this regulation and ensuring tribes have sufficient funding to meet those requirements. Language and culture are also a primary topic, particularly Head Start supporting efforts to preserve and revitalize language within each tribe, which is specifically addressed in this final rule. Teacher credentials, and, Monitoring, and fiscal issues were also common themes across the consultations, which have allowed us to gather valuable information that informed the development of this rule. Through the notice and comment process we also received comments from tribal communities, including form the National Indian Head Start Directors Association which informed the development of this final rule.

**List of Subjects**

**45 CFR Part 1301**

Education of disadvantaged.

**45 CFR Part 1302**

Education of disadvantaged, Grant programs-social programs, Homeless, Immunization, Migrant labor, Individuals with disabilities, Reporting and recordkeeping requirements, Indians, Health care, Oral health, Mental health programs, Nutrition, Safety, Maternal and child health, Volunteers.

**45 CFR Part 1303**

Administrative practice and procedure, Education of disadvantaged, Grant programs-social programs, Reporting and recordkeeping requirements, Privacy, Real property, acquisition, Individuals with disabilities, Transportation, Motor vehicles.

**45 CFR Part 1304**

Education of disadvantaged, Grant programs-social programs, Designation renewal system, Scholarships and fellowships, Indians.

**45 CFR Part 1305**

Definitions.

---

Mark H. Greenberg,
Acting Assistant Secretary
for Children and Families.

Approved: June 10, 2016.

_____

Sylvia M. Burwell,
Secretary.

For the reasons set forth in the preamble, under the authority at 42 U.S.C. 9801 *et seq*., subchapter B of 45 CFR chapter XIII is revised to read as follows:

**SUBCHAPTER B— THE ADMINISTRATION FOR CHILDREN AND FAMILIES, HEAD START PROGRAM**

**PART 1300—[Reserved]**
**PART 1301— PROGRAM GOVERNANCE**
**PART 1302— PROGRAM OPERATIONS**
**PART 1303— FINANCIAL AND ADMINISTRATIVE REQUIREMENTS**
**PART 1304— FEDERAL ADMINISTRATIVE PROCEDURES**
**PART 1305— DEFINITIONS**

**PART 1300—[Reserved]**

**PART 1301— PROGRAM GOVERNANCE**

Sec.
1301.1 Purpose.
1301.2 Governing body.
1301.3 Policy council and policy committee.
1301.4 Parent committees.
1301.5 Training.
1301.6 Impasse procedures.

AUTHORITY: 42 U.S.C. 9801 *et seq.*

**§1301.1 In general.**

An agency, as defined in part 1305 of this chapter, must establish and maintain a formal structure for program governance that includes a governing body, a policy council at the agency level and policy committee at the delegate level, and a parent committee. Governing bodies have a legal and fiscal responsibility to administer and oversee the agency's Head Start and Early Head Start programs. Policy councils are responsible for the direction of the agency's Head Start and Early Head Start programs.

**§1301.2 Governing body.**

(a) Composition. The composition of a governing body must be in accordance with the requirements specified at section 642(c)(1)(B) of the Act, except where specific exceptions are authorized in the case of public entities at section 642(c)(1)(D) of the Act. Agencies must ensure members of the governing body do not have a conflict of interest, pursuant to section 642(c)(1)(C) of the Act.

(b) Duties and responsibilities. (1) The governing body is responsible for activities specified at section 642(c)(1)(E) of the Act.

(2) The governing body must use ongoing monitoring results, data on school readiness goals, other information described in §1302.102, and information described at section 642(d)(2) of the Act to conduct its responsibilities.

(c) Advisory committees. (1) A governing body may establish advisory committees as it deems necessary for effective governance and improvement of the program.

(2) If a governing body establishes an advisory committee to oversee key responsibilities related to program governance, it must:

(i) Establish the structure, communication, and oversight in such a way that the governing body continues to maintain its legal and fiscal responsibility for the Head Start agency; and,

(ii) Notify the responsible HHS official of its intent to establish such an advisory committee.

**§1301.3 Policy council and policy committee.**

(a) Establishing policy councils and policy committees. Each agency must establish and maintain a policy council responsible for the direction of the Head Start program at the agency level, and a policy committee at the delegate level. If an agency delegates operational responsibility for the entire Head Start or Early Head Start program to one delegate agency, the policy council and policy committee may be the same body.

(b) Composition. (1) A program must establish a policy council in accordance with section 642(c)(2)(B) of the Act, or a policy committee at the delegate level in accordance with section 642(c)(3) of the Act, as early in the program year as possible. Parents of children currently enrolled in each program option must be proportionately represented on the policy council and on the policy committee at the delegate level.

(2) The program must ensure members of the policy council, and of the policy committee at the delegate level, do not have a conflict of interest pursuant to sections 642(c)(2)(C) and 642(c)(3)(B) of the Act. Staff may not serve on the policy council or policy committee at the delegate level except parents who occasionally substitute as staff. In the case of tribal grantees, this exclusion applies only to tribal staff who work in areas directly related to or which directly impact administrative, fiscal, or programmatic issues.

(c) Duties and responsibilities. (1) A policy council is responsible for activities specified at section 642(c)(2)(D) of the Act. A policy committee must approve and submit to the delegate agency its decisions in each of the following areas referenced at section 642(c)(2)(D)(i) through (vii) of the Act.

(2) A policy council, and a policy committee at the delegate level, must use ongoing monitoring results, data on school readiness goals, other information described in §1302.102, and information described in section 642(d)(2) of the Act to conduct its responsibilities.

(d) Term. (1) A member will serve for one year.

(2) If the member intends to serve for another year, s/he must stand for re-election.

(3) The policy council, and policy committee at the delegate level, must include in its bylaws how many one-year terms, not to exceed five terms, a person may serve.

(4) A program must seat a successor policy council, or policy committee at the delegate level, before an existing policy council, or policy committee at the delegate level, may be dissolved.

(e) Reimbursement. A program must enable low-income members to participate fully in their policy council or policy committee responsibilities by providing, if necessary, reimbursements for reasonable expenses incurred by the low-income members.

**§1301.4 Parent committees.**

(a) Establishing parent committees. A program must establish a parent committee comprised exclusively of parents of currently enrolled children as early in the program year as possible. This committee must be established at the center level for center-based programs and at the local program level for other program options. When a program operates more than one option, parents may choose to have a separate committee for each option or combine membership. A program must ensure that parents of currently enrolled children understand the process for elections to the policy council or policy committee and other leadership opportunities.

(b) Requirements of parent committees. Within the parent committee structure, a program may determine the best methods to engage families using strategies that are most effective in their community, as long as the program ensures the parent committee carries out the following minimum responsibilities:

(1) Advise staff in developing and implementing local program policies, activities, and services to ensure they meet the needs of children and families;

(2) Have a process for communication with the policy council and policy committee; and

(3) Within the guidelines established by the governing body, policy council or policy committee, participate in the recruitment and screening of Early Head Start and Head Start employees.

**§1301.5 Training.**

An agency must provide appropriate training and technical assistance or orientation to the governing body, any advisory committee members, and the policy council, including training on program performance standards and training indicated in §1302.12(m) to ensure the members understand the information they receive and can effectively oversee and participate in the programs in the Head Start agency.

**§1301.6 Impasse procedures.**

(a) To facilitate meaningful consultation and collaboration about decisions of the governing body and the policy council, each agency's governing body and policy council jointly must establish written procedures for resolving internal disputes between the governing board and policy council in a timely manner that include impasse procedures. These procedures must:

(1) Demonstrate that the governing body considers proposed decisions from the policy council and that the policy council considers proposed decisions from the governing body;

(2) If there is a disagreement, require the governing body and the policy council to notify the other in writing why it does not accept a decision; and,

(3) Describe a decision-making process and a timeline to resolve disputes and reach decisions that are not arbitrary, capricious, or illegal.

(b) If the agency's decision-making process does not result in a resolution and an impasse continues, the governing body and policy council must select a mutually agreeable third party mediator and participate in a formal process of mediation that leads to a resolution of the dispute.

(c) For all programs except American Indian and Alaska Native programs, if no resolution is reached with a mediator, the governing body and policy council must select a mutually agreeable arbitrator whose decision is final.

**PART 1302—PROGRAM OPERATIONS**

**Sec.**

1302.1 Overview.

**Subpart A—Eligibility, Recruitment, Selection, Enrollment, and Attendance**

1302.10 Purpose.

1302.11 Determining community strengths, needs, and resources.

1302.12 Determining, verifying, and documenting eligibility.

1302.13 Recruitment of children.

1302.14 Selection process.

1302.15 Enrollment.

1302.16 Attendance.

1302.17 Suspension and expulsion.

1302.18 Fees.

**Subpart B—Program Structure**

1302.20 Determining program structure.

1302.21 Center-based option.

1302.22 Home-based option.

1302.23 Family child care option.

1302.24 Locally-designed program option variations.

**Subpart C—Education and Child Development Program Services**

1302.30 Purpose.

1302.31 Teaching and the learning environment.

1302.32 Curricula.

1302.33 Child screenings and assessments.

1302.34 Parent and family engagement in education and child development services.

1302.35 Education in home-based programs.

1302.36 Tribal language preservation and revitalization.

**Subpart D—Health Program Services**

1302.40 Purpose.

1302.41 Collaboration and communication with parents.

1302.42 Child health status and care.

1302.43 Oral health practices.

1302.44 Child nutrition.

1302.45 Child mental health and social and emotional well-being.

1302.46 Family support services for health, nutrition, and mental health.

1302.47 Safety practices.

**Subpart E—Family and Community Engagement Program Services**

1302.50 Family engagement.

1302.51 Parent activities to promote child learning and development.

1302.52 Family partnership services.

1302.53 Community partnerships and coordination with other early childhood and education programs.

**Subpart F—Additional Services for Children with Disabilities**

1302.60 Full participation in program services and activities.

1302.61 Additional services for children.

1302.62 Additional services for parents.

1302.63 Coordination and collaboration with the local agency responsible for implementing IDEA.

**Subpart G—Transition Services**

1302.70 Transitions from Early Head Start.

1302.71 Transitions from Head Start to kindergarten.

1302.72 Transitions between programs.

**Subpart H—Services to Enrolled Pregnant Women**

1302.80 Enrolled pregnant women.

1302.81 Prenatal and postpartum information, education, and services.

1302.82 Family partnership services for enrolled pregnant women.

**Subpart I—Human Resources Management**

1302.90 Personnel policies.

1302.91 Staff qualification and competency requirements.

1302.92 Training and professional development.

1302.93 Staff health and wellness.

1302.94 Volunteers.

**Subpart J—Program Management and Quality Improvement**

1302.100 Purpose.

1302.101 Management system.

1302.102 Achieving program goals.

1302.103 Implementation of program performance standards.

AUTHORITY: 42 U.S.C. 9801 *et seq.*

**§1302.1 Overview.**

This part implements these statutory requirements in Sections 641A, 645, 645A, and 648A of the Act by describing all of the program performance standards that are required to operate Head Start, Early Head Start, American Indian and Alaska Native and Migrant or

Seasonal Head Start programs. The part covers the full range of operations from enrolling eligible children and providing program services to those children and their families, to managing programs to ensure staff are qualified and supported to effectively provide services. This part also focuses on using data through ongoing program improvement to ensure high-quality service. As required in the Act, these provisions do not narrow the scope or quality of services covered in previous regulations. Instead, these regulations raise the quality standard to reflect science and best practices, and streamline and simplify requirements so programs can better understand what is required for quality services.

**Subpart A—Eligibility, Recruitment, Selection, Enrollment, and Attendance**

**§1302.10 Purpose.**

This subpart describes requirements of grantees for determining community strengths, needs and resources as well as recruitment areas. It contains requirements and procedures for the eligibility determination, recruitment, selection, enrollment and attendance of children and explains the policy concerning the charging of fees.

**§1302.11 Determining community strengths, needs, and resources.**

(a) Service area. (1) A program must propose a service area in the grant application and define the area by county or sub-county area, such as a municipality, town or census tract or jurisdiction of a federally recognized Indian reservation.

(i) A tribal program may propose a service area that includes areas where members of Indian tribes or those eligible for such membership reside, including but not limited to Indian reservation land, areas designated as near-reservation by the Bureau of Indian Affairs (BIA) provided that the service area is approved by the tribe's governing council, Alaska Native Villages, Alaska Native Regional Corporations with land-based authorities, Oklahoma Tribal Statistical Areas, and Tribal Designated Statistical Areas where federally recognized Indian tribes do not have a federally established reservation.

(ii) If the tribe's service area includes any area specified in paragraph (a)(1)(i) of this section, and that area is also served by another program, the tribe may serve children from families who are members of or eligible to be members of such tribe and who reside in such areas as well as children from families who are not members of the tribe, but who reside within the tribe's established service area.

(2) If a program decides to change the service area after ACF has approved its grant application, the program must submit to ACF a new service area proposal for approval.

(b) Community wide strategic planning and needs assessment (community assessment). (1) To design a program that meets community needs, and builds on strengths and resources, a

program must conduct a community assessment at least once over the five-year grant period. The community assessment must use data that describes community strengths, needs, and resources and include, at a minimum:

(i) The number of eligible infants, toddlers, preschool age children, and expectant mothers, including their geographic location, race, ethnicity, and languages they speak, including:

(A) Children experiencing homelessness in collaboration with, to the extent possible, McKinney-Vento Local Education Agency Liaisons (42 U.S.C. 11432 (6)(A));

(B) Children in foster care; and

(C) Children with disabilities, including types of disabilities and relevant services and resources provided to these children by community agencies;

(ii) The education, health, nutrition and social service needs of eligible children and their families, including prevalent social or economic factors that impact their well-being;

(iii) Typical work, school, and training schedules of parents with eligible children;

(iv) Other child development, child care centers, and family child care programs that serve eligible children, including home visiting, publicly funded state and local preschools, and the approximate number of eligible children served;

(v) Resources that are available in the community to address the needs of eligible children and their families; and,

(vi) Strengths of the community.

(2) A program must annually review and update the community assessment to reflect any significant changes including increased availability of publicly-funded pre-kindergarten-(including an assessment of how the pre-kindergarten available in the community meets the needs of the parents and children served by the program, and whether it is offered for a full school day), rates of family and child homelessness, and significant shifts in community demographics and resources.

(3) A program must consider whether the characteristics of the community allow it to include children from diverse economic backgrounds that would be supported by other funding sources, including private pay, in addition to the program's eligible funded enrollment. A program must not enroll children from diverse economic backgrounds if it would result in a program serving less than its eligible funded enrollment.

**§1302.12 Determining, verifying, and documenting eligibility.**

(a) Process overview. (1) Program staff must:

(i) Conduct an in-person interview with each family, unless paragraph (a)(2) of this section applies;

(ii) Verify information as required in paragraphs (h) and (i) of this section; and,

(iii) Create an eligibility determination record for enrolled participants according to paragraph (k) of this section.

(2) Program staff may interview the family over the telephone if an in-person interview is not possible or convenient for the family.

(3) If a program has an alternate method to reasonably determine eligibility based on its community assessment, geographic and administrative data, or from other reliable data sources, it may petition the responsible HHS official to waive requirements in paragraphs (a)(1)(i) and (ii) of this section.

(b) Age requirements. (1) For Early Head Start, except when the child is transitioning to Head Start, a child must be an infant or a toddler younger than three years old.

(2) For Head Start, a child must:

(i) Be at least three years old or, turn 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,

(ii) Be no older than the age required to attend school.

(3) For Migrant or Seasonal Head Start, a child must be younger than compulsory school age by the date used to determine public school eligibility for the community in which the program is located.

(c) Eligibility requirements. (1) A pregnant woman or a child is eligible if:

(i) The family's income is equal to or below the poverty line; or,

(ii) The family is eligible for or, in the absence of child care, would be potentially eligible for public assistance; including TANF child-only payments; or,

(iii) The child is homeless, as defined in part 1305; or,

(iv) The child is in foster care.

(2) If the family does not meet a criterion under paragraph (c)(1) of this section, a program may enroll a child who would benefit from services, provided that these participants

only make up to 10 percent of a program's enrollment in accordance with paragraph (d) of this section.

(d) Additional allowances for programs. (1) A program may enroll an additional 35 percent of participants whose families do not meet a criterion described in paragraph (c) of this section and whose incomes are below 130 percent of the poverty line, if the program:

(i) Establishes and implements outreach, and enrollment policies and procedures to ensure it is meeting the needs of eligible pregnant women, children, and children with disabilities, before serving pregnant women or children who do not meet the criteria in paragraph (c) of this section; and,

(ii) Establishes criteria that ensure pregnant women and children eligible under the criteria listed in paragraph (c) of this section are served first.

(2) If a program chooses to enroll participants who do not meet a criterion in paragraph (c) of this section, and whose family incomes are between 100 and 130 percent of the poverty line, it must be able to report to the Head Start regional program office:

(i) How it is meeting the needs of low-income families or families potentially eligible for public assistance, homeless children, and children in foster care, and include local demographic data on these populations;

(ii) Outreach and enrollment policies and procedures that ensure it is meeting the needs of eligible children or pregnant women, before serving over-income children or pregnant women;

(iii) Efforts, including outreach, to be fully enrolled with eligible pregnant women or children;

(iv) Policies, procedures, and selection criteria it uses to serve eligible children;

(v) Its current enrollment and its enrollment for the previous year;

(vi) The number of pregnant women and children served, disaggregated by the eligibility criteria in paragraphs (c) and (d)(1) of this section; and,

(vii) The eligibility criteria category of each child on the program's waiting list.

(e) Additional allowances for Indian tribes. (1) Notwithstanding paragraph (c)(2) of this section, a tribal program may fill more than 10 percent of its enrollment with participants who are not eligible under the criteria in paragraph (c) of this section, if:

(i) The tribal program has served all eligible pregnant women or children who wish to be enrolled from Indian and non-Indian families living within the approved service area of the tribal agency;

(ii) The tribe has resources within its grant, without using additional funds from HHS intended to expand Early Head Start or Head Start services, to enroll pregnant women or children whose family incomes exceed low-income guidelines or who are not otherwise eligible; and,

(iii) At least 51 percent of the program's participants meet an eligibility criterion under paragraph (c)(1) of this section.

(2) If another program does not serve the approved service area, the program must serve all eligible Indian and non-Indian pregnant women or children who wish to enroll before serving over-income pregnant women or children.

(3) A program that meets the conditions of this paragraph (e) must annually set criteria that are approved by the policy council and the tribal council for selecting over-income pregnant women or children who would benefit from program services.

(4) An Indian tribe or tribes that operates both an Early Head Start program and a Head Start program may, at its discretion, at any time during the grant period involved, reallocate funds between the Early Head Start program and the Head Start program in order to address fluctuations in client populations, including pregnant women and children from birth to compulsory school age. The reallocation of such funds between programs by an Indian tribe or tribes during a year may not serve as a basis for any reduction of the base grant for either program in succeeding years.

(f) Migrant or Seasonal eligibility requirements. A child is eligible for Migrant or Seasonal Head Start, if the family meets an eligibility criterion in paragraphs (c) and (d) of this section; and the family's income comes primarily from agricultural work.

(g) Eligibility requirements for communities with 1,000 or fewer individuals. (1) A program may establish its own criteria for eligibility provided that it meets the criteria outlined in section 645(a)(2) of the Act.

(2) No child residing in such community whose family is eligible under criteria described in paragraphs (c) through (f) of this section, may be denied an opportunity to participate in the program under the eligibility criteria established under this paragraph (g).

(h) Verifying age. Program staff must verify a child's age according to program policies and procedures. A program's policies and procedures cannot require families to provide documents that confirm a child's age, if doing so creates a barrier for the family to enroll the child.

(i) Verifying eligibility. (1) To verify eligibility based on income, program staff must use tax forms, pay stubs, or other proof of income to determine the family income for the relevant time period.

(i) If the family cannot provide tax forms, pay stubs, or other proof of income for the relevant time period, program staff may accept written statements from employers, including

individuals who are self-employed, for the relevant time period and use information provided to calculate total annual income with appropriate multipliers.

(ii) If the family reports no income for the relevant time period, a program may accept the family's signed declaration to that effect, if program staff describes efforts made to verify the family's income, and explains how the family's total income was calculated or seeks information from third parties about the family's eligibility, if the family gives written consent. If a family gives consent to contact third parties, program staff must adhere to program safety and privacy policies and procedures and ensure the eligibility determination record adheres to paragraph (k)(2) of this section.

(iii) If the family can demonstrate a significant change in income for the relevant time period, program staff may consider current income circumstances.

(2) To verify whether a family is eligible for, or in the absence of child care, would be potentially eligible for public assistance, the program must have documentation from either the state, local, or tribal public assistance agency that shows the family either receives public assistance or that shows the family is potentially eligible to receive public assistance.

(3) To verify whether a family is homeless, a program may accept a written statement from a homeless services provider, school personnel, or other service agency attesting that the child is homeless or any other documentation that indicates homelessness, including documentation from a public or private agency, a declaration, information gathered on

enrollment or application forms, or notes from an interview with staff to establish the child is homeless; or any other document that establishes homelessness.

(i) If a family can provide one of the documents described in this paragraph (i)(3), program staff must describe efforts made to verify the accuracy of the information provided and state whether the family is eligible because they are homeless.

(ii) If a family cannot provide one of the documents described in this paragraph (i)(3) to prove the child is homeless, a program may accept the family's signed declaration to that effect, if, in a written statement, program staff describe the child's living situation that meets the definition of homeless in part 1305 of this chapter.

(iii) Program staff may seek information from third parties who have firsthand knowledge about a family's living situation, if the family gives written consent. If the family gives consent to contact third parties, program staff must adhere to program privacy policies and procedures and ensure the eligibility determination record adheres to paragraph (k) of this section.

(4) To verify whether a child is in foster care, program staff must accept either a court order or other legal or government-issued document, a written statement from a government child welfare official that demonstrates the child is in foster care, or proof of a foster care payment.

(j) Eligibility duration. (1) If a child is determined eligible under this section and is participating in a Head Start program, he or she will remain eligible through the end of the

succeeding program year except that the Head Start program may choose not to enroll a child when there are compelling reasons for the child not to remain in Head Start, such as when there is a change in the child's family income and there is a child with a greater need for Head Start services.

(2) Children who are enrolled in a program receiving funds under the authority of section 645A of the Act remain eligible while they participate in the program.

(3) If a child moves from an Early Head Start program to a Head Start program, program staff must verify the family's eligibility again.

(4) If a program operates both an Early Head Start and a Head Start program, and the parents wish to enroll their child who has been enrolled in the program's Early Head Start, the program must ensure, whenever possible, the child receives Head Start services until enrolled in school, provided the child is eligible.

(k) Records. (1) A program must keep eligibility determination records for each participant and ongoing records of the eligibility training for staff required by paragraph (m) of this section. A program may keep these records electronically.

(2) Each eligibility determination record must include:

(i) Copies of any documents or statements, including declarations, that are deemed necessary to verify eligibility under paragraphs (h) and (i) of this section;

(ii) A statement that program staff has made reasonable efforts to verify information by:

(A) Conducting either an in-person, or a telephone interview with the family as described under paragraph (a)(1)(i) or (a)(2) of this section; and,

(B) Describing efforts made to verify eligibility, as required under paragraphs (h) through (i) of this section; and, collecting documents required for third party verification that includes the family's written consent to contact each third party, the third parties' names, titles, and affiliations, and information from third parties regarding the family's eligibility.

(iii) A statement that identifies whether:

(A) The family's income is below income guidelines for its size, and lists the family's size;

(B) The family is eligible for or, in the absence of child care, potentially eligible for public assistance;

(C) The child is a homeless child or the child is in foster care;

(D) The family was determined to be eligible under the criterion in paragraph (c)(2) of this section; or,

(E) The family was determined to be eligible under the criterion in paragraph (d)(1) of this section.

(3) A program must keep eligibility determination records for those currently enrolled, as long as they are enrolled, and, for one year after they have either stopped receiving services; or are no longer enrolled.

(l) Program policies and procedures on violating eligibility determination regulations. A program must establish written policies and procedures that describe all actions taken against staff who intentionally violate federal and program eligibility determination regulations and who enroll pregnant women and children that are not eligible to receive Early Head Start or Head Start services.

(m) Training on eligibility. (1) A program must train all governing body, policy council, management, and staff who determine eligibility on applicable federal regulations and program policies and procedures. Training must, at a minimum:

(i) Include methods on how to collect complete and accurate eligibility information from families and third party sources;

(ii) Incorporate strategies for treating families with dignity and respect and for dealing with possible issues of domestic violence, stigma, and privacy; and,

(iii) Explain program policies and procedures that describe actions taken against staff, families, or participants who attempt to provide or intentionally provide false information.

(2) A program must train management and staff members who make eligibility determinations within 90 days of hiring new staff.

(3) A program must train all governing body and policy council members within 180 days of the beginning of the term of a new governing body or policy council.

(4) A program must develop policies on how often training will be provided after the initial training.

**§1302.13 Recruitment of children.**

In order to reach those most in need of services, a program must develop and implement a recruitment process designed to actively inform all families with eligible children within the recruitment area of the availability of program services, and encourage and assist them in applying for admission to the program. A program must include specific efforts to actively

locate and recruit children with disabilities and other vulnerable children, including homeless children and children in foster care.

**§1302.14 Selection process.**

(a) Selection criteria. (1) A program must annually establish selection criteria that weigh the prioritization of selection of participants, based on community needs identified in the community needs assessment as described in §1302.11(b), and including family income, whether the child is homeless, whether the child is in foster care, the child's age, whether the child is eligible for special education and related services, or early intervention services, as appropriate, as determined under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq*.) and, other relevant family or child risk factors.

(2) If a program serves migrant or seasonal families, it must select participants according to criteria in paragraph (a)(1) of this section, and give priority to children whose families can demonstrate they have relocated frequently within the past two-years to pursue agricultural work.

(3) If a program operates in a service area where Head Start eligible children can enroll in high-quality publicly funded pre-kindergarten for a full school day, the program must prioritize younger children as part of the selection criteria in paragraph (a)(1) of this section. If this priority would disrupt partnerships with local education agencies, then it is not required. An American Indian and Alaska Native or Migrant or Seasonal Head Start program must consider whether such prioritization is appropriate in their community.

(4) A program must not deny enrollment based on a disability or chronic health condition or its severity.

(b) Children eligible for services under IDEA. (1) A program must ensure at least 10 percent of its total funded enrollment is filled by children eligible for services under IDEA, unless the responsible HHS official grants a waiver.

(2) If the requirement in paragraph (b)(1) of this section has been met, children eligible for services under IDEA should be prioritized for the available slots in accordance with the program's selection criteria described in paragraph (a) of this section.

(c) Waiting lists. A program must develop at the beginning of each enrollment year and maintain during the year a waiting list that ranks children according to the program's selection criteria.

**§1302.15 Enrollment.**

(a) Funded enrollment. A program must maintain its funded enrollment level and fill any vacancy as soon as possible. A program must fill any vacancy within 30 days.

(b) Continuity of enrollment. (1) A program must make efforts to maintain enrollment of eligible children for the following year.

(2) Under exceptional circumstances, a program may maintain a child's enrollment in Head Start for a third year, provided that family income is verified again. A program may maintain a child's enrollment in Early Head Start as described in §1302.12(j)(2).

(3) If a program serves homeless children or children in foster care, it must make efforts to maintain the child's enrollment regardless of whether the family or child moves to a different service area, or transition the child to a program in a different service area, as required in §1302.72(a), according to the family's needs.

(c) Reserved slots. If a program determines from the community assessment there are families experiencing homelessness in the area, or children in foster care that could benefit from services, the program may reserve one or more enrollment slots for pregnant women and children experiencing homelessness and children in foster care, when a vacancy occurs. No more than three percent of a program's funded enrollment slots may be reserved. If the reserved enrollment slot is not filled within 30 days, the enrollment slot becomes vacant and then must be filled in accordance with paragraph (a) of this section.

(d) Other enrollment. Children from diverse economic backgrounds who are funded with other sources, including private pay, are not considered part of a program's eligible funded enrollment.

(e) State immunization enrollment requirements. A program must comply with state immunization enrollment and attendance requirements, with the exception of homeless children as described in §1302.16(c)(1).

(f) Voluntary parent participation. Parent participation in any program activity is voluntary, including consent for data sharing, and is not required as a condition of the child's enrollment.

**§1302.16 Attendance.**

(a) Promoting regular attendance. A program must track attendance for each child.

(1) A program must implement a process to ensure children are safe when they do not arrive at school. If a child is unexpectedly absent and a parent has not contacted the program within one hour of program start time, the program must attempt to contact the parent to ensure the child's well-being.

(2) A program must implement strategies to promote attendance. At a minimum, a program must:

(i) Provide information about the benefits of regular attendance;

(ii) Support families to promote the child's regular attendance;

(iii) Conduct a home visit or make other direct contact with a child's parents if a child has multiple unexplained absences (such as two consecutive unexplained absences); and,

(iv) Within the first 60 days of program operation, and on an ongoing basis thereafter, use individual child attendance data to identify children with patterns of absence that put them at risk of missing ten percent of program days per year and develop appropriate strategies to improve individual attendance among identified children, such as direct contact with parents or intensive case management, as necessary.

(3) If a child ceases to attend, the program must make appropriate efforts to reengage the family to resume attendance, including as described in paragraph (a)(2) of this section. If the child's attendance does not resume, then the program must consider that slot vacant. This action is not considered expulsion as described in §1302.17.

(b) Managing systematic program attendance issues. If a program's monthly average daily attendance rate falls below 85 percent, the program must analyze the causes of absenteeism to identify any systematic issues that contribute to the program's absentee rate. The program must use this data to make necessary changes in a timely manner as part of ongoing oversight and correction as described in §1302.102(b) and inform its continuous improvement efforts as described in §1302.102(c).

(c) Supporting attendance of homeless children. (1) If a program determines a child is eligible under §1302.12(c)(1)(iii), it must allow the child to attend for up to 90 days or as long as

allowed under state licensing requirements, without immunization and other records, to give the family reasonable time to present these documents. A program must work with families to get children immunized as soon as possible in order to comply with state licensing requirements.

(2) If a child experiencing homelessness is unable to attend classes regularly because the family does not have transportation to and from the program facility, the program must utilize community resources, where possible, to provide transportation for the child.

**§ 1302.17 Suspension and expulsion.**

(a) Limitations on suspension. (1) A program must prohibit or severely limit the use of suspension due to a child's behavior. Such suspensions may only be temporary in nature.

(2) A temporary suspension must be used only as a last resort in extraordinary circumstances where there is a serious safety threat that cannot be reduced or eliminated by the provision of reasonable modifications.

(3) Before a program determines whether a temporary suspension is necessary, a program must engage with a mental health consultant, collaborate with the parents, and utilize appropriate community resources – such as behavior coaches, psychologists, other appropriate specialists, or other resources – as needed, to determine no other reasonable option is appropriate.

(4) If a temporary suspension is deemed necessary, a program must help the child return to full participation in all program activities as quickly as possible while ensuring child safety by:

(i) Continuing to engage with the parents and a mental health consultant, and continuing to utilize appropriate community resources;

(ii) Developing a written plan to document the action and supports needed;

(iii) Providing services that include home visits; and,

(iv) Determining whether a referral to a local agency responsible for implementing IDEA is appropriate.

(b) Prohibition on expulsion. (1) A program cannot expel or unenroll a child from Head Start because of a child's behavior.

(2) When a child exhibits persistent and serious challenging behaviors, a program must explore all possible steps and document all steps taken to address such problems, and facilitate the child's safe participation in the program. Such steps must include, at a minimum, engaging a mental health consultant, considering the appropriateness of providing appropriate services and supports under section 504 of the Rehabilitation Act to ensure that the child who satisfies the

definition of disability in 29 U.S.C. 705(9)(b) of the Rehabilitation Act is not excluded from the program on the basis of disability, and consulting with the parents and the child's teacher, and:

(i) If the child has an individualized family service plan (IFSP) or individualized education program (IEP), the program must consult with the agency responsible for the IFSP or IEP to ensure the child receives the needed support services; or,

(ii) If the child does not have an IFSP or IEP, the program must collaborate, with parental consent, with the local agency responsible for implementing IDEA to determine the child's eligibility for services.

(3) If, after a program has explored all possible steps and documented all steps taken as described in paragraph (b)(2) of this section, a program, in consultation with the parents, the child's teacher, the agency responsible for implementing IDEA (if applicable), and the mental health consultant, determines that the child's continued enrollment presents a continued serious safety threat to the child or other enrolled children and determines the program is not the most appropriate placement for the child, the program must work with such entities to directly facilitate the transition of the child to a more appropriate placement.

**§1302.18 Fees.**

(a) Policy on fees. A program must not charge eligible families a fee to participate in Head Start, including special events such as field trips, and cannot in any way condition an eligible child's enrollment or participation in the program upon the payment of a fee.

(b) Allowable fees. (1) A program must only accept a fee from families of enrolled children for services that are in addition to services funded by Head Start, such as child care before or after funded Head Start hours. A program may not condition a Head Start child's enrollment on the ability to pay a fee for additional hours.

(2) In order to support programs serving children from diverse economic backgrounds or using multiple funding sources, a program may charge fees to private pay families and other non-Head Start enrolled families to the extent allowed by any other applicable federal, state or local funding sources.

**Subpart B—Program Structure**

**§1302.20 Determining program structure.**

(a) Choose a program option. (1) A program must choose to operate one or more of the following program options: center-based, home-based, family child care, or an approved locally-designed variation as described in §1302.24. The program option(s) chosen must meet the needs of children and families based on the community assessment described in §1302.11(b). A Head Start program serving preschool-aged children may not provide only the option described in §1302.22(a) and (c)(2).

(2) To choose a program option and develop a program calendar, a program must consider in conjunction with the annual review of the community assessment described in §1302.11(b)(2), whether it would better meet child and family needs through conversion of existing slots to full school day or full working day slots, extending the program year, conversion of existing Head Start slots to Early Head Start slots as described in paragraph (c) of this section, and ways to promote continuity of care and services. A program must work to identify alternate sources to support full working day services. If no additional funding is available, program resources may be used.

(b) Comprehensive services. All program options must deliver the full range of services, as described in subparts C, D, E, F, and G of this part, except that §§1302.30 through 1302.32 and §1302.34 do not apply to home-based options.

(c) Conversion. (1) Consistent with section 645(a)(5) of the Head Start Act, grantees may request to convert Head Start slots to Early Head Start slots through the re-funding application process or as a separate grant amendment.

(2) Any grantee proposing a conversion of Head Start services to Early Head Start services must obtain policy council and governing body approval and submit the request to their regional office.

(3) With the exception of American Indian and Alaska Native grantees as described in paragraph (c)(4) of this section, the request to the regional office must include:

(i) A grant application budget and a budget narrative that clearly identifies the funding amount for the Head Start and Early Head Start programs before and after the proposed conversion;

(ii) The results of the community assessment demonstrating how the proposed use of funds would best meet the needs of the community, including a description of how the needs of eligible Head Start children will be met in the community when the conversion takes places;

(iii) A revised program schedule that describes the program option(s) and the number of funded enrollment slots for Head Start and Early Head Start programs before and after the proposed conversion;

(iv) A description of how the needs of pregnant women, infants, and toddlers will be addressed;

(v) A discussion of the agency's capacity to carry out an effective Early Head Start program in accordance with the requirements of section 645A(b) of the Head Start Act and all applicable regulations;

(vi) Assurances that the agency will participate in training and technical assistance activities required of all Early Head Start grantees;

(vii) A discussion of the qualifications and competencies of the child development staff proposed for the Early Head Start program, as well as a description of the facilities and program infrastructure that will be used to support the new or expanded Early Head Start program;

(viii) A discussion of any one-time funding necessary to implement the proposed conversion and how the agency intends to secure such funding; and,

(ix) The proposed timetable for implementing this conversion, including updating school readiness goals as described in subpart J of this part.

(4) Consistent with section 645(d)(3) of the Act, any American Indian and Alaska Native grantee that operates both an Early Head Start program and a Head Start program may reallocate funds between the programs at its discretion and at any time during the grant period involved, in order to address fluctuations in client populations. An American Indian and Alaska Native program that exercises this discretion must notify the regional office.

(d) Source of funding. A program may consider hours of service that meet the Head Start Program Performance Standards, regardless of the source of funding, as hours of planned class operations for the purposes of meeting the Head Start and Early Head Start service duration requirements in this subpart.

**§1302.21 Center-based option.**

(a) Setting. The center-based option delivers the full range of services, consistent with §1302.20(b). Education and child development services are delivered primarily in classroom settings.

(b) Ratios and group size. (1) Staff-child ratios and group size maximums must be determined by the age of the majority of children and the needs of children present. A program must determine the age of the majority of children in a class at the start of the year and may adjust this determination during the program year, if necessary. Where state or local licensing requirements are more stringent than the teacher-child ratios and group size specifications in this section, a program must meet the stricter requirements. A program must maintain appropriate ratios during all hours of program operation, except:

(i) For brief absences of a teaching staff member for no more than five minutes; and,

(ii) During nap time, one teaching staff member may be replaced by one staff member or volunteer who does not meet the teaching qualifications required for the age.

(2) An Early Head Start or Migrant or Seasonal Head Start class that serves children under 36 months old must have two teachers with no more than eight children, or three teachers with no more than nine children. Each teacher must be assigned consistent, primary

responsibility for no more than four children to promote continuity of care for individual children. A program must minimize teacher changes throughout a child's enrollment, whenever possible, and consider mixed age group classes to support continuity of care.

(3) A class that serves a majority of children who are three years old must have no more than 17 children and a teacher and teaching assistant or two teachers. A double session class that serves a majority of children who are three years old must have no more than 15 children and a teacher and teaching assistant or two teachers.

(4) A class that serves a majority of children who are four and five years old must have no more than 20 children and a teacher and a teaching assistant or two teachers. A double session class that serves a majority of children who are four and five years old must have no more than 17 children and a teacher and a teaching assistant or two teachers.

| Table to §1302.21(b) — Center-based group size | |
|---|---|
| 4 and 5 year olds | No more than 20 children enrolled in any class.<br>No more than 17 children enrolled in any double session class. |
| 3 year olds | No more than 17 children enrolled in any class.<br>No more than 15 children enrolled in any double session class. |
| Under 3 years old | No more than 8 or 9 children enrolled in any class, depending on the number of teachers. |

(c) Service duration--(1) Early Head Start. (i) By August 1, 2018, a program must provide 1,380 annual hours of planned class operations for all enrolled children.

(ii) A program that is designed to meet the needs of young parents enrolled in school settings may meet the service duration requirements in paragraph (c)(1)(i) of this section if it operates a center-based program schedule during the school year aligned with its local education agency requirements and provides regular home-based services during the summer break.

(2) Head Start. (i) Until a program is operating all of its Head Start center-based funded enrollment at the standard described in paragraph (c)(2)(iv) or (v) of this section, a program must provide, at a minimum, at least 160 days per year of planned class operations if it operates for five days per week, or at least 128 days per year if it operates four days per week. Classes must operate for a minimum of 3.5 hours per day.

(ii) Until a program is operating all of its Head Start center-based funded enrollment at the standard described in paragraph (c)(2)(iv) or (v) of this section, if a program operates a double session variation, it must provide classes for four days per week for a minimum of 128 days per year and 3.5 hours per day. Each double session class staff member must be provided adequate break time during the course of the day. In addition, teachers, aides, and volunteers must have appropriate time to prepare for each session together, to set up the classroom environment, and to give individual attention to children entering and leaving the center.

(iii) By August 1, 2019, a program must provide 1,020 annual hours of planned class operations over the course of at least eight months per year for at least 50 percent of its Head Start center-based funded enrollment.

(iv) By August 1, 2021, a program must provide 1,020 annual hours of planned class operations over the course of at least eight months per year for all of its Head Start center-based funded enrollment.

(v) A Head Start program providing fewer than 1,020 annual hours of planned class operations or fewer than eight months of service is considered to meet the requirements described in paragraphs (c)(2)(iii) and (iv) of this section if its program schedule aligns with the annual hours required by its local education agency for grade one and such alignment is necessary to support partnerships for service delivery.

(3) Secretarial determination. (i) On or before February 1, 2018, the Secretary may lower the required percentage described in paragraph (c)(2)(iii) of this section, based on an assessment of the availability of sufficient funding to mitigate a substantial reduction in funded enrollment; and,

(ii) On or before February 1, 2020, the Secretary may lower the required percentage described in paragraph (c)(2)(iv) of this section, based on an assessment of the availability of sufficient funding to mitigate a substantial reduction in funded enrollment.

(4) Extension. If an extension is necessary to ensure children enrolled in the program on [insert date 60 days after date of publication in the Federal Register] are not displaced from the Early Head Start or Head Start program, a program may request a one-year extension from the responsible HHS official of the requirements outlined in paragraphs (c)(1) and (c)(2)(iii) of this section.

(5) Exemption for Migrant or Seasonal Head Start programs. A Migrant or Seasonal program is not subject to the requirements described in §1302.21(c)(1) or (2), but must make every effort to provide as many days and hours of service as possible to each child and family.

(6) Calendar planning. A program must:

(i) Plan its year using a reasonable estimate of the number of days during a year that classes may be closed due to problems such as inclement weather; and,

(ii) Make every effort to schedule makeup days using existing resources if hours of planned class operations fall below the number required per year.

(d) Licensing and square footage requirements. (1) The facilities used by a program must meet state, tribal, or local licensing requirements, even if exempted by the licensing entity. When state, tribal, or local requirements vary from Head Start requirements, the most stringent provision takes precedence.

(2) A center-based program must have at least 35 square feet of usable indoor space per child available for the care and use of children (exclusive of bathrooms, halls, kitchen, staff rooms, and storage places) and at least 75 square feet of usable outdoor play space per child.

(3) A program that operates two or more groups within an area must ensure clearly defined, safe divisions to separate groups. A program must ensure such spaces are learning environments that facilitate the implementation of the requirements in subpart C of this part. The divisions must limit noise transfer from one group to another to prevent disruption of an effective learning environment.

**§1302.22 Home-based option.**

(a) Setting. The home-based option delivers the full range of services, consistent with §1302.20(b), through visits with the child's parents, primarily in the child's home and through group socialization opportunities in a Head Start classroom, community facility, home, or on field trips. For Early Head Start programs, the home-based option may be used to deliver services to some or all of a program's enrolled children. For Head Start programs, the home-based option may only be used to deliver services to a portion of a program's enrolled children.

(b) Caseload. A program that implements a home-based option must maintain an average caseload of 10 to 12 families per home visitor with a maximum of 12 families for any individual home visitor.

(c) Service duration--(1) Early Head Start. By August 1, 2017, an Early Head Start home-based program must:

(i) Provide one home visit per week per family that lasts at least an hour and a half and provide a minimum of 46 visits per year; and,

(ii) Provide, at a minimum, 22 group socialization activities distributed over the course of the program year.

(2) Head Start. A Head Start home-based program must:

(i) Provide one home visit per week per family that lasts at least an hour and a half and provide a minimum of 32 visits per year; and,

(ii) Provide, at a minimum, 16 group socialization activities distributed over the course of the program year.

(3) Meeting minimum requirements. A program that implements a home-based option must:

(i) Make up planned home visits or scheduled group socialization activities that were canceled by the program, and to the extent possible attempt to make up planned home visits canceled by the family, when this is necessary to meet the minimums described in paragraphs (c)(1) and (2) of this section; and,

(ii) Not replace home visits or scheduled group socialization activities for medical or social service appointments for the purposes of meeting the minimum requirements described in paragraphs (c)(1) and (2) of this section.

(d) Safety requirements. The areas for learning, playing, sleeping, toileting, preparing food, and eating in facilities used for group socializations in the home-based option must meet the safety standards described in §1302.47(1)(ii) through (viii).

**§1302.23 Family child care option.**

(a) Setting. The family child care program option delivers the full range of services, consistent with §1302.20(b). Education and child development services are primarily delivered by a family child care provider in their home or other family-like setting. A program may choose to offer the family child care option if:

(1) The program has a legally binding agreement with one or more family child care provider(s) that clearly defines the roles, rights, and responsibilities of each party, or the program is the employer of the family child care provider, and ensures children and families enrolled in this option receive the full range of services described in subparts C, D, E, F, and G of this part; and,

(2) The program ensures family child care homes are available that can accommodate children and families with disabilities.

(b) Ratios and group size. (1) A program that operates the family child care option where Head Start children are enrolled must ensure group size does not exceed the limits specified in this section. If the family child care provider's own children under the age of six are present, they must be included in the group size.

(2) When there is one family child care provider, the maximum group size is six children and no more than two of the six may be under 24 months of age. When there is a provider and an assistant, the maximum group size is twelve children with no more than four of the twelve children under 24 months of age.

(3) One family child care provider may care for up to four children younger than 36 months of age with a maximum group size of four children, and no more than two of the four children may be under 18 months of age.

(4) A program must maintain appropriate ratios during all hours of program operation. A program must ensure providers have systems to ensure the safety of any child not within view for any period. A program must make substitute staff and assistant providers available with the necessary training and experience to ensure quality services to children are not interrupted.

(c) Service duration. Whether family child care option services are provided directly or via contractual arrangement, a program must ensure family child care providers operate sufficient hours to meet the child care needs of families and not less than 1,380 hours per year.

(d) Licensing requirements. A family child-care provider must be licensed by the state, tribal, or local entity to provide services in their home or family-like setting. When state, tribal, or local requirements vary from Head Start requirements, the most stringent provision applies.

(e) Child development specialist. A program that offers the family child care option must provide a child development specialist to support family child care providers and ensure the provision of quality services at each family child care home. Child development specialists must:

(1) Conduct regular visits to each home, some of which are unannounced, not less than once every two weeks;

(2) Periodically verify compliance with either contract requirements or agency policy;

(3) Facilitate ongoing communication between program staff, family child care providers, and enrolled families; and,

(4) Provide recommendations for technical assistance and support the family child care provider in developing relationships with other child care professionals.

**§1302.24 Locally-designed program option variations.**

(a) Waiver option. Programs may request to operate a locally-designed program option, including a combination of program options, to better meet the unique needs of their communities or to demonstrate or test alternative approaches for providing program services. In order to operate a locally-designed program option, programs must seek a waiver as described in this section and must deliver the full range of services, consistent with §1302.20(b), and demonstrate how any change to their program design is consistent with achieving program goals in subpart J of this part.

(b) Request for approval. A program's request to operate a locally-designed variation may be approved by the responsible HHS official through the end of a program's current grant or, if the request is submitted through a grant application for an upcoming project period, for the project period of the new award. Such approval may be revoked based on progress toward program goals as described in §1302.102 and monitoring as described in §1304.2.

(c) Waiver requirements. (1) The responsible HHS official may waive one or more of the requirements contained in §1302.21(b), (c)(1)(i), and (c)(2)(iii) and (iv); §1302.22(a) through (c); and §1302.23(b) and (c), but may not waive ratios or group size for children under 24 months. Center-based locally-designed options must meet the minimums described in section 640(k)(1) of the Act for center-based programs.

(2) If the responsible HHS official determines a waiver of group size for center-based services would better meet the needs of children and families in a community, the group size may not exceed the limits below:

(i) A group that serves children 24 to 36 months of age must have no more than ten children; and,

(ii) A group that serves predominantly three-year-old children must have no more than twenty children; and,

(iii) A group that serves predominantly four-year-old children must have no more than twenty-four children.

(3) If the responsible HHS official approves a waiver to allow a program to operate below the minimums described in §1302.21(c)(2)(iii) or (iv), a program must meet the requirements described in §1302.21(c)(2)(i), or in the case of a double session variation, a program must meet the requirements described in §1302.21(c)(2)(ii).

(4) In order to receive a waiver under this section, a program must provide supporting evidence that demonstrates the locally-designed variation effectively supports appropriate development and progress in children's early learning outcomes.

(5) In order to receive a waiver of service duration, a program must meet the requirement in paragraph (c)(4) of this section, provide supporting evidence that it better meets the needs of parents than the applicable service duration minimums described in §1302.21(c)(1) and (c)(2)(iii) and (iv), or §1302.22(c), and assess the effectiveness of the variation in supporting appropriate development and progress in children's early learning outcomes.

(d) Transition from previously approved program options. If, before [insert date 60 days after date of publication in the Federal Register], a program was approved to operate a program option that is no longer allowable under §§1302.21 through 1302.23, a program may continue to operate that model until July 31, 2018.

**Subpart C—Education and Child Development Program Services**

**§1302.30 Purpose.**

All programs must provide high-quality early education and child development services, including for children with disabilities, that promote children's cognitive, social, and emotional growth for later success in school. A center-based or family child care program must embed responsive and effective teacher-child interactions. A home-based program must promote secure parent-child relationships and help parents provide high-quality early learning experiences. All programs must implement a research-based curriculum, and screening and assessment procedures that support individualization and growth in the areas of development described in

the Head Start Early Learning Outcomes Framework: Ages Birth to Five and support family engagement in children's learning and development. A program must deliver developmentally, culturally, and linguistically appropriate learning experiences in language, literacy, mathematics, social and emotional functioning, approaches to learning, science, physical skills, and creative arts. To deliver such high-quality early education and child development services, a center-based or family child care program must implement, at a minimum, the elements contained in §§1302.31 through 1302.34, and a home-based program must implement, at a minimum, the elements in §§1302.33 and 1302.35.

**§1302.31 Teaching and the learning environment.**

(a) Teaching and the learning environment. A center-based and family child care program must ensure teachers and other relevant staff provide responsive care, effective teaching, and an organized learning environment that promotes healthy development and children's skill growth aligned with the Head Start Early Learning Outcomes Framework: Ages Birth to Five, including for children with disabilities. A program must also support implementation of such environment with integration of regular and ongoing supervision and a system of individualized and ongoing professional development, as appropriate. This includes, at a minimum, the practices described in paragraphs (b) through (e) of this section.

(b) Effective teaching practices. (1) Teaching practices must:

(i) Emphasize nurturing and responsive practices, interactions, and environments that foster trust and emotional security; are communication and language rich; promote critical thinking and problem-solving; social, emotional, behavioral, and language development; provide supportive feedback for learning; motivate continued effort; and support all children's engagement in learning experiences and activities;

(ii) Focus on promoting growth in the developmental progressions described in the Head Start Early Learning Outcomes Framework: Ages Birth to Five by aligning with and using the Framework and the curricula as described in §1302.32 to direct planning of organized activities, schedules, lesson plans, and the implementation of high-quality early learning experiences that are responsive to and build upon each child's individual pattern of development and learning;

(iii) Integrate child assessment data in individual and group planning; and,

(iv) Include developmentally appropriate learning experiences in language, literacy, social and emotional development, math, science, social studies, creative arts, and physical development that are focused toward achieving progress outlined in the Head Start Early Learning Outcomes Framework: Ages Birth to Five.

(2) For dual language learners, a program must recognize bilingualism and biliteracy as strengths and implement research-based teaching practices that support their development. These practices must:

(i) For an infant or toddler dual language learner, include teaching practices that focus on the development of the home language, when there is a teacher with appropriate language competency, and experiences that expose the child to English;

(ii) For a preschool age dual language learner, include teaching practices that focus on both English language acquisition and the continued development of the home language; or,

(iii) If staff do not speak the home language of all children in the learning environment, include steps to support the development of the home language for dual language learners such as having culturally and linguistically appropriate materials available and other evidence-based strategies. Programs must work to identify volunteers who speak children's home language/s who could be trained to work in the classroom to support children's continued development of the home language.

(c) Learning environment. A program must ensure teachers implement well-organized learning environments with developmentally appropriate schedules, lesson plans, and indoor and outdoor learning experiences that provide adequate opportunities for choice, play, exploration, and experimentation among a variety of learning, sensory, and motor experiences and:

(1) For infants and toddlers, promote relational learning and include individualized and small group activities that integrate appropriate daily routines into a flexible schedule of learning experiences; and,

(2) For preschool age children, include teacher-directed and child-initiated activities, active and quiet learning activities, and opportunities for individual, small group, and large group learning activities.

(d) Materials and space for learning. To support implementation of the curriculum and the requirements described in paragraphs (a), (b), (c), and (e) of this section a program must provide age-appropriate equipment, materials, supplies and physical space for indoor and outdoor learning environments, including functional space. The equipment, materials and supplies must include any necessary accommodations and the space must be accessible to children with disabilities. Programs must change materials intentionally and periodically to support children's interests, development, and learning.

(e) Promoting learning through approaches to rest, meals, routines, and physical activity. (1) A program must implement an intentional, age appropriate approach to accommodate children's need to nap or rest, and that, for preschool age children in a program that operates for 6 hours or longer per day provides a regular time every day at which preschool age children are encouraged but not forced to rest or nap. A program must provide alternative quiet learning activities for children who do not need or want to rest or nap.

(2) A program must implement snack and meal times in ways that support development and learning. For bottle-fed infants, this approach must include holding infants during feeding to support socialization. Snack and meal times must be structured and used as learning opportunities that support teaching staff-child interactions and foster communication and

conversations that contribute to a child's learning, development, and socialization. Programs are encouraged to meet this requirement with family style meals when developmentally appropriate. A program must also provide sufficient time for children to eat, not use food as reward or punishment, and not force children to finish their food.

(3) A program must approach routines, such as hand washing and diapering, and transitions between activities, as opportunities for strengthening development, learning, and skill growth.

(4) A program must recognize physical activity as important to learning and integrate intentional movement and physical activity into curricular activities and daily routines in ways that support health and learning. A program must not use physical activity as reward or punishment.

**§1302.32 Curricula.**

(a) Curricula. (1) Center-based and family child care programs must implement developmentally appropriate research-based early childhood curricula, including additional curricular enhancements, as appropriate that:

(i) Are based on scientifically valid research and have standardized training procedures and curriculum materials to support implementation;

(ii) Are aligned with the Head Start Early Learning Outcomes Framework: Ages Birth to Five and, as appropriate, state early learning and development standards; and are sufficiently content-rich to promote measurable progress toward development and learning outlined in the Framework; and,

(iii) Have an organized developmental scope and sequence that include plans and materials for learning experiences based on developmental progressions and how children learn.

(2) A program must support staff to effectively implement curricula and at a minimum monitor curriculum implementation and fidelity, and provide support, feedback, and supervision for continuous improvement of its implementation through the system of training and professional development.

(b) Adaptation. A program that chooses to make significant adaptations to a curriculum or a curriculum enhancement described in paragraph (a)(1) of this section to better meet the needs of one or more specific populations must use an external early childhood education curriculum or content area expert to develop such significant adaptations. A program must assess whether the adaptation adequately facilitates progress toward meeting school readiness goals, consistent with the process described in §1302.102(b) and (c). Programs are encouraged to partner with outside evaluators in assessing such adaptations.

**§1302.33 Child screenings and assessments.**

(a) Screening. (1) In collaboration with each child's parent and with parental consent, a program must complete or obtain a current developmental screening to identify concerns regarding a child's developmental, behavioral, motor, language, social, cognitive, and emotional skills within 45 calendar days of when the child first attends the program or, for the home-based program option, receives a home visit. A program that operates for 90 days or less must complete or obtain a current developmental screening within 30 calendar days of when the child first attends the program.

(2) A program must use one or more research-based developmental standardized screening tools to complete the screening. A program must use as part of the screening additional information from family members, teachers, and relevant staff familiar with the child's typical behavior.

(3) If warranted through screening and additional relevant information and with direct guidance from a mental health or child development professional a program must, with the parent's consent, promptly and appropriately address any needs identified through:

(i) Referral to the local agency responsible for implementing IDEA for a formal evaluation to assess the child's eligibility for services under IDEA as soon as possible, and not to exceed timelines required under IDEA; and,

(ii) Partnership with the child's parents and the relevant local agency to support families through the formal evaluation process.

(4) If a child is determined to be eligible for services under IDEA, the program must partner with parents and the local agency responsible for implementing IDEA, as appropriate, and deliver the services in subpart F of this part.

(5) If, after the formal evaluation described in paragraph (a)(3)(i) of this section, the local agency responsible for implementing IDEA determines the child is not eligible for early intervention or special education and related services under IDEA, the program must:

(i) Seek guidance from a mental health or child development professional to determine if the formal evaluation shows the child has a significant delay in one or more areas of development that is likely to interfere with the child's development and school readiness; and,

(ii) If the child has a significant delay, partner with parents to help the family access services and supports to help address the child's identified needs.

(A) Such additional services and supports may be available through a child's health insurance or it may be appropriate for the program to provide needed services and supports under section 504 of the Rehabilitation Act if the child satisfies the definition of disability in 29 U.S.C. section 705(9)(b) of the Rehabilitation Act, to ensure that the child who satisfies the definition of disability in 29 U.S.C. 705(9)(b) of the Rehabilitation Act is not excluded from the program on the basis of disability.

(B) A program may use program funds for such services and supports when no other sources of funding are available.

(b) Assessment for individualization. (1) A program must conduct standardized and structured assessments, which may be observation-based or direct, for each child that provide ongoing information to evaluate the child's developmental level and progress in outcomes aligned to the goals described in the Head Start Early Learning Child Outcomes Framework: Ages Birth to Five. Such assessments must result in usable information for teachers, home visitors, and parents and be conducted with sufficient frequency to allow for individualization within the program year.

(2) A program must regularly use information from paragraph (b)(1) of this section along with informal teacher observations and additional information from family and staff, as relevant, to determine a child's strengths and needs, inform and adjust strategies to better support individualized learning and improve teaching practices in center-based and family child care settings, and improve home visit strategies in home-based models.

(3) If warranted from the information gathered from paragraphs (b)(1) and (2) of this section and with direct guidance from a mental health or child development professional and a parent's consent, a program must refer the child to the local agency responsible for implementing IDEA for a formal evaluation to assess a child's eligibility for services under IDEA.

(c) Characteristics of screenings and assessments. (1) Screenings and assessments must be valid and reliable for the population and purpose for which they will be used, including by being conducted by qualified and trained personnel, and being age, developmentally, culturally and linguistically appropriate, and appropriate for children with disabilities, as needed.

(2) If a program serves a child who speaks a language other than English, a program must use qualified bilingual staff, contractor, or consultant to:

(i) Assess language skills in English and in the child's home language, to assess both the child's progress in the home language and in English language acquisition;

(ii) Conduct screenings and assessments for domains other than language skills in the language or languages that best capture the child's development and skills in the specific domain; and,

(iii) Ensure those conducting the screening or assessment know and understand the child's language and culture and have sufficient skill level in the child's home language to accurately administer the screening or assessment and to record and understand the child's responses, interactions, and communications.

(3) If a program serves a child who speaks a language other than English and qualified bilingual staff, contractors, or consultants are not able to conduct screenings and assessments, a

program must use an interpreter in conjunction with a qualified staff person to conduct screenings and assessments as described in paragraphs (c)(2)(i) through (iii) of this section.

(4) If a program serves a child who speaks a language other than English and can demonstrate that there is not a qualified bilingual staff person or interpreter, then screenings and assessments may be conducted in English. In such a case, a program must also gather and use other information, including structured observations over time and information gathered in a child's home language from the family, for use in evaluating the child's development and progress.

(d) Prohibitions on use of screening and assessment data. The use of screening and assessment items and data on any screening or assessment authorized under this subchapter by any agent of the federal government is prohibited for the purposes of ranking, comparing, or otherwise evaluating individual children for purposes other than research, training, or technical assistance, and is prohibited for the purposes of providing rewards or sanctions for individual children or staff. A program must not use screening or assessments to exclude children from enrollment or participation.

**§1302.34 Parent and family engagement in education and child development services.**

(a) Purpose. Center-based and family child care programs must structure education and child development services to recognize parents' roles as children's lifelong educators, and to encourage parents to engage in their child's education.

(b) Engaging parents and family members. A program must offer opportunities for parents and family members to be involved in the program's education services and implement policies to ensure:

(1) The program's settings are open to parents during all program hours;

(2) Teachers regularly communicate with parents to ensure they are well-informed about their child's routines, activities, and behavior;

(3) Teachers hold parent conferences, as needed, but no less than two times per program year, to enhance the knowledge and understanding of both staff and parents of the child's education and developmental progress and activities in the program;

(4) Parents have the opportunity to learn about and to provide feedback on selected curricula and instructional materials used in the program;

(5) Parents and family members have opportunities to volunteer in the class and during group activities;

(6) Teachers inform parents, about the purposes of and the results from screenings and assessments and discuss their child's progress;

(7) Teachers, except those described in paragraph (b)(8) of this section, conduct at least two home visits per program year for each family, including one before the program year begins, if feasible, to engage the parents in the child's learning and development, except that such visits may take place at a program site or another safe location that affords privacy at the parent's request, or if a visit to the home presents significant safety hazards for staff; and,

(8) Teachers that serve migrant or seasonal families make every effort to conduct home visits to engage the family in the child's learning and development.

**§1302.35 Education in home-based programs.**

(a) Purpose. A home-based program must provide home visits and group socialization activities that promote secure parent-child relationships and help parents provide high-quality early learning experiences in language, literacy, mathematics, social and emotional functioning, approaches to learning, science, physical skills, and creative arts. A program must implement a research-based curriculum that delivers developmentally, linguistically, and culturally appropriate home visits and group socialization activities that support children's cognitive, social, and emotional growth for later success in school.

(b) Home-based program design. A home-based program must ensure all home visits are:

(1) Planned jointly by the home visitor and parents, and reflect the critical role of parents in the early learning and development of their children, including that the home visitor is able to effectively communicate with the parent, directly or through an interpreter;

(2) Planned using information from ongoing assessments that individualize learning experiences;

(3) Scheduled with sufficient time to serve all enrolled children in the home and conducted with parents and are not conducted when only babysitters or other temporary caregivers are present;

(4) Scheduled with sufficient time and appropriate staff to ensure effective delivery of services described in subparts D, E, F, and G of this part through home visiting, to the extent possible.

(c) Home visit experiences. A program that operates the home-based option must ensure all home visits focus on promoting high-quality early learning experiences in the home and growth towards the goals described in the Head Start Early Learning Outcomes Framework: Ages Birth to Five and must use such goals and the curriculum to plan home visit activities that implement:

(1) Age and developmentally appropriate, structured child-focused learning experiences;

(2) Strategies and activities that promote parents' ability to support the child's cognitive, social, emotional, language, literacy, and physical development;

(3) Strategies and activities that promote the home as a learning environment that is safe, nurturing, responsive, and language- and communication- rich;

(4) Research-based strategies and activities for children who are dual language learners that recognize bilingualism and biliteracy as strengths, and:

(i) For infants and toddlers, focus on the development of the home language, while providing experiences that expose both parents and children to English; and,

(ii) For preschoolers, focus on both English language acquisition and the continued development of the home language; and,

(5) Follow-up with the families to discuss learning experiences provided in the home between each visit, address concerns, and inform strategies to promote progress toward school readiness goals.

(d) Home-based curriculum. A program that operates the home-based option must:

(1) Ensure home-visiting and group socializations implement a developmentally appropriate research-based early childhood home-based curriculum that:

(i) Promotes the parent's role as the child's teacher through experiences focused on the parent-child relationship and, as appropriate, the family's traditions, culture, values, and beliefs;

(ii) Aligns with the Head Start Early Learning Outcomes Framework: Ages Birth to Five and, as appropriate, state early learning standards, and, is sufficiently content-rich within the Framework to promote measurable progress toward goals outlined in the Framework; and,

(iii) Has an organized developmental scope and sequence that includes plans and materials for learning experiences based on developmental progressions and how children learn.

(2) Support staff in the effective implementation of the curriculum and at a minimum monitor curriculum implementation and fidelity, and provide support, feedback, and supervision for continuous improvement of its implementation through the system of training and professional development.

(3) If a program chooses to make significant adaptations to a curriculum or curriculum enhancement to better meet the needs of one or more specific populations, a program must:

(i) Partner with early childhood education curriculum or content experts; and,

(ii) Assess whether the adaptation adequately facilitates progress toward meeting school readiness goals consistent with the process described in §1302.102(b) and (c).

(4) Provide parents with an opportunity to review selected curricula and instructional materials used in the program.

(e) Group socialization. (1) A program that operates the home-based option must ensure group socializations are planned jointly with families, conducted with both child and parent participation, occur in a classroom, community facility, home or field trip setting, as appropriate.

(2) Group socializations must be structured to:

(i) Provide age appropriate activities for participating children that are intentionally aligned to school readiness goals, the Head Start Early Learning Outcomes Framework: Ages Birth to Five and the home-based curriculum; and,

(ii) Encourage parents to share experiences related to their children's development with other parents in order to strengthen parent-child relationships and to help promote parents understanding of child development;

(3) For parents with preschoolers, group socializations also must provide opportunities for parents to participate in activities that support parenting skill development or family partnership goals identified in §1302.52(c), as appropriate and must emphasize peer group interactions designed to promote children's social, emotional and language development, and progress towards school readiness goals, while encouraging parents to observe and actively participate in activities, as appropriate.

(f) Screening and assessments. A program that operates the home-based option must implement provisions in §1302.33 and inform parents about the purposes of and the results from screenings and assessments and discuss their child's progress.

**§1302.36 Tribal language preservation and revitalization.**

A program that serves American Indian and Alaska Native children may integrate efforts to preserve, revitalize, restore, or maintain the tribal language for these children into program services. Such language preservation and revitalization efforts may include full immersion in the tribal language for the majority of the hours of planned class operations. If children's home language is English, exposure to English as described in §1302.31(b)(2)(i) and (ii) is not required.

**Subpart D—Health Program Services**

**§1302.40 Purpose.**

(a) A program must provide high-quality health, oral health, mental health, and nutrition services that are developmentally, culturally, and linguistically appropriate and that will support each child's growth and school readiness.

(b) A program must establish and maintain a Health Services Advisory Committee that includes Head Start parents, professionals, and other volunteers from the community.

**§1302.41 Collaboration and communication with parents**.

(a) For all activities described in this part, programs must collaborate with parents as partners in the health and well-being of their children in a linguistically and culturally appropriate manner and communicate with parents about their child's health needs and development concerns in a timely and effective manner.

(b) At a minimum, a program must:

(1) Obtain advance authorization from the parent or other person with legal authority for all health and developmental procedures administered through the program or by contract or agreement, and, maintain written documentation if they refuse to give authorization for health services; and,

(2) Share with parents the policies for health emergencies that require rapid response on the part of staff or immediate medical attention.

**§1302.42 Child health status and care.**

(a) Source of health care. (1) A program, within 30 calendar days after the child first attends the program or, for the home-based program option, receives a home visit, must consult with parents to determine whether each child has ongoing sources of continuous, accessible health care – provided by a health care professional that maintains the child's ongoing health record and is not primarily a source of emergency or urgent care – and health insurance coverage.

(2) If the child does not have such a source of ongoing care and health insurance coverage or access to care through the Indian Health Service, the program must assist families in accessing a source of care and health insurance that will meet these criteria, as quickly as possible.

(b) Ensuring up-to-date child health status. (1) Within 90 calendar days after the child first attends the program or, for the home-based program option, receives a home visit, with the exceptions noted in paragraph (b)(3) of this section, a program must:

(i) Obtain determinations from health care and oral health care professionals as to whether or not the child is up-to-date on a schedule of age appropriate preventive and primary medical and oral health care, based on: the well-child visits and dental periodicity schedules as prescribed by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program of the Medicaid agency of the state in which they operate, immunization recommendations issued by the Centers for Disease Control and Prevention, and any additional recommendations from

the local Health Services Advisory Committee that are based on prevalent community health problems;

(ii) Assist parents with making arrangements to bring the child up-to-date as quickly as possible; and, if necessary, directly facilitate provision of health services to bring the child up-to-date with parent consent as described in §1302.41(b)(1).

(2) Within 45 calendar days after the child first attends the program or, for the home-based program option, receives a home visit, a program must either obtain or perform evidence-based vision and hearing screenings.

(3) If a program operates for 90 days or less, it has 30 days from the date the child first attends the program to satisfy paragraphs (b)(1) and (2) of this section.

(4) A program must identify each child's nutritional health needs, taking into account available health information, including the child's health records, and family and staff concerns, including special dietary requirements, food allergies, and community nutrition issues as identified through the community assessment or by the Health Services Advisory Committee.

(c) Ongoing care. (1) A program must help parents continue to follow recommended schedules of well-child and oral health care.

(2) A program must implement periodic observations or other appropriate strategies for

program staff and parents to identify any new or recurring developmental, medical, oral, or mental health concerns.

(3) A program must facilitate and monitor necessary oral health preventive care, treatment and follow-up, including topical fluoride treatments. In communities where there is a lack of adequate fluoride available through the water supply and for every child with moderate to severe tooth decay, a program must also facilitate fluoride supplements, and other necessary preventive measures, and further oral health treatment as recommended by the oral health professional.

(d) Extended follow-up care. (1) A program must facilitate further diagnostic testing, evaluation, treatment, and follow-up plan, as appropriate, by a licensed or certified professional for each child with a health problem or developmental delay, such as elevated lead levels or abnormal hearing or vision results that may affect child's development, learning, or behavior.

(2) A program must develop a system to track referrals and services provided and monitor the implementation of a follow-up plan to meet any treatment needs associated with a health, oral health, social and emotional, or developmental problem.

(3) A program must assist parents, as needed, in obtaining any prescribed medications, aids or equipment for medical and oral health conditions.

(e) Use of funds. (1) A program must use program funds for the provision of diapers and formula for enrolled children during the program day.

(2) A program may use program funds for professional medical and oral health services when no other source of funding is available. When program funds are used for such services, grantee and delegate agencies must have written documentation of their efforts to access other available sources of funding.

**§1302.43 Oral health practices.**

A program must promote effective oral health hygiene by ensuring all children with teeth are assisted by appropriate staff, or volunteers, if available, in brushing their teeth with toothpaste containing fluoride once daily.

**§1302.44 Child nutrition.**

(a) Nutrition service requirements. (1) A program must design and implement nutrition services that are culturally and developmentally appropriate, meet the nutritional needs of and accommodate the feeding requirements of each child, including children with special dietary needs and children with disabilities. Family style meals are encouraged as described in §1302.31(e)(2).

(2) Specifically, a program must:

(i) Ensure each child in a program that operates for fewer than six hours per day receives meals and snacks that provide one third to one half of the child's daily nutritional needs;

(ii) Ensure each child in a program that operates for six hours or more per day receives meals and snacks that provide one half to two thirds of the child's daily nutritional needs, depending upon the length of the program day;

(iii) Serve three- to five-year-olds meals and snacks that conform to USDA requirements in 7 CFR parts 210, 220, and 226, and are high in nutrients and low in fat, sugar, and salt;

(iv) Feed infants and toddlers according to their individual developmental readiness and feeding skills as recommended in USDA requirements outlined in 7 CFR parts 210, 220, and 226, and ensure infants and young toddlers are fed on demand to the extent possible;

(v) Ensure bottle-fed infants are never laid down to sleep with a bottle;

(vi) Serve all children in morning center-based settings who have not received breakfast upon arrival at the program a nourishing breakfast;

(vii) Provide appropriate healthy snacks and meals to each child during group socialization activities in the home-based option;

(viii) Promote breastfeeding, including providing facilities to properly store and handle breast milk and make accommodations, as necessary, for mothers who wish to breastfeed during program hours, and if necessary, provide referrals to lactation consultants or counselors; and,

(ix) Make safe drinking water available to children during the program day.

(b) Payment sources. A program must use funds from USDA Food, Nutrition, and Consumer Services child nutrition programs as the primary source of payment for meal services. Early Head Start and Head Start funds may be used to cover those allowable costs not covered by the USDA.

**§1302.45 Child mental health and social and emotional well-being.**

(a) Wellness promotion. To support a program-wide culture that promotes children's mental health, social and emotional well-being, and overall health, a program must:

(1) Provide supports for effective classroom management and positive learning environments; supportive teacher practices; and, strategies for supporting children with challenging behaviors and other social, emotional, and mental health concerns;

(2) Secure mental health consultation services on a schedule of sufficient and consistent frequency to ensure a mental health consultant is available to partner with staff and families in a timely and effective manner;

(3) Obtain parental consent for mental health consultation services at enrollment; and,

(4) Build community partnerships to facilitate access to additional mental health resources and services, as needed.

(b) Mental health consultants. A program must ensure mental health consultants assist:

(1) The program to implement strategies to identify and support children with mental health and social and emotional concerns;

(2) Teachers, including family child care providers, to improve classroom management and teacher practices through strategies that include using classroom observations and consultations to address teacher and individual child needs and creating physical and cultural environments that promote positive mental health and social and emotional functioning ;

(3) Other staff, including home visitors, to meet children's mental health and social and emotional needs through strategies that include observation and consultation;

(4) Staff to address prevalent child mental health concerns, including internalizing problems such as appearing withdrawn and externalizing problems such as challenging behaviors; and,

(5) In helping both parents and staff to understand mental health and access mental health interventions, if needed.

(6) In the implementation of the policies to limit suspension and prohibit expulsion as described in §1302.17.

**§1302.46 Family support services for health, nutrition, and mental health.**

(a) Parent collaboration. Programs must collaborate with parents to promote children's health and well-being by providing medical, oral, nutrition and mental health education support services that are understandable to individuals, including individuals with low health literacy.

(b) Opportunities. (1) Such collaboration must include opportunities for parents to:

(i) Learn about preventive medical and oral health care, emergency first aid, environmental hazards, and health and safety practices for the home including health and developmental consequences of tobacco products use and exposure to lead, and safe sleep;

(ii) Discuss their child's nutritional status with staff, including the importance of physical activity, healthy eating, and the negative health consequences of sugar-sweetened beverages, and how to select and prepare nutritious foods that meet the family's nutrition and food budget needs;

(iii) Learn about healthy pregnancy and postpartum care, as appropriate, including breastfeeding support and treatment options for parental mental health or substance abuse problems, including perinatal depression;

(iv) Discuss with staff and identify issues related to child mental health and social and emotional well-being, including observations and any concerns about their child's mental health, typical and atypical behavior and development, and how to appropriately respond to their child and promote their child's social and emotional development; and,

(v) Learn about appropriate vehicle and pedestrian safety for keeping children safe.

(2) A program must provide ongoing support to assist parents' navigation through health systems to meet the general health and specifically identified needs of their children and must assist parents:

(i) In understanding how to access health insurance for themselves and their families, including information about private and public health insurance and designated enrollment periods;

(ii) In understanding the results of diagnostic and treatment procedures as well as plans for ongoing care; and,

(iii) In familiarizing their children with services they will receive while enrolled in the program and to enroll and participate in a system of ongoing family health care.

**§1302.47 Safety practices.**

(a) A program must establish, train staff on, implement, and enforce a system of health and safety practices that ensure children are kept safe at all times. A program should consult Caring for our Children Basics, available at http://www.acf.hhs.gov/sites/default/files/ecd/caring_for_our_children_basics.pdf, for additional information to develop and implement adequate safety policies and practices described in this part.

(b) A program must develop and implement a system of management, including ongoing training, oversight, correction and continuous improvement in accordance with §1302.102, that includes policies and practices to ensure all facilities, equipment and materials, background checks, safety training, safety and hygiene practices and administrative safety procedures are adequate to ensure child safety. This system must ensure:

(1) Facilities. All facilities where children are served, including areas for learning, playing, sleeping, toileting, and eating are, at a minimum:

(i) Meet licensing requirements in accordance with §§1302.21(d)(1) and 1302.23(d);

(ii) Clean and free from pests;

(iii) Free from pollutants, hazards and toxins that are accessible to children and could endanger children's safety;

(iv) Designed to prevent child injury and free from hazards, including choking, strangulation, electrical, and drowning hazards, hazards posed by appliances and all other safety hazards;

(v) Well lit, including emergency lighting;

(vi) Equipped with safety supplies that are readily accessible to staff, including, at a minimum, fully-equipped and up-to-date first aid kits and appropriate fire safety supplies;

(vii) Free from firearms or other weapons that are accessible to children;

(viii) Designed to separate toileting and diapering areas from areas for preparing food, cooking, eating, or children's activities; and,

(ix) Kept safe through an ongoing system of preventative maintenance.

(2) Equipment and materials. Indoor and outdoor play equipment, cribs, cots, feeding chairs, strollers, and other equipment used in the care of enrolled children, and as applicable, other equipment and materials meet standards set by the Consumer Product Safety Commission

(CPSC) or the American Society for Testing and Materials, International (ASTM). All equipment and materials must at a minimum:

(i) Be clean and safe for children's use and are appropriately disinfected;

(ii) Be accessible only to children for whom they are age appropriate;

(iii) Be designed to ensure appropriate supervision of children at all times;

(iv) Allow for the separation of infants and toddlers from preschoolers during play in center-based programs; and,

(v) Be kept safe through an ongoing system of preventative maintenance.

(3) Background checks. All staff have complete background checks in accordance with §1302.90(b).

(4) Safety training--(i) Staff with regular child contact. All staff with regular child contact have initial orientation training within three months of hire and ongoing training in all state, local, tribal, federal and program-developed health, safety and child care requirements to ensure the safety of children in their care; including, at a minimum, and as appropriate based on staff roles and ages of children they work with, training in:

(A) The prevention and control of infectious diseases;

(B) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(C) Administration of medication, consistent with standards for parental consent;

(D) Prevention and response to emergencies due to food and allergic reactions;

(E) Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

(F) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;

(G) Emergency preparedness and response planning for emergencies;

(H) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(I) Appropriate precautions in transporting children, if applicable;

(J) First aid and cardiopulmonary resuscitation; and,

(K) Recognition and reporting of child abuse and neglect, in accordance with the requirement at paragraph (b)(5) of this section.

(ii) Staff without regular child contact. All staff with no regular responsibility for or contact with children have initial orientation training within three months of hire; ongoing training in all state, local, tribal, federal and program-developed health and safety requirements applicable to their work; and training in the program's emergency and disaster preparedness procedures.

(5) Safety practices. All staff and consultants follow appropriate practices to keep children safe during all activities, including, at a minimum:

(i) Reporting of suspected or known child abuse and neglect, including that staff comply with applicable federal, state, local, and tribal laws;

(ii) Safe sleep practices, including ensuring that all sleeping arrangements for children under 18 months of age use firm mattresses or cots, as appropriate, and for children under 12 months, soft bedding materials or toys must not be used;

(iii) Appropriate indoor and outdoor supervision of children at all times;

(iv) Only releasing children to an authorized adult, and;

(v) All standards of conduct described in §1302.90(c).

(6) Hygiene practices. All staff systematically and routinely implement hygiene practices that at a minimum ensure:

(i) Appropriate toileting, hand washing, and diapering procedures are followed;

(ii) Safe food preparation; and,

(iii) Exposure to blood and body fluids are handled consistent with standards of the Occupational Safety Health Administration.

(7) Administrative safety procedures. Programs establish, follow, and practice, as appropriate, procedures for, at a minimum:

(i) Emergencies;

(ii) Fire prevention and response;

(iii) Protection from contagious disease, including appropriate inclusion and exclusion policies for when a child is ill, and from an infectious disease outbreak, including appropriate notifications of any reportable illness;

(iv) The handling, storage, administration, and record of administration of medication;

(v) Maintaining procedures and systems to ensure children are only released to an authorized adult; and,

(vi) Child specific health care needs and food allergies that include accessible plans of action for emergencies. For food allergies, a program must also post individual child food allergies prominently where staff can view wherever food is served.

(8) Disaster preparedness plan. The program has all-hazards emergency management/disaster preparedness and response plans for more and less likely events including natural and manmade disasters and emergencies, and violence in or near programs.

(c) A program must report any safety incidents in accordance with §1302.102(d)(1)(ii).

## Subpart E—Family and Community Engagement Program Services

### §1302.50 Family engagement.

(a) Purpose. A program must integrate parent and family engagement strategies into all systems and program services to support family well-being and promote children's learning and development. Programs are encouraged to develop innovative two-generation approaches that address prevalent needs of families across their program that may leverage community partnerships or other funding sources.

(b) Family engagement approach. A program must:

(1) Recognize parents as their children's primary teachers and nurturers and implement intentional strategies to engage parents in their children's learning and development and support parent-child relationships, including specific strategies for father engagement;

(2) Develop relationships with parents and structure services to encourage trust and respectful, ongoing two-way communication between staff and parents to create welcoming program environments that incorporate the unique cultural, ethnic, and linguistic backgrounds of families in the program and community;

(3) Collaborate with families in a family partnership process that identifies needs, interests, strengths, goals, and services and resources that support family well-being, including family safety, health, and economic stability;

(4) Provide parents with opportunities to participate in the program as employees or volunteers;

(5) Conduct family engagement services in the family's preferred language, or through an interpreter, to the extent possible, and ensure families have the opportunity to share personal information in an environment in which they feel safe; and,

(6) Implement procedures for teachers, home visitors, and family support staff to share information with each other, as appropriate and consistent with the requirements in part 1303, subpart C, of this chapter; FERPA; or IDEA, to ensure coordinated family engagement strategies with children and families in the classroom, home, and community.

**§1302.51 Parent activities to promote child learning and development.**

(a) A program must promote shared responsibility with parents for children's early learning and development, and implement family engagement strategies that are designed to foster parental confidence and skills in promoting children's learning and development. These strategies must include:

(1) Offering activities that support parent-child relationships and child development including language, dual language, literacy, and bi-literacy development as appropriate;

(2) Providing parents with information about the importance of their child's regular attendance, and partner with them, as necessary, to promote consistent attendance; and,

(3) For dual language learners, information and resources for parents about the benefits of bilingualism and biliteracy.

(b) A program must, at a minimum, offer opportunities for parents to participate in a research-based parenting curriculum that builds on parents' knowledge and offers parents the opportunity to practice parenting skills to promote children's learning and development. A program that chooses to make significant adaptations to the parenting curriculum to better meet the needs of one or more specific populations must work with an expert or experts to develop such adaptations.

**§1302.52 Family partnership services.**

(a) Family partnership process. A program must implement a family partnership process that includes a family partnership agreement and the activities described in this section to support family well-being, including family safety, health, and economic stability, to support child learning and development, to provide, if applicable, services and supports for children with disabilities, and to foster parental confidence and skills that promote the early learning and development of their children. The process must be initiated as early in the program year as possible and continue for as long as the family participates in the program, based on parent interest and need.

(b) Identification of family strengths and needs. A program must implement intake and family assessment procedures to identify family strengths and needs related to the family engagement outcomes as described in the Head Start Parent Family and Community Engagement Framework, including family well-being, parent-child relationships, families as lifelong educators, families as learners, family engagement in transitions, family connections to peers and the local community, and families as advocates and leaders.

(c) Individualized family partnership services. A program must offer individualized family partnership services that:

(1) Collaborate with families to identify interests, needs, and aspirations related to the family engagement outcomes described in paragraph (b) of this section;

(2) Help families achieve identified individualized family engagement outcomes;

(3) Establish and implement a family partnership agreement process that is jointly developed and shared with parents in which staff and families review individual progress, revise goals, evaluate and track whether identified needs and goals are met, and adjust strategies on an ongoing basis, as necessary, and;

(4) Assign staff and resources based on the urgency and intensity of identified family needs and goals.

(d) Existing plans and community resources. In implementing this section, a program must take into consideration any existing plans for the family made with other community agencies and availability of other community resources to address family needs, strengths, and goals, in order to avoid duplication of effort.

**§1302.53 Community partnerships and coordination with other early childhood and education programs.**

(a) Community partnerships. (1) A program must establish ongoing collaborative relationships and partnerships with community organizations such as establishing joint agreements, procedures, or contracts and arranging for onsite delivery of services as appropriate, to facilitate access to community services that are responsive to children's and families' needs and family partnership goals, and community needs and resources, as determined by the community assessment.

(2) A program must establish necessary collaborative relationships and partnerships, with community organizations that may include:

(i) Health care providers, including child and adult mental health professionals, Medicaid managed care networks, dentists, other health professionals, nutritional service providers, providers of prenatal and postnatal support, and substance abuse treatment providers;

(ii) Individuals and agencies that provide services to children with disabilities and their families, elementary schools, state preschool providers, and providers of child care services;

(iii) Family preservation and support services and child protective services and any other agency to which child abuse must be reported under state or tribal law;

(iv) Educational and cultural institutions, such as libraries and museums, for both children and families;

(v) Temporary Assistance for Needy Families, nutrition assistance agencies, workforce development and training programs, adult or family literacy, adult education, and post-secondary education institutions, and agencies or financial institutions that provide asset-building education, products and services to enhance family financial stability and savings;

(vi) Housing assistance agencies and providers of support for children and families experiencing homelessness, including the local educational agency liaison designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq*.);

(vii) Domestic violence prevention and support providers; and,

(viii) Other organizations or businesses that may provide support and resources to families.

(b) Coordination with other programs and systems. A program must take an active role in promoting coordinated systems of comprehensive early childhood services to low-income children and families in their community through communication, cooperation, and the sharing of information among agencies and their community partners, while protecting the privacy of child records in accordance with subpart C of part 1303 of this chapter and applicable federal, state, local, and tribal laws.

(1) Memorandum of understanding. To support coordination between Head Start and publicly funded preschool programs, a program must enter into a memorandum of understanding with the appropriate local entity responsible for managing publicly funded preschool programs in the service area of the program, as described in section 642(e)(5) of the Act.

(2) Quality Rating and Improvement Systems. A program, with the exception of American Indian and Alaska Native programs, must participate in its state or local Quality Rating and Improvement System (QRIS) if:

(i) Its state or local QRIS accepts Head Start monitoring data to document quality indicators included in the state's tiered system;

(ii) Participation would not impact a program's ability to comply with the Head Start Program Performance Standards; and,

(iii) The program has not provided the Office of Head Start with a compelling reason not to comply with this requirement.

(3) Data systems. A program, with the exception of American Indian and Alaska Native programs unless they would like to and to the extent practicable, should integrate and share relevant data with state education data systems, to the extent practicable, if the program can receive similar support and benefits as other participating early childhood programs.

(4) American Indian and Alaska Native programs. An American Indian and Alaska Native program should determine whether or not it will participate in the systems described in paragraphs (b)(2) and (3) of this section.

**Subpart F—Additional Services for Children with Disabilities**

**§1302.60 Full participation in program services and activities.**

A program must ensure enrolled children with disabilities, including but not limited to those who are eligible for services under IDEA, and their families receive all applicable program services delivered in the least restrictive possible environment and that they fully participate in all program activities.

**§1302.61 Additional services for children.**

(a) Additional services for children with disabilities. Programs must ensure the individualized needs of children with disabilities, including but not limited to those eligible for services under IDEA, are being met and all children have access to and can fully participate in the full range of activities and services. Programs must provide any necessary modifications to the environment, multiple and varied formats for instruction, and individualized accommodations and supports as necessary to support the full participation of children with disabilities. Programs must ensure all individuals with disabilities are protected from discrimination under and provided with all services and program modifications required by section 504 of the Rehabilitation Act (29 U.S.C. 794), the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.), and their implementing regulations.

(b) Services during IDEA eligibility determination. While the local agency responsible for implementing IDEA determines a child's eligibility, a program must provide individualized services and supports, to the maximum extent possible, to meet the child's needs. Such

additional supports may be available through a child's health insurance or it may be appropriate or required to provide the needed services and supports under section 504 of the Rehabilitation Act if the child satisfies the definition of disability in section 705(9)(b) of the Rehabilitation Act. When such supports are not available through alternate means, pending the evaluation results and eligibility determination, a program must individualize program services based on available information such as parent input and child observation and assessment data and may use program funds for these purposes.

(c) Additional services for children with an IFSP or IEP. To ensure the individual needs of children eligible for services under IDEA are met, a program must:

(1) Work closely with the local agency responsible for implementing IDEA, the family, and other service partners, as appropriate, to ensure:

(i) Services for a child with disabilities will be planned and delivered as required by their IFSP or IEP, as appropriate;

(ii) Children are working towards the goals in their IFSP or IEP;

(iii) Elements of the IFSP or IEP that the program cannot implement are implemented by other appropriate agencies, related service providers and specialists;

(iv) IFSPs and IEPs are being reviewed and revised, as required by IDEA; and,

(v) Services are provided in a child's regular Early Head Start or Head Start classroom or family child care home to the greatest extent possible.

(2) Plan and implement the transition services described in subpart G of this part, including at a minimum:

(i) For children with an IFSP who are transitioning out of Early Head Start, collaborate with the parents, and the local agency responsible for implementing IDEA, to ensure appropriate steps are undertaken in a timely and appropriate manner to determine the child's eligibility for services under Part B of IDEA; and,

(ii) For children with an IEP who are transitioning out of Head Start to kindergarten, collaborate with the parents, and the local agency responsible for implementing IDEA, to ensure steps are undertaken in a timely and appropriate manner to support the child and family as they transition to a new setting.

**§1302.62 Additional services for parents.**

(a) Parents of all children with disabilities. (1) A program must collaborate with parents of children with disabilities, including but not limited to children eligible for services under IDEA, to ensure the needs of their children are being met, including support to help parents become advocates for services that meet their children's needs and information and skills to help parents understand their child's disability and how to best support the child's development;

(2) A program must assist parents to access services and resources for their family, including securing adaptive equipment and devices and supports available through a child's health insurance or other entities, creating linkages to family support programs, and helping parents establish eligibility for additional support programs, as needed and practicable.

(b) Parents of children eligible for services under IDEA. For parents of children eligible for services under IDEA, a program must also help parents:

(1) Understand the referral, evaluation, and service timelines required under IDEA;

(2) Actively participate in the eligibility process and IFSP or IEP development process with the local agency responsible for implementing IDEA, including by informing parents of their right to invite the program to participate in all meetings;

(3) Understand the purposes and results of evaluations and services provided under an IFSP or IEP; and,

(4) Ensure their children's needs are accurately identified in, and addressed through, the IFSP or IEP.

**§1302.63 Coordination and collaboration with the local agency responsible for implementing IDEA.**

(a) A program must coordinate with the local agency responsible for implementing IDEA to identify children enrolled or who intend to enroll in a program that may be eligible for services under IDEA, including through the process described in §1302.33(a)(3) and through participation in the local agency Child Find efforts.

(b) A program must work to develop interagency agreements with the local agency responsible for implementing IDEA to improve service delivery to children eligible for services under IDEA, including the referral and evaluation process, service coordination, promotion of service provision in the least restrictive appropriate community-based setting and reduction in dual enrollment which causes reduced time in a less restrictive setting, and transition services as children move from services provided under Part C of IDEA to services provided under Part B of IDEA and from preschool to kindergarten.

(c) A program must participate in the development of the IFSP or IEP if requested by the child's parents, and the implementation of the IFSP or IEP. At a minimum, the program must offer:

(1) To provide relevant information from its screenings, assessments, and observations to the team developing a child's IFSP or IEP; and,

(2) To participate in meetings with the local agency responsible for implementing IDEA to develop or review an IEP or IFSP for a child being considered for Head Start enrollment, a currently enrolled child, or a child transitioning from a program.

(d) A program must retain a copy of the IEP or IFSP for any child enrolled in Head Start for the time the child is in the program, consistent with the IDEA requirements in 34 CFR parts 300 and 303.

**Subpart G—Transition Services**

**§1302.70 Transitions from Early Head Start.**

(a) Implementing transition strategies and practices. An Early Head Start program must implement strategies and practices to support successful transitions for children and their families transitioning out of Early Head Start.

(b) Timing for transitions. To ensure the most appropriate placement and service following participation in Early Head Start, such programs must, at least six months prior to each child's third birthday, implement transition planning for each child and family that:

(1) Takes into account the child's developmental level and health and disability status, progress made by the child and family while in Early Head Start, current and changing family circumstances and, the availability of Head Start, other public pre-kindergarten, and other early education and child development services in the community that will meet the needs of the child and family; and,

(2) Transitions the child into Head Start or another program as soon as possible after the child's third birthday but permits the child to remain in Early Head Start for a limited number of additional months following the child's third birthday if necessary for an appropriate transition.

(c) Family collaborations. A program must collaborate with parents of Early Head Start children to implement strategies and activities that support successful transitions from Early Head Start and, at a minimum, provide information about the child's progress during the program year and provide strategies for parents to continue their involvement in and advocacy for the education and development of their child.

(d) Early Head Start and Head Start collaboration. Early Head Start and Head Start programs must work together to maximize enrollment transitions from Early Head Start to Head Start, consistent with the eligibility provisions in subpart A, and promote successful transitions through collaboration and communication.

(e) Transition services for children with an IFSP. A program must provide additional transition services for children with an IFSP, at a minimum, as described in subpart F of this part.

**§1302.71 Transitions from Head Start to kindergarten.**

(a) Implementing transition strategies and practices. A program that serves children who will enter kindergarten in the following year must implement transition strategies to support a successful transition to kindergarten.

(b) Family collaborations for transitions. (1) A program must collaborate with parents of enrolled children to implement strategies and activities that will help parents advocate for and promote successful transitions to kindergarten for their children, including their continued involvement in the education and development of their child.

(2) At a minimum, such strategies and activities must:

(i) Help parents understand their child's progress during Head Start;

(ii) Help parents understand practices they use to effectively provide academic and social support for their children during their transition to kindergarten and foster their continued involvement in the education of their child;

(iii) Prepare parents to exercise their rights and responsibilities concerning the education of their children in the elementary school setting, including services and supports available to children with disabilities and various options for their child to participate in language instruction educational programs; and,

(iv) Assist parents in the ongoing communication with teachers and other school personnel so that parents can participate in decisions related to their children's education.

(c) Community collaborations for transitions. (1) A program must collaborate with local education agencies to support family engagement under section 642(b)(13) of the Act and state departments of education, as appropriate, and kindergarten teachers to implement strategies and activities that promote successful transitions to kindergarten for children, their families, and the elementary school.

(2) At a minimum, such strategies and activities must include:

(i) Coordination with schools or other appropriate agencies to ensure children's relevant records are transferred to the school or next placement in which a child will enroll, consistent with privacy requirements in subpart C of part 1303 of this chapter;

(ii) Communication between appropriate staff and their counterparts in the schools to facilitate continuity of learning and development, consistent with privacy requirements in subpart C of part 1303 of this chapter; and,

(iii) Participation, as possible, for joint training and professional development activities for Head Start and kindergarten teachers and staff.

(3) A program that does not operate during the summer must collaborate with school districts to determine the availability of summer school programming for children who will be entering kindergarten and work with parents and school districts to enroll children in such programs, as appropriate.

(d) Learning environment activities. A program must implement strategies and activities in the learning environment that promote successful transitions to kindergarten for enrolled children, and at a minimum, include approaches that familiarize children with the transition to kindergarten and foster confidence about such transition.

(e) Transition services for children with an IEP. A program must provide additional transition services for children with an IEP, at a minimum, as described in subpart F of this part.

**§1302.72 Transitions between programs.**

(a) For families and children who move out of the community in which they are currently served, including homeless families and foster children, a program must undertake efforts to support effective transitions to other Early Head Start or Head Start programs. If Early Head Start or Head Start is not available, the program should assist the family to identify another early childhood program that meets their needs.

(b) A program that serves children whose families have decided to transition them to other early education programs, including public pre-kindergarten, in the year prior to

kindergarten entry must undertake strategies and activities described in §1302.71(b) and (c)(1) and (2), as practicable and appropriate.

(c) A migrant or seasonal Head Start program must undertake efforts to support effective transitions to other migrant or seasonal Head Start or, if appropriate, Early Head Start or Head Start programs for families and children moving out of the community in which they are currently served.

**Subpart H—Services to Enrolled Pregnant Women**

**§1302.80 Enrolled pregnant women.**

(a) Within 30 days of enrollment, a program must determine whether each enrolled pregnant woman has an ongoing source of continuous, accessible health care – provided by a health care professional that maintains her ongoing health record and is not primarily a source of emergency or urgent care – and, as appropriate, health insurance coverage.

(b) If an enrolled pregnant woman does not have a source of ongoing care as described in paragraph (a) of this section and, as appropriate, health insurance coverage, a program must, as quickly as possible, facilitate her access to such a source of care that will meet her needs.

(c) A program must facilitate the ability of all enrolled pregnant women to access comprehensive services through referrals that, at a minimum, include nutritional counseling,

food assistance, oral health care, mental health services, substance abuse prevention and treatment, and emergency shelter or transitional housing in cases of domestic violence.

(d) A program must provide a newborn visit with each mother and baby to offer support and identify family needs. A program must schedule the newborn visit within two weeks after the infant's birth.

**§1302.81 Prenatal and postpartum information, education, and services.**

(a) A program must provide enrolled pregnant women, fathers, and partners or other relevant family members the prenatal and postpartum information, education and services that address, as appropriate, fetal development, the importance of nutrition, the risks of alcohol, drugs, and smoking, labor and delivery, postpartum recovery, parental depression, infant care and safe sleep practices, and the benefits of breastfeeding.

(b) A program must also address needs for appropriate supports for emotional well-being, nurturing and responsive caregiving, and father engagement during pregnancy and early childhood.

**§1302.82 Family partnership services for enrolled pregnant women.**

(a) A program must engage enrolled pregnant women and other relevant family members, such as fathers, in the family partnership services as described in §1302.52 and include a specific focus on factors that influence prenatal and postpartum maternal and infant health.

(b) A program must engage enrolled pregnant women and other relevant family members, such as fathers, in discussions about program options, plan for the infant's transition to program enrollment, and support the family during the transition process, where appropriate.

**Subpart I—Human Resources Management**

**§1302.90 Personnel policies.**

(a) Establishing personnel policies and procedures. A program must establish written personnel policies and procedures that are approved by the governing body and policy council or policy committee and that are available to all staff.

(b) Background checks and selection procedures. (1) Before a person is hired, directly or through contract, including transportation staff and contractors, a program must conduct an interview, verify references, conduct a sex offender registry check and obtain one of the following:

(i) State or tribal criminal history records, including fingerprint checks; or,

(ii) Federal Bureau of Investigation criminal history records, including fingerprint checks.

(2) A program has 90 days after an employee is hired to complete the background check process by obtaining:

(i) Whichever check listed in paragraph (b)(1) of this section was not obtained prior to the date of hire; and,

(ii) Child abuse and neglect state registry check, if available.

(3) A program must review the information found in each employment application and complete background check to assess the relevancy of any issue uncovered by the complete background check including any arrest, pending criminal charge, or conviction and must use Child Care and Development Fund (CCDF) disqualification factors described in 42 U.S.C. 9858f(c)(1)(D) and 42 U.S.C. 9858f(h)(1) or tribal disqualifications factors to determine whether the prospective employee can be hired or the current employee must be terminated.

(4) A program must ensure a newly hired employee, consultant, or contractor does not have unsupervised access to children until the complete background check process described in paragraphs (b)(1) through (3) of this section is complete.

(5) A program must conduct the complete background check for each employee, consultant, or contractor at least once every five years which must include each of the four checks listed in paragraphs (b)(1) and (2) of this section, and review and make employment decisions based on the information as described in paragraph (b)(3) of this section, unless the program can demonstrate to the responsible HHS official that it has a more stringent system in place that will ensure child safety.

(6) A program must consider current and former program parents for employment vacancies for which such parents apply and are qualified.

(c) Standards of conduct. (1) A program must ensure all staff, consultants, contractors, and volunteers abide by the program's standards of conduct that:

(i) Ensure staff, consultants, contractors, and volunteers implement positive strategies to support children's well-being and prevent and address challenging behavior;

(ii) Ensure staff, consultants, contractors, and volunteers do not maltreat or endanger the health or safety of children, including, at a minimum, that staff must not:

(A) Use corporal punishment;

(B) Use isolation to discipline a child;

(C) Bind or tie a child to restrict movement or tape a child's mouth;

(D) Use or withhold food as a punishment or reward;

(E) Use toilet learning/training methods that punish, demean, or humiliate a child;

(F) Use any form of emotional abuse, including public or private humiliation, rejecting, terrorizing, extended ignoring, or corrupting a child;

(G) Physically abuse a child;

(H) Use any form of verbal abuse, including profane, sarcastic language, threats, or derogatory remarks about the child or child's family; or,

(I) Use physical activity or outdoor time as a punishment or reward;

(iii) Ensure staff, consultants, contractors, and volunteers respect and promote the unique identity of each child and family and do not stereotype on any basis, including gender, race, ethnicity, culture, religion, disability, sexual orientation, or family composition;

(iv) Require staff, consultants, contractors, and volunteers to comply with program confidentiality policies concerning personally identifiable information about children, families, and other staff members in accordance with subpart C of part 1303 of this chapter and applicable federal, state, local, and tribal laws; and,

(v) Ensure no child is left alone or unsupervised by staff, consultants, contractors, or volunteers while under their care.

(2) Personnel policies and procedures must include appropriate penalties for staff, consultants, and volunteers who violate the standards of conduct.

(d) Communication with dual language learners and their families. (1) A program must ensure staff and program consultants or contractors are familiar with the ethnic backgrounds and heritages of families in the program and are able to serve and effectively communicate, either directly or through interpretation and translation, with children who are dual language learners and to the extent feasible, with families with limited English proficiency.

(2) If a majority of children in a class or home-based program speak the same language, at least one class staff member or home visitor must speak such language.

**§1302.91 Staff qualifications and competency requirements.**

(a) Purpose. A program must ensure all staff, consultants, and contractors engaged in the delivery of program services have sufficient knowledge, training and experience, and competencies to fulfill the roles and responsibilities of their positions and to ensure high-quality service delivery in accordance with the program performance standards. A program must provide

ongoing training and professional development to support staff in fulfilling their roles and responsibilities.

(b) Early Head Start or Head Start director. A program must ensure an Early Head Start or Head Start director hired after [insert date 60 days after date of publication in the Federal Register], has, at a minimum, a baccalaureate degree and experience in supervision of staff, fiscal management, and administration.

-

(c) Fiscal officer. A program must assess staffing needs in consideration of the fiscal complexity of the organization and applicable financial management requirements and secure the regularly scheduled or ongoing services of a fiscal officer with sufficient education and experience to meet their needs. A program must ensure a fiscal officer hired after [insert date 60 days after date of publication in the Federal Register], is a certified public accountant or has, at a minimum, a baccalaureate degree in accounting, business, fiscal management, or a related field.

(d) Child and family services management staff qualification requirements--(1) Family, health, and disabilities management. A program must ensure staff responsible for management and oversight of family services, health services, and services to children with disabilities hired after [insert date 60 days after date of publication in the Federal Register], have, at a minimum, a baccalaureate degree, preferably related to one or more of the disciplines they oversee.

(2) Education management. As prescribed in section 648A(a)(2)(B)(i) of the Act, a program must ensure staff and consultants that serve as education managers or coordinators, including those that serve as curriculum specialists, have a baccalaureate or advanced degree in

early childhood education or a baccalaureate or advanced degree and equivalent coursework in early childhood education with early education teaching experience.

(e) Child and family services staff--(1) Early Head Start center-based teacher qualification requirements. As prescribed in section 645A(h) of the Act, a program must ensure center-based teachers that provide direct services to infants and toddlers in Early Head Start centers have a minimum of a Child Development Associate (CDA) credential or comparable credential, and have been trained or have equivalent coursework in early childhood development with a focus on infant and toddler development.

(2) Head Start center-based teacher qualification requirements. (i) The Secretary must ensure no less than fifty percent of all Head Start teachers, nationwide, have a baccalaureate degree in child development, early childhood education, or equivalent coursework.

(ii) As prescribed in section 648A(a)(3)(B) of the Act, a program must ensure all center-based teachers have at least an associate's or bachelor's degree in child development or early childhood education, equivalent coursework, or otherwise meet the requirements of section 648(a)(3)(B) of the Act.

(3) Head Start assistant teacher qualification requirements. As prescribed in section 648A(a)(2)(B)(ii) of the Act, a program must ensure Head Start assistant teachers, at a minimum, have a CDA credential or a state-awarded certificate that meets or exceeds the requirements for a CDA credential, are enrolled in a program that will lead to an associate or baccalaureate degree

or, are enrolled in a CDA credential program to be completed within two years of the time of hire.

(4) Family child care provider qualification requirements. (i) A program must ensure family child care providers have previous early child care experience and, at a minimum, are enrolled in a Family Child Care CDA program or state equivalent, or an associate's or baccalaureate degree program in child development or early childhood education prior to beginning service provision, and for the credential acquire it within eighteen months of beginning to provide services.

(ii) By August 1, 2018, a child development specialist, as required for family child care in §1302.23(e), must have, at a minimum, a baccalaureate degree in child development, early childhood education, or a related field.

(5) Center-based teachers, assistant teachers, and family child care provider competencies. A program must ensure center-based teachers, assistant teachers, and family child care providers demonstrate competency to provide effective and nurturing teacher-child interactions, plan and implement learning experiences that ensure effective curriculum implementation and use of assessment and promote children's progress across the standards described in the Head Start Early Learning Outcomes Framework: Ages Birth to Five and applicable state early learning and development standards, including for children with disabilities and dual language learners, as appropriate.

(6) Home visitors. A program must ensure home visitors providing home-based education services:

(i) Have a minimum of a home-based CDA credential or comparable credential, or equivalent coursework as part of an associate's or bachelor's degree; and,

(ii) Demonstrate competency to plan and implement home-based learning experiences that ensure effective implementation of the home visiting curriculum and promote children's progress across the standards described in the Head Start Early Learning Outcomes Framework: Ages Birth to Five, including for children with disabilities and dual language learners, as appropriate, and to build respectful, culturally responsive, and trusting relationships with families.

(7) Family services staff qualification requirements. A program must ensure staff who work directly with families on the family partnership process hired after [insert date 60 days after date of publication in the Federal Register], have within eighteen months of hire, at a minimum, a credential or certification in social work, human services, family services, counseling or a related field.

(8) Health professional qualification requirements. (i) A program must ensure health procedures are performed only by a licensed or certified health professional.

(ii) A program must ensure all mental health consultants are licensed or certified mental health professionals. A program must use mental health consultants with knowledge of and experience in serving young children and their families, if available in the community.

(iii) A program must use staff or consultants to support nutrition services who are registered dieticians or nutritionists with appropriate qualifications.

(f) Coaches. A program must ensure coaches providing the services described in § 1302.92(c) have a minimum of a baccalaureate degree in early childhood education or a related field.

**§1302.92 Training and professional development.**

(a) A program must provide to all new staff, consultants, and volunteers an orientation that focuses on, at a minimum, the goals and underlying philosophy of the program and on the ways they are implemented.

(b) A program must establish and implement a systematic approach to staff training and professional development designed to assist staff in acquiring or increasing the knowledge and skills needed to provide high-quality, comprehensive services within the scope of their job responsibilities, and attached to academic credit as appropriate. At a minimum, the system must include:

(1) Staff completing a minimum of 15 clock hours of professional development per year. For teaching staff, such professional development must meet the requirements described in section 648A(a)(5) of the Act.

(2) Training on methods to handle suspected or known child abuse and neglect cases, that comply with applicable federal, state, local, and tribal laws;

(3) Training for child and family services staff on best practices for implementing family engagement strategies in a systemic way, as described throughout this part;

(4) Training for child and family services staff, including staff that work on family services, health, and disabilities, that builds their knowledge, experience, and competencies to improve child and family outcomes; and,

(5) Research-based approaches to professional development for education staff, that are focused on effective curricula implementation, knowledge of the content in Head Start Early Learning Outcomes Framework: Ages Birth to Five, partnering with families, supporting children with disabilities and their families, providing effective and nurturing adult-child interactions, supporting dual language learners as appropriate, addressing challenging behaviors, preparing children and families for transitions (as described in subpart G of this part), and use of data to individualize learning experiences to improve outcomes for all children.

(c) A program must implement a research-based, coordinated coaching strategy for education staff that:

(1) Assesses all education staff to identify strengths, areas of needed support, and which staff would benefit most from intensive coaching;

(2) At a minimum, provides opportunities for intensive coaching to those education staff identified through the process in paragraph (c)(1) of this section, including opportunities to be observed and receive feedback and modeling of effective teacher practices directly related to program performance goals;

(3) At a minimum, provides opportunities for education staff not identified for intensive coaching through the process in paragraph (c)(1) of this section to receive other forms of research-based professional development aligned with program performance goals;

(4) Ensures intensive coaching opportunities for the staff identified through the process in paragraph (c)(1) of this section that:

(i) Align with the program's school readiness goals, curricula, and other approaches to professional development;

(ii) Utilize a coach with adequate training and experience in adult learning and in using assessment data to drive coaching strategies aligned with program performance goals;

(iii) Provide ongoing communication between the coach, program director, education director, and any other relevant staff; and,

(iv) Include clearly articulated goals informed by the program's goals, as described in §1302.102, and a process for achieving those goals; and,

(5) Establishes policies that ensure assessment results are not used to solely determine punitive actions for staff identified as needing support, without providing time and resources for staff to improve.

(d) If a program needs to develop or significantly adapt their approach to research-based professional development to better meet the training needs of education staff, such that it does not include the requirements in paragraph (c) of this section, the program must partner with external early childhood education professional development experts. A program must assess whether the adaptation adequately supports staff professional development, consistent with the process laid out in subpart J of this part.

**§1302.93 Staff health and wellness.**

(a) A program must ensure each staff member has an initial health examination and a periodic re-examination as recommended by their health care provider in accordance with state, tribal, or local requirements, that include screeners or tests for communicable diseases, as

appropriate. The program must ensure staff do not, because of communicable diseases, pose a significant risk to the health or safety of others in the program that cannot be eliminated or reduced by reasonable accommodation, in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

(b) A program must make mental health and wellness information available to staff regarding health issues that may affect their job performance, and must provide regularly scheduled opportunities to learn about mental health, wellness, and health education.

**§1302.94 Volunteers.**

(a) A program must ensure regular volunteers have been screened for appropriate communicable diseases in accordance with state, tribal or local laws. In the absence of state, tribal or local law, the Health Services Advisory Committee must be consulted regarding the need for such screenings.

(b) A program must ensure children are never left alone with volunteers.

**Subpart J—Program Management and Quality Improvement**

**§1302.100 Purpose.**

A program must provide management and a process of ongoing monitoring and continuous improvement for achieving program goals that ensures child safety and the delivery of effective, high-quality program services.

**§1302.101 Management system.**

(a) Implementation. A program must implement a management system that:

(1) Ensures a program, fiscal, and human resource management structure that provides effective management and oversight of all program areas and fiduciary responsibilities to enable delivery of high-quality services in all of the program services described in subparts C, D, E, F, G, and H of this part;

(2) Provides regular and ongoing supervision to support individual staff professional development and continuous program quality improvement;

(3) Ensures budget and staffing patterns that promote continuity of care for all children enrolled, allow sufficient time for staff to participate in appropriate training and professional development, and allow for provision of the full range of services described in subparts C, D, E, F, G, and H of this part; and,

(4) Maintains an automated accounting and record keeping system adequate for effective oversight.

(b) Coordinated approaches. At the beginning of each program year, and on an ongoing basis throughout the year, a program must design and implement program-wide coordinated approaches that ensure:

(1) The training and professional development system, as described in §1302.92, effectively supports the delivery and continuous improvement of high-quality services;

(2) The full and effective participation of children who are dual language learners and their families, by:

(i) Utilizing information from the program's community assessment about the languages spoken throughout the program service area to anticipate child and family needs;

(ii) Identifying community resources and establishing ongoing collaborative relationships and partnerships with community organizations consistent with the requirements in §1302.53(a); and,

(iii) Systematically and comprehensively addressing child and family needs by facilitating meaningful access to program services, including, at a minimum, curriculum, instruction, staffing, supervision, and family partnerships with bilingual staff, oral language assistance and interpretation, or translation of essential program materials, as appropriate.

(3) The full and effective participation of all children with disabilities, including but not limited to children eligible for services under IDEA, by providing services with appropriate

facilities, program materials, curriculum, instruction, staffing, supervision, and partnerships, at a minimum, consistent with section 504 of the Rehabilitation Act and the Americans with Disabilities Act; and,

(4) The management of program data to effectively support the availability, usability, integrity, and security of data. A program must establish procedures on data management, and have them approved by the governing body and policy council, in areas such as quality of data and effective use and sharing of data, while protecting the privacy of child records in accordance with subpart C of part 1303 of this chapter and applicable federal, state, local, and tribal laws.

**§1302.102 Achieving program goals.**

(a) Establishing program goals. A program, in collaboration with the governing body and policy council, must establish goals and measurable objectives that include:

(1) Strategic long-term goals for ensuring programs are and remain responsive to community needs as identified in their community assessment as described in subpart A of this part;

(2) Goals for the provision of educational, health, nutritional, and family and community engagement program services as described in the program performance standards to further promote the school readiness of enrolled children;

(3) School readiness goals that are aligned with the Head Start Early Learning Outcomes Framework: Ages Birth to Five, state and tribal early learning standards, as appropriate, and requirements and expectations of schools Head Start children will attend, per the requirements of subpart B of part 1304 of this part; and,

(4) Effective health and safety practices to ensure children are safe at all times, per the requirements in §§1302.47, 1302.90(b) and (c), 1302.92(c)(1), and 1302.94 and part 1303, subpart F, of this chapter.

(b) Monitoring program performance--(1) Ongoing compliance oversight and correction. In order to ensure effective ongoing oversight and correction, a program must establish and implement a system of ongoing oversight that ensures effective implementation of the program performance standards, including ensuring child safety, and other applicable federal regulations as described in this part, and must:

(i) Collect and use data to inform this process;

(ii) Correct quality and compliance issues immediately, or as quickly as possible;

(iii) Work with the governing body and the policy council to address issues during the ongoing oversight and correction process and during federal oversight; and,

(iv) Implement procedures that prevent recurrence of previous quality and compliance issues, including previously identified deficiencies, safety incidents, and audit findings.

(2) Ongoing assessment of program goals. A program must effectively oversee progress towards program goals on an ongoing basis and annually must:

(i) Conduct a self-assessment that uses program data including aggregated child assessment data, and professional development and parent and family engagement data as appropriate, to evaluate the program's progress towards meeting goals established under paragraph (a) of this section, compliance with program performance standards throughout the program year, and the effectiveness of the professional development and family engagement systems in promoting school readiness;

(ii) Communicate and collaborate with the governing body and policy council, program staff, and parents of enrolled children when conducting the annual self-assessment; and,

(iii) Submit findings of the self-assessment, including information listed in paragraph (b)(2)(i) of this section to the responsible HHS official.

(c) Using data for continuous improvement. (1) A program must implement a process for using data to identify program strengths and needs, develop and implement plans that address program needs, and continually evaluate compliance with program performance standards and progress towards achieving program goals described in paragraph (a) of this section.

(2) This process must:

(i) Ensure data is aggregated, analyzed and compared in such a way to assist agencies in identifying risks and informing strategies for continuous improvement in all program service areas;

(ii) Ensure child-level assessment data is aggregated and analyzed at least three times a year, including for sub-groups, such as dual language learners and children with disabilities, as appropriate, except in programs operating fewer than 90 days, and used with other program data described in paragraph (c)(2)(iv) of this section to direct continuous improvement related to curriculum choice and implementation, teaching practices, professional development, program design and other program decisions, including changing or targeting scope of services; and,

(iii) For programs operating fewer than 90 days, ensures child assessment data is aggregated and analyzed at least twice during the program operating period, including for subgroups, such as dual language learners and children with disabilities, as appropriate, and used with other program data described in paragraph (c)(2)(iv) of this section to direct continuous improvement related to curriculum choice and implementation, teaching practices, professional development, program design and other program decisions, including changing or targeting scope of services;

(iv) Use information from ongoing monitoring and the annual self-assessment, and program data on teaching practice, staffing and professional development, child-level

assessments, family needs assessments, and comprehensive services, to identify program needs, and develop and implement plans for program improvement; and,

(v) Use program improvement plans as needed to either strengthen or adjust content and strategies for professional development, change program scope and services, refine school readiness and other program goals, and adapt strategies to better address the needs of sub-groups.

(d) Reporting. (1) A program must submit:

(i) Status reports, determined by ongoing oversight data, to the governing body and policy council, at least semi-annually;

(ii) Reports, as appropriate, to the responsible HHS official immediately or as soon as practicable, related to any significant incidents affecting the health and safety of program participants, circumstances affecting the financial viability of the program, breaches of personally identifiable information, or program involvement in legal proceedings, any matter for which notification or a report to state, tribal, or local authorities is required by applicable law, including at a minimum:

(A) Any reports regarding agency staff or volunteer compliance with federal, state, tribal, or local laws addressing child abuse and neglect or laws governing sex offenders;

(B) Incidents that require classrooms or centers to be closed for any reason;

(C) Legal proceedings by any party that are directly related to program operations; and,

(D) All conditions required to be reported under §1304.12, including disqualification from the Child and Adult Care Food Program (CACFP) and license revocation.

(2) Annually, a program must publish and disseminate a report that complies with section 644(a)(2) of the Act and includes a summary of a program's most recent community assessment, as described in §1302.11(b), consistent with privacy protections in subpart C of part 1303 of this chapter.

(3) If a program has had a deficiency identified, it must submit, to the responsible HHS official, a quality improvement plan as required in section 641A(e)(2) of the Act.

**1302.103 Implementation of program performance standards.**

(a) A current program as of [insert date 60 days after date of publication in the Federal Register], must implement a program-wide approach for the effective and timely implementation of the changes to the program performance standards, including the purchase of materials and allocation of staff time, as appropriate.

(b) A program's approach to implement the changes included in parts 1301 through 1304 of this chapter must ensure adequate preparation for effective and timely service delivery to

children and their families including, at a minimum, review of community assessment data to determine the most appropriate strategy for implementing required program changes, including assessing any changes in the number of children who can be served, as necessary, the purchase of and training on any curriculum, assessment, or other materials, as needed, assessment of program-wide professional development needs, assessment of staffing patterns, the development of coordinated approaches described in §1302.101(b), and the development of appropriate protections for data sharing; and children enrolled in the program on [insert date 60 days after date of publication in the Federal Register] are not displaced during a program year and that children leaving Early Head Start or Head Start at the end of the program year following [insert date 60 days after date of publication in the Federal Register] as a result of any slot reductions received services described in §§1302.70 and 1302.72 to facilitate successful transitions to other programs.

**PART 1303 -- FINANCIAL AND ADMINISTRATIVE REQUIREMENTS**

**Sec.**

1303.1 Overview.

**Subpart A—Financial Requirements**

1303.2 Purpose.

1303.3 Other requirements.

1303.4 Federal financial assistance, non-federal match, and waiver requirements.

1303.5 Limitations on development and administrative costs.

**Subpart B—Administrative Requirements**

1303.10 Purpose.

1303.11 Limitations and prohibitions.

1303.12 Insurance and bonding.

**Subpart C—Protections for the Privacy of Child Records**

1303.20 Establishing procedures.

1303.21 Program procedures – applicable confidentiality provisions

1303.22 Disclosures with, and without, parental consent.

1303.23 Parental rights.

1303.24 Maintaining records.

**Subpart D—Delegation of Program Operations**

1303.30 Grantee responsibility and accountability.

1303.31 Determining and establishing delegate agencies.

1303.32 Evaluations and corrective actions for delegate agencies.

1303.33 Termination of delegate agencies.

**Subpart E—Facilities**

1303.40 Purpose.

1303.41 Approval of previously purchased facilities.

1303.42 Eligibility to purchase, construct, and renovate facilities.

1303.43 Use of grant funds to pay fees.

1303.44 Applications to purchase, construct, and renovate facilities.

1304.45 Cost-comparison to purchase, construct, and renovate facilities.

1303.46 Recording and posting notices of federal interest.

1303.47 Contents of notices of federal interest.

1303.48 Grantee limitations on federal interest.

1303.49 Protection of federal interest in mortgage agreements.

1303.50 Third party leases and occupancy arrangements.

1303.51 Subordination of the federal interest.

1303.52 Insurance, bonding, and maintenance.

1303.53 Copies of documents.

1303.54 Record retention.

1303.55 Procurement procedures.

1303.56 Inspection of work.

**Subpart F—Transportation**

1303.70 Purpose.

1303.71 Vehicles.

1303.72 Vehicle operation.

1303.73 Trip routing.

1303.74 Safety procedures.

1303.75 Children with disabilities.

AUTHORITY: 42 U.S.C. 9801 *et seq.*

**§1303.1 Overview.**

Section 641A of the Act requires that the Secretary modify as necessary program performance standards including administrative and financial management standards (section

641A(a)(1)(C)). This part specifies the financial and administrative requirements of agencies. Subpart A of this part outlines the financial requirements consistent with sections 640(b) and 644(b) and (c) of the Act. Subpart B of this part specifies the administrative requirements consistent with sections 644(a)(1), 644(e), 653, 654, 655, 656, and 657A of the Act. Subpart C of this part implements the statutory provision at section 641A(b)(4) of the Act that directs the Secretary to ensure the confidentiality of any personally identifiable data, information, and records collected or maintained. Subpart D of this part prescribes regulations for the operation of delegate agencies consistent with Section 641(A)(d). Subpart E of this part implements the statutory requirements in Section 644(c), (f) and (g) related to facilities. Subpart F prescribes regulations on transportation consistent with section 640(i) of the Act.

**Subpart A—Financial Requirements**

**§1303.2 Purpose.**

This subpart establishes regulations applicable to program administration and grants management for all grants under the Act.

**§1303.3 Other requirements.**

The following chart includes HHS regulations that apply to all grants made under the Act:

| CITE | TITLE |
|---|---|
| 45 CFR part 16 | Department grant appeals process |
| 45 CFR part 30 | HHS Standards and Procedures for Claims collection |
| 45 CFR part 46 | Protection of human subjects |
| 45 CFR part 75 | Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards |
| 45 CFR part 80 | Nondiscrimination under programs receiving federal assistance through the Department of Health and Human Services- Effectuation of title VI and VII of the Civil Rights Act of 1964 |
| 45 CFR part 81 | Practice and procedure for hearings under part 80 |
| 45 CFR part 84 | Nondiscrimination on the basis of handicap in federally assisted programs |
| 45 CFR part 87 | Equal treatment for faith based organizations |
| 2 CFR part 170 | FFATA Sub-award and executive compensation |
| 2 CFR 25.110 | CCR/DUNS requirement |

**§1303.4 Federal financial assistance, non-federal match, and waiver requirements.**

In accordance with section 640(b) of the Act, federal financial assistance to a grantee will not exceed 80 percent of the approved total program costs. A grantee must contribute 20 percent

as non-federal match each budget period. The responsible HHS official may approve a waiver of all or a portion of the non-federal match requirement on the basis of the grantee's written application submitted for the budget period and any supporting evidence the responsible HHS official requires. In deciding whether to grant a waiver, the responsible HHS official will consider the circumstances specified at section 640(b) of the Act and whether the grantee has made a reasonable effort to comply with the non-federal match requirement.

**§1303.5 Limitations on development and administrative costs.**

(a) Limitations. (1) Costs to develop and administer a program cannot be excessive or exceed 15 percent of the total approved program costs. Allowable costs to develop and administer a Head Start program cannot exceed 15 percent of the total approved program costs, which includes both federal costs and non-federal match, unless the responsible HHS official grants a waiver under paragraph (b) of this section that approves a higher percentage in order to carry out the purposes of the Act.

(2) To assess total program costs and determine whether a grantee meets this requirement, the grantee must:

(i) Determine the costs to develop and administer its program, including the local costs of necessary resources;

(ii) Categorize total costs as development and administrative or program costs;

(iii) Identify and allocate the portion of dual benefits costs that are for development and administration;

(iv) Identify and allocate the portion of indirect costs that are for development and administration versus program costs; and,

(v) Delineate all development and administrative costs in the grant application and calculate the percentage of total approved costs allocated to development and administration.

(b) Waivers. (1) The responsible HHS official may grant a waiver for each budget period if a delay or disruption to program services is caused by circumstances beyond the agency's control, or if an agency is unable to administer the program within the 15 percent limitation and if the agency can demonstrate efforts to reduce its development and administrative costs.

(2) If at any time within the grant funding cycle, a grantee estimates development and administration costs will exceed 15 percent of total approved costs, it must submit a waiver request to the responsible HHS official that explains why costs exceed the limit, that indicates the time period the waiver will cover, and that describes what the grantee will do to reduce its development and administrative costs to comply with the 15 percent limit after the waiver period.

**Subpart B—Administrative Requirements**

**§1303.10 Purpose.**

A grantee must observe standards of organization, management, and administration that will ensure, so far as reasonably possible, that all program activities are conducted in a manner consistent with the purposes of the Act and the objective of providing assistance effectively, efficiently, and free of any taint of partisan political bias or personal or family favoritism.

**§1303.11 Limitations and prohibitions.**

An agency must adhere to sections 644(e), 644(g)(3), 653, 654, 655, 656, and 657A of the Act. These sections pertain to union organizing, the Davis-Bacon Act, limitations on compensation, nondiscrimination, unlawful activities, political activities, and obtaining parental consent.

**§1303.12 Insurance and bonding.**

An agency must have an ongoing process to identify risks and have cost-effective insurance for those identified risks; a grantee must require the same for its delegates. The agency must specifically consider the risk of accidental injury to children while participating in the program. The grantee must submit proof of appropriate coverage in its initial application for funding. The process of identifying risks must also consider the risk of losses resulting from fraudulent acts by individuals authorized to disburse Head Start funds. Consistent with 45 CFR

part 75, if the agency lacks sufficient coverage to protect the federal government's interest, the agency must maintain adequate fidelity bond coverage.

**Subpart C—Protections for the Privacy of Child Records**

**§1303.20 Establishing procedures.**

A program must establish procedures to protect the confidentiality of any personally identifiable information (PII) in child records.

**§1303.21 Program procedures – applicable confidentiality provisions**.

(a) If a program is an educational agency or institution that receives funds under a program administered by the Department of Education and therefore is subject to the confidentiality provisions under the Family Educational Rights and Privacy Act (FERPA), then it must comply with those confidentiality provisions of FERPA instead of the provisions in this subpart.

(b) If a program serves a child who is referred to, or found eligible for services under, IDEA, then a program must comply with the applicable confidentiality provisions in Part B or Part C of IDEA to protect the PII in records of those children, and, therefore, the provisions in this subpart do not apply to those children.

**§1303.22 Disclosures with, and without, parental consent.**

(a) Disclosure with parental consent. (1) Subject to the exceptions in paragraphs (b) and (c) of this section, the procedures to protect PII must require the program to obtain a parent's written consent before the program may disclose such PII from child records.

(2) The procedures to protect PII must require the program to ensure the parent's written consent specifies what child records may be disclosed, explains why the records will be disclosed, and identifies the party or class of parties to whom the records may be disclosed. The written consent must be signed and dated.

(3) "Signed and dated written consent" under this part may include a record and signature in electronic form that:

(i) Identifies and authenticates a particular person as the source of the electronic consent; and,

(ii) Indicates such person's approval of the information.

(4) The program must explain to the parent that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive and therefore it does not apply to an action that occurred before the consent was revoked.

(b) Disclosure without parental consent but with parental notice and opportunity to refuse. The procedures to protect PII must allow the program to disclose such PII from child records without parental consent if the program notifies the parent about the disclosure, provides the parent, upon the parent's request, a copy of the PII from child records to be disclosed in advance, and gives the parent an opportunity to challenge and refuse disclosure of the information in the records, before the program forwards the records to officials at a program, school, or school district in which the child seeks or intends to enroll or where the child is already enrolled so long as the disclosure is related to the child's enrollment or transfer.

(c) Disclosure without parental consent. The procedures to protect PII must allow the program to disclose such PII from child records without parental consent to:

(1) Officials within the program or acting for the program, such as contractors and subrecipients, if the official provides services for which the program would otherwise use employees, the program determines it is necessary for Head Start services, and the program maintains oversight with respect to the use, further disclosure, and maintenance of child records, such as through a written agreement;

(2) Officials within the program, acting for the program, or from a federal or state entity, in connection with an audit or evaluation of education or child development programs, or for enforcement of or compliance with federal legal requirements of the program; provided the program maintains oversight with respect to the use, further disclosure, and maintenance of child

records, such as through a written agreement, including the destruction of the PII when no longer needed for the purpose of the disclosure, except when the disclosure is specifically authorized by federal law or by the responsible HHS official;

(3) Officials within the program, acting for the program, or from a federal or state entity, to conduct a study to improve child and family outcomes, including improving the quality of programs, for, or on behalf of, the program, provided the program maintains oversight with respect to the use, further disclosure, and maintenance of child records, such as through a written agreement, including the destruction of the PII when no longer needed for the purpose of the disclosure;

(4) Appropriate parties in order to address a disaster, health or safety emergency during the period of the emergency, or a serious health and safety risk such as a serious food allergy, if the program determines that disclosing the PII from child records is necessary to protect the health or safety of children or other persons;

(5) Comply with a judicial order or lawfully issued subpoena, provided the program makes a reasonable effort to notify the parent about all such subpoenas and court orders in advance of the compliance therewith, unless:

(i) A court has ordered that neither the subpoena, its contents, nor the information provided in response be disclosed;

(ii) The disclosure is in compliance with an ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.

(iii) A parent is a party to a court proceeding directly involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101)) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the program is not required; or,

(iv) A program initiates legal action against a parent or a parent initiates legal action against a program, then a program may disclose to the court, also without a court order or subpoena, the child records relevant for the program to act as plaintiff or defendant.

(6) The Secretary of Agriculture or an authorized representative from the Food and Nutrition Service to conduct program monitoring, evaluations, and performance measurements for the Child and Adult Care Food Program under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966, if the results will be reported in an aggregate form that does not identify any individual: provided, that any data collected must be protected in a manner that will not permit the personal identification of students and their parents by other than the authorized representatives of the Secretary of Agriculture and any PII must be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements;

(7) A caseworker or other representative from a state, local, or tribal child welfare agency, who has the right to access a case plan for a child who is in foster care placement, when such agency is legally responsible for the child's care and protection, under state or tribal law, if the agency agrees in writing to protect PII, to use information from the child's case plan for specific purposes intended of addressing the child's needs, and to destroy information that is no longer needed for those purposes; and,

(8) Appropriate parties in order to address suspected or known child maltreatment and is consistent with applicable federal, state, local, and tribal laws on reporting child abuse and neglect.

(d) Written agreements. When a program establishes a written agreement with a third party, the procedures to protect such PII must require the program to annually review and, if necessary, update the agreement. If the third party violates the agreement, then the program may:

(1) Provide the third party an opportunity to self-correct; or,

(2) Prohibit the third party from access to records for a set period of time as established by the programs governing body and policy council.

(e) Annual notice. The procedures to protect PII must require the program to annually notify parents of their rights in writing described in this subpart and applicable definitions in part 1305 of this chapter, and include in that notice a description of the types of PII that may be disclosed, to whom the PII may be disclosed, and what may constitute a necessary reason for the disclosure without parental consent as described in paragraph (c) of this section.

(f) Limit on disclosing PII. A program must only disclose the information that is deemed necessary for the purpose of the disclosure.

**§1303.23 Parental rights.**

(a) Inspect record. (1) A parent has the right to inspect child records.

(2) If the parent requests to inspect child records, the program must make the child records available within a reasonable time, but no more than 45 days after receipt of request.

(3) If a program maintains child records that contain information on more than one child, the program must ensure the parent only inspects information that pertains to the parent's child.

(4) The program shall not destroy a child record with an outstanding request to inspect and review the record under this section.

(b) Amend record. (1) A parent has the right to ask the program to amend information in the child record that the parent believes is inaccurate, misleading, or violates the child's privacy.

(2) The program must consider the parent's request and, if the request is denied, render a written decision to the parent within a reasonable time that informs the parent of the right to a hearing.

(c) Hearing. (1) If the parent requests a hearing to challenge information in the child record, the program must schedule a hearing within a reasonable time, notify the parent, in advance, about the hearing, and ensure the person who conducts the hearing does not have a direct interest in its outcome.

(2) The program must ensure the hearing affords the parent a full and fair opportunity to present evidence relevant to the issues.

(3) If the program determines from evidence presented at the hearing that the information in the child records is inaccurate, misleading, or violates the child's privacy, the program must either amend or remove the information and notify the parent in writing.

(4) If the program determines from evidence presented at the hearing that information in the child records is accurate, does not mislead, or otherwise does not violate the child's privacy, the program must inform the parent of the right to place a statement in the child records that either comments on the contested information or that states why the parent disagrees with the program's decision, or both.

(d) Right to copy of record. The program must provide a parent, free of charge, an initial copy of child records disclosed to third parties with parental consent and, upon parent request, an initial copy of child records disclosed to third parties, unless the disclosure was for a court that ordered neither the subpoena, its contents, nor the information furnished in response be disclosed.

(e) Right to inspect written agreements. A parent has the right to review any written agreements with third parties.

**§1303.24 Maintaining records.**

(a) A program must maintain child records in a manner that ensures only parents, and officials within the program or acting on behalf of the program have access, and such records must be destroyed within a reasonable timeframe after such records are no longer needed or required to be maintained.

(b) A program must maintain, with the child records, for as long as the records are maintained, information on all individuals, agencies, or organizations to whom a disclosure of PII from the child records was made (except for program officials and parents) and why the disclosure was made. If a program uses a web-based data system to maintain child records, the program must ensure such child records are adequately protected and maintained according to current industry security standards.

(c) If a parent places a statement in the child record, the program must maintain the statement with the contested part of the child record for as long as the program maintains the record and, disclose the statement whenever it discloses the portion of the child record to which the statement relates.

## Subpart D—Delegation of Program Operations

### §1303.30 Grantee responsibility and accountability.

A grantee is accountable for the services its delegate agencies provide. The grantee supports, oversees and ensures delegate agencies provide high-quality services to children and families and meet all applicable Head Start requirements. The grantee can only terminate a delegate agency if the grantee shows cause why termination is necessary and provides a process for delegate agencies to appeal termination decisions. The grantee retains legal responsibility and authority and bears financial accountability for the program when services are provided by delegate agencies.

### §1303.31 Determining and establishing delegate agencies.

(a) If a grantee enters into an agreement with another entity to serve children, the grantee must determine whether the agreement meets the definition of “delegate agency” in section 637(3) of the Act.

(b) A grantee must not award a delegate agency federal financial assistance unless there is a written agreement and the responsible HHS official approves the agreement before the grantee delegates program operations.

**§1303.32 Evaluations and corrective actions for delegate agencies.**

A grantee must evaluate and ensure corrective action for delegate agencies according to section 641A(d) of the Act.

**§1303.33 Termination of delegate agencies.**

(a) If a grantee shows cause why termination is appropriate or demonstrates cost effectiveness, the grantee may terminate a delegate agency's contract.

(b) The grantee's decision to terminate must not be arbitrary or capricious.

(c) The grantee must establish a process for defunding a delegate agency, including an appeal of a defunding decision and must ensure the process is fair and timely.

(d) The grantee must notify the responsible HHS official about the appeal and its decision.

## Subpart E -- Facilities

### §1303.40 Purpose.

This subpart prescribes what a grantee must establish to show it is eligible to purchase, construct and renovate facilities as outlined in section 644(c), (f) and (g) of the Act. It explains how a grantee may apply for funds, details what measures a grantee must take to protect federal interest in facilities purchased, constructed or renovated with grant funds, and concludes with other administrative provisions. This subpart applies to major renovations. It only applies to minor renovations and repairs, when they are included with a purchase application and are part of purchase costs.

### §1303.41 Approval of previously purchased facilities.

If a grantee purchased a facility after December 31, 1986, and seeks to use grant funds to continue to pay purchase costs for the facility or to refinance current indebtedness and use grant funds to service the resulting debt, the grantee may apply for funds to meet those costs. The grantee must submit an application that conforms to requirements in this part and in the Act to the responsible HHS official. If the responsible HHS official approves the grantee's application, Head Start funds may be used to pay ongoing purchase costs, which include principal and interest on approved loans.

**§1303.42 Eligibility to purchase, construct, and renovate facilities.**

(a) Preliminary eligibility. (1) Before a grantee can apply for funds to purchase, construct, or renovate a facility under §1303.44, it must establish that:

(i) The facility will be available to Indian tribes, or rural or other low-income communities;

(ii) The proposed purchase, construction or major renovation is within the grantee's designated service area; and,

(iii) The proposed purchase, construction or major renovation is necessary because the lack of suitable facilities in the grantee's service area will inhibit the operation of the program.

(2) If a program applies to construct a facility, that the construction of such facility is more cost-effective than the purchase of available facilities or renovation.

(b) Proving a lack of suitable facilities. To satisfy paragraph (a)(1)(iii) of this section, the grantee must have a written statement from an independent real estate professional familiar with the commercial real estate market in the grantee's service area, that includes factors considered and supports how the real estate professional determined there are no other suitable facilities in the area.

**§1303.43 Use of grant funds to pay fees.**

A grantee may submit a written request to the responsible HHS official for reasonable fees and costs necessary to determine preliminary eligibility under §1303.42 before it submits an application under §1303.44. If the responsible HHS official approves the grantee's application, the grantee may use federal funds to pay fees and costs.

**§1303.44 Applications to purchase, construct, and renovate facilities.**

(a) Application requirements. If a grantee is preliminarily eligible under §1303.42 to apply for funds to purchase, construct, or renovate a facility, it must submit to the responsible HHS official:

(1) A statement that explains the anticipated effect the proposed purchase, construction or renovation has had or will have on program enrollment, activities and services, and how it determined what the anticipated effect would be;

(2) A deed or other document showing legal ownership of the real property where facilities activity is proposed, legal description of the facility site, and an explanation why the location is appropriate for the grantee's service area;

(3) Plans and specifications for the facility, including square footage, structure type, the number of rooms the facility will have or has, how the rooms will be used, where the structure

will be positioned or located on the building site, and whether there is space available for outdoor play and for parking;

(4) Certification by a licensed engineer or architect that the facility is, or will be upon completion, structurally sound and safe for use as a Head Start facility and that the facility complies, or will comply upon completion, with local building codes, applicable child care licensing requirements, the accessibility requirements of the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, the Flood Disaster Protection Act of 1973, and the National Historic Preservation Act of 1966;

(5) A description of proposed renovations or repairs to make the facility suitable for program activities, and plans and specification that describe the facility after renovation or repair;

(6) A proposed schedule that details when the grantee will acquire, renovate, repair and occupy the facility;

(7) An estimate by a licensed independent certified appraiser of the facility's fair market value after proposed purchase and associated repairs and renovations construction, or major renovation is completed is required for all facilities activities except for major renovations to leased property;

(8) The cost comparison described in §1303.45;

(9) A statement that shows what share of the purchase, construction, or major renovation will be paid with grant funds and what the grantee proposes to contribute as a nonfederal match to the purchase, construction or major renovation;

(10) A statement from a lender, if a grantee applies to use Head Start funds to continue purchase on a facility or refinance existing debt on a facility that indicates the lender is willing to comply with §1303.49;

(l1) The terms of any proposed or existing loan(s) related to purchase, construction or major renovation of the facility, including copies of any funding commitment letters, mortgages, promissory notes, potential security agreements to be entered into, information on all other sources of funding, construction or major renovation, and any restrictions or conditions imposed by other funding sources;

(12) A Phase I environmental site assessment that describes the environmental condition of the proposed facility site and any structures on the site;

(13) A description of the efforts by the grantee to coordinate or collaborate with other providers in the community to seek assistance, including financial assistance, prior to the use of funds under this section; and,

(14) Any additional information the responsible HHS official may require.

(b) Additional requirements for leased properties. (1) If a grantee applies to renovate leased property, it must submit to the responsible HHS official information described in paragraph (a) of this section, a copy of the existing or proposed lease agreement, and the landlord or lessor's consent.

(2) If a grantee applies to purchase a modular unit it intends to site on leased property or on other property the grantee does not own, the grantee must submit to the responsible HHS official information described in paragraph (a) of this section and a copy of the proposed lease or other occupancy agreement that will allow the grantee access to the modular unit for at least 15 years.

(c) Non-federal match. Any non-federal match associated with facilities activities becomes part of the federal share of the facility.

**§1303.45 Cost-comparison to purchase, construct, and renovate facilities.**

(a) Cost comparison. (1) If a grantee proposes to purchase, construct, or renovate a facility, it must submit a detailed cost estimate of the proposed activity, compare the costs associated with the proposed activity to other available alternatives in the service area, and provide any additional information the responsible HHS official requests. The grantee must demonstrate that the proposed activity will result in savings when compared to the costs that would be incurred to acquire the use of an alternative facility to carry out program.

(2) In addition to requirements in paragraph (a)(1) of this section, the grantee must:

(i) Identify who owns the property;

(ii) List all costs related to the purchase, construction, or renovation;

(iii) Identify costs over the structure's useful life, which is at least 20 years for a facility that the grantee purchased or constructed and at least 15 years for a modular unit the grantee renovated, and deferred costs, including mortgage balloon payments, as costs with associated due dates; and,

(iv) Demonstrate how the proposed purchase, construction, or major renovation is consistent with program management and fiscal goals, community needs, enrollment and program options and how the proposed facility will support the grantee as it provides quality services to children and families.

(b) Continue purchase or refinance. To use funds to continue purchase on a facility or to refinance an existing indebtedness, the grantee must compare the costs of continued purchase against the cost of purchasing a comparable facility in the service area over the remaining years of the facility's useful life. The grantee must demonstrate that the proposed activity will result in savings when compared to the cost that would be incurred to acquire the use of an alternative facility to carry out the program.

(c) Multi-purpose use. If the grantee intends to use a facility to operate a Head Start program and for another purpose, it must disclose what percentage of the facility will be used for non-Head Start activities, along with costs associated with those activities, in accordance with applicable cost principles.

**§1303.46 Recording and posting notices of federal interest.**

(a) Survival of federal interest. A grantee that receives funds under this subpart must file notices of federal interest as set forth in paragraph (b) of this section. Federal interest cannot be defeated by a grantee's failure to file a notice of federal interest.

(b) Recording notices of federal interest. (1) If a grantee uses federal funds to purchase real property or a facility, excluding modular units, appurtenant to real property, it must record a notice of federal interest in the official real property records for the jurisdiction where the facility is or will be located. The grantee must file the notice of federal interest as soon as it uses Head Start funds to either fully or partially purchase a facility or real property where a facility will be constructed or as soon as it receives permission from the responsible HHS official to use Head Start funds to continue purchase on a facility.

(2) If a grantee uses federal funds in whole or in part to construct a facility, it must record the notice of federal interest in the official real property records for the jurisdiction in which the facility is located as soon as it receives the notice of award to construct the facility.

(3) If a grantee uses federal funds to renovate a facility that it, or a third party owns, the grantee must record the notice of federal interest in the official real property records for the jurisdiction in which the facility is located as soon as it receives the notice of award to renovate the facility.

(4) If a grantee uses federal funds in whole or in part to purchase a modular unit or to renovate a modular unit, the grantee must post the notice of federal interest, in clearly visible locations, on the exterior of the modular unit and inside the modular unit.

**§1303.47 Contents of notices of federal interest.**

(a) Facility and real property a grantee owns. A notice of federal interest for a facility, other than a modular unit, and real property the grantee owns or will own, must include:

(1) The grantee's correct legal name and current mailing address;

(2) A legal description of the real property;

(3) Grant award number, amount and date of initial facilities funding award or initial use of base grant funds for ongoing purchase or mortgage payments;

(4) A statement that the notice of federal interest includes funds awarded in grant award(s) and any Head Start funds subsequently used to purchase, construct or to make major renovations to the real property;

(5) A statement that the facility and real property will only be used for purposes consistent with the Act and applicable Head Start regulations;

(6) A statement that the facility and real property will not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the responsible HHS official's written permission;

(7) A statement that the federal interest cannot be subordinated, diminished, nullified or released through encumbrance of the property, transfer of the property to another party or any other action the grantee takes without the responsible HHS official's written permission;

(8) A statement that confirms that the agency's governing body received a copy of the notice of federal interest prior to filing and the date the governing body was provided with a copy; and,

(9) The name, title, and signature of the person who drafted the notice.

(b) Facility leased by a grantee. (1) A notice of federal interest for a leased facility, excluding a modular unit, on land the grantee does not own, must be recorded in the official real property records for the jurisdiction where the facility is located and must include:

(i) The grantee's correct legal name and current mailing address;

(ii) A legal description of affected real property;

(iii) The grant award number, amount and date of initial funding award or initial use of base grant funds for major renovation;

(iv) Acknowledgement that the notice of federal interest includes any Head Start funds subsequently used to make major renovations on the affected real property;

(v) A statement the facility and real property will only be used for purposes consistent with the Act and applicable Head Start regulations; and,

(vi) A lease or occupancy agreement that includes the required information from paragraphs (b)(1)(i) through (v) of this section may be recorded in the official real property records for the jurisdiction where the facility is located to serve as a notice of federal interest.

(2) If a grantee cannot file the lease or occupancy agreement described in paragraph (b)(1)(vi) of this section in the official real property records for the jurisdiction where the facility is

located, it may file an abstract. The abstract must include the names and addresses of parties to the lease or occupancy agreement, terms of the lease or occupancy agreement, and information described in paragraphs (a)(1) through (9) of this section.

(c) Modular units. A notice of federal interest on a modular unit the grantee purchased or renovated must be visible and clearly posted on the exterior of the modular and inside the modular and must include:

(1) The grantee's correct legal name and current mailing address;

(2) The grant award number, amount and date of initial funding award or initial use of base grant funds to purchase or renovate;

(3) A statement that the notice of federal interest includes any Head Start funds subsequently used for major renovations to the modular unit;

(4) A statement that the facility and real property will only be used for purposes consistent with the Act and applicable Head Start regulations;

(5) A statement that the modular unit will not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the responsible HHS official's written permission;

(6) A statement that the federal interest cannot be subordinated, diminished, nullified or released through encumbrance of the property, transfer to another party, or any other action the grantee takes without the responsible HHS official's written permission;

(7) A statement that the modular unit cannot be moved to another location without the responsible HHS official's written permission;

(8) A statement that confirms that the agency's governing body has received a copy of the filed notice of federal interest and the date the governing body was provided with a copy; and,

(9) The name, title, and signature of the person who completed the notice for the grantee agency.

**§1303.48 Grantee limitations on federal interest.**

(a) A grantee cannot mortgage, use as collateral for a credit line or for other loan obligations, or, sell or transfer to another party, a facility, real property, or a modular unit it has purchased, constructed or renovated with Head Start funds, without the responsible HHS official's written permission.

(b) A grantee must have the responsible HHS official's written permission before it can use real property, a facility, or a modular unit subject to federal interest for a purpose other than that for which the grantee's application was approved.

**§1303.49 Protection of federal interest in mortgage agreements.**

(a) Any mortgage agreement or other security instrument that is secured by real property or a modular unit constructed or purchased in whole or in part with federal funds or subject to renovation with federal funds must:

(1) Specify that the responsible HHS official can intervene in case the grantee defaults on, terminates or withdraws from the agreement;

(2) Designate the responsible HHS official to receive a copy of any notice of default given to the grantee under the terms of the agreement and include the regional grants management officer's current address;

(3) Include a clause that requires any action to foreclose the mortgage agreement or security agreement be suspended for 60 days after the responsible HHS official receives the default notice to allow the responsible HHS official reasonable time to respond;

(4) Include a clause that preserves the notice of federal interest and the grantee's obligation for its federal share if the responsible HHS official fails to respond to any notice of default provided under this section;

(5) Include a statement that requires the responsible HHS official to be paid the federal interest before foreclosure proceeds are paid to the lender, unless the official's rights under the notice of federal interest have been subordinated by a written agreement in conformance with §1303.51;

(6) Include a clause that gives the responsible HHS official the right to cure any default under the agreement within the designated period to cure the default; and,

(7) Include a clause that gives the responsible HHS official the right to assign or transfer the agreement to another interim or permanent grantee.

(b) A grantee must immediately notify the responsible HHS official of any default under an agreement described in paragraph (a) of this section.

**§1303.50 Third party leases and occupancy arrangements.**

(a) After [insert date 60 days after date of publication in the Federal Register], if a grantee receives federal funds to purchase, construct or renovate a facility on real property the grantee does not own or to purchase or renovate a modular unit on real property the grantee does

not own, the grantee must have a lease or other occupancy agreement of at least 30 years for purchase or construction of a facility and at least 15 years for a major renovation or placement of a modular unit.

(b) The lease or occupancy agreement must:

(1) Provide for the grantee's right of continued use and occupancy of the leased or occupied premises during the entire term of the lease;

(2) Designate the regional grants management officer to receive a copy of any notice of default given to the grantee under the terms of the agreement and include the regional grants management officer's current address;

(3) Specify that the responsible HHS official has the right to cure any default under the lease or occupancy agreement within the designated period to cure default; and,

(4) Specify that the responsible HHS official has the right to transfer the lease to another interim or replacement grantee.

**§1303.51 Subordination of the federal interest.**

Only the responsible HHS official can subordinate federal interest to the rights of a lender or other third party. Subordination agreements must be in writing and the mortgage agreement

or security agreement for which subordination is requested must comply with §1303.49. When the amount of federal funds already contributed to the facility exceeds the amount to be provided by the lender seeking subordination, the federal interest may only be subordinated if the grantee can show that funding is not available without subordination of the federal interest

**§1303.52 Insurance, bonding, and maintenance.**

(a) Purpose. If a grantee uses federal funds to purchase or continue purchase on a facility, excluding modular units, the grantee must obtain a title insurance policy for the purchase price that names the responsible HHS official as an additional loss payee.

(b) Insurance coverage. (1) If a grantee uses federal funds to purchase or continue purchase on a facility or modular unit the grantee must maintain physical damage or destruction insurance at the full replacement value of the facility, for as long as the grantee owns or occupies the facility.

(2) If a facility is located in an area the National Flood Insurance Program defines as high risk, the grantee must maintain flood insurance for as long as the grantee owns or occupies the facility.

(3) A grantee must submit to the responsible HHS official, within 10 days after coverage begins, proof of insurance coverage required under paragraphs (a) and (b) of this section.

(c) Maintenance. A grantee must keep all facilities purchased or constructed in whole or in part with Head Start funds in good repair in accordance with all applicable federal, state, and local laws, rules and regulations, including Head Start requirements, zoning requirements, building codes, health and safety regulations and child care licensing standards.

**§1303.53 Copies of documents.**

A grantee must submit to the responsible HHS official, within 10 days after filing or execution, copies of deeds, leases, loan instruments, mortgage agreements, notices of federal interest, and other legal documents related to the use of Head Start funds for purchase, construction, major renovation, or the discharge of any debt secured by the facility.

**§1303.54 Record retention.**

A grantee must retain records pertinent to the lease, purchase, construction or renovation of a facility funded in whole or in part with Head Start funds, for as long as the grantee owns or occupies the facility, plus three years.

**§1303.55 Procurement procedures.**

(a) A grantee must comply with all grants management regulations, including specific regulations applicable to transactions in excess of the current simplified acquisition threshold,

cost principles, and its own procurement procedures, and must provide, to the maximum extent practical, open and full competition.

(b) A grantee must obtain the responsible HHS official's written approval before it uses Head Start funds, in whole or in part, to contract construction or renovation services. The grantee must ensure these contracts are paid on a lump sum fixed-price basis.

(c) A grantee must obtain prior written approval from the responsible HHS official for contract modifications that would change the scope or objective of a project or would materially alter the costs, by increasing the amount of grant funds needed to complete the project.

(d) A grantee must ensure all construction and renovation contracts paid, in whole or in part with Head Start funds contain a clause that gives the responsible HHS official or his or her designee access to the facility, at all reasonable times, during construction and inspection.

**§1303.56 Inspection of work.**

The grantee must submit to the responsible HHS official a final facility inspection report by a licensed engineer or architect within 30 calendar days after the project is completed. The inspection report must certify that the facility complies with local building codes, applicable child care licensing requirements, is structurally sound and safe for use as a Head Start facility, complies with the access requirements of the Americans with Disabilities Act, section 504 of the

Rehabilitation Act, and the Flood Disaster Protection Act of 1973, and complies with National Historic Preservation Act of 1966.

**Subpart F—Transportation**

**§1303.70 Purpose.**

(a) Applicability. This rule applies to all agencies, including those that provide transportation services, with the exceptions and exclusions provided in this section, regardless of whether such transportation is provided directly on agency owned or leased vehicles or through arrangement with a private or public transportation provider.

(b) Providing transportation services. (1) If a program does not provide transportation services, either for all or a portion of the children, it must provide reasonable assistance, such as information about public transit availability, to the families of such children to arrange transportation to and from its activities, and provide information about these transportation options in recruitment announcements.

(2) A program that provides transportation services must make reasonable efforts to coordinate transportation resources with other human services agencies in its community in order to control costs and to improve the quality and the availability of transportation services.

(3) A program that provides transportation services must ensure all accidents involving vehicles that transport children are reported in accordance with applicable state requirements.

(c) Waiver. (1) A program that provides transportation services must comply with all provisions in this subpart. A Head Start program may request to waive a specific requirement in this part, in writing, to the responsible HHS official, as part of an agency's annual application for financial assistance or amendment and must submit any required documentation the responsible HHS official deems necessary to support the waiver. The responsible HHS official is not authorized to waive any requirements with regard to children enrolled in an Early Head Start program. A program may request a waiver when:

(i) Adherence to a requirement in this part would create a safety hazard in the circumstances faced by the agency; and,

(ii) For preschool children, compliance with requirements related to child restraint systems at §§1303.71(d) and 1303.72(a)(1) or bus monitors at §1303.72(a)(4) will result in a significant disruption to the program and the agency demonstrates that waiving such requirements is in the best interest of the children involved.

(2) The responsible HHS official is not authorized to waive any requirements of the Federal Motor Vehicle Safety Standards (FMVSS) made applicable to any class of vehicle under 49 CFR part 571.

**§1303.71 Vehicles.**

(a) Required use of schools buses or allowable alternative vehicles. A program, with the exception of transportation services to children served under a home-based option, must ensure all vehicles used or purchased with grant funds to provide transportation services to enrolled children are school buses or allowable alternate vehicles that are equipped for use of height- and weight-appropriate child restraint systems, and that have reverse beepers.

(b) Emergency equipment. A program must ensure each vehicle used in providing such services is equipped with an emergency communication system clearly labeled and appropriate emergency safety equipment, including a seat belt cutter, charged fire extinguisher, and first aid kit.

(c) Auxiliary seating. A program must ensure any auxiliary seating, such as temporary or folding jump seats, used in vehicles of any type providing such services are built into the vehicle by the manufacturer as part of its standard design, are maintained in proper working order, and are inspected as part of the annual inspection required under paragraph (e)(2)(i) of this section.

(d) Child restraint systems. A program must ensure each vehicle used to transport children receiving such services is equipped for use of age-, height- and weight-appropriate child safety restraint systems as defined in part 1305 of this chapter.

(e) Vehicle maintenance. (1) A program must ensure vehicles used to provide such services are in safe operating condition at all times.

(2) The program must:

(i) At a minimum, conduct an annual thorough safety inspection of each vehicle through an inspection program licensed or operated by the state;

(ii) Carry out systematic preventive maintenance on vehicles; and,

(iii) Ensure each driver implements daily pre-trip vehicle inspections.

(f) New vehicle inspection. A program must ensure bid announcements for school buses and allowable alternate vehicles to transport children in its program include correct specifications and a clear statement of the vehicle's intended use. The program must ensure vehicles are examined at delivery to ensure they are equipped in accordance with the bid specifications and that the manufacturer's certification of compliance with the applicable FMVSS is included with the vehicle.

**§1303.72 Vehicle operation.**

(a) Safety. A program must ensure:

(1) Each child is seated in a child restraint system appropriate to the child's age, height, and weight;

(2) Baggage and other items transported in the passenger compartment are properly stored and secured, and the aisles remain clear and the doors and emergency exits remain unobstructed at all times;

(3) Up-to-date child rosters and lists of the adults each child is authorized to be released to, including alternates in case of emergency, are maintained and no child is left behind, either at the classroom or on the vehicle at the end of the route; and,

(4) With the exception of transportation services to children served under a home-based option, there is at least one bus monitor on board at all times, with additional bus monitors provided as necessary.

(b) Driver qualifications. A program, with the exception of transportation services to children served under a home-based option, must ensure drivers, at a minimum:

(1) In states where such licenses are granted, have a valid Commercial Driver's License (CDL) for vehicles in the same class as the vehicle the driver will operating; and,

(2) Meet any physical, mental, and other requirements as necessary to perform job-related functions with any necessary reasonable accommodations.

(c) Driver application review. In addition to the applicant review process prescribed §1302.90(b) of this chapter, a program, with the exception of transportation services to children served under a home-based option, must ensure the applicant review process for drivers includes, at minimum:

(1) Disclosure by the applicant of all moving traffic violations, regardless of penalty;

(2) A check of the applicant's driving record through the appropriate state agency, including a check of the applicant's record through the National Driver Register, if available;

(3) A check that drivers qualify under the applicable driver training requirements in the state or tribal jurisdiction; and,

(4) After a conditional employment offer to the applicant and before the applicant begins work as a driver, a medical examination, performed by a licensed doctor of medicine or osteopathy, establishing that the individual possesses the physical ability to perform any job-related functions with any necessary accommodations.

(d) Driver training. (1) A program must ensure any person employed as a driver receives training prior to transporting any enrolled child and receives refresher training each year.

(2) Training must include:

(i) Classroom instruction and behind-the-wheel instruction sufficient to enable the driver to operate the vehicle in a safe and efficient manner, to safely run a fixed route, to administer basic first aid in case of injury, and to handle emergency situations, including vehicle evacuation, operate any special equipment, such as wheelchair lifts, assistance devices or special occupant restraints, conduct routine maintenance and safety checks of the vehicle, and maintain accurate records as necessary; and,

(ii) Instruction on the topics listed in §1303.75 related to transportation services for children with disabilities.

(3) A program must ensure the annual evaluation of each driver of a vehicle used to provide such services includes an on-board observation of road performance.

(e) Bus monitor training. A program must train each bus monitor before the monitor begins work, on child boarding and exiting procedures, how to use child restraint systems, completing any required paperwork, how to respond to emergencies and emergency evacuation procedures, how to use special equipment, child pick-up and release procedures, how to conduct and pre- and post-trip vehicle checks. Bus monitors are also subject to staff safety training requirements in §1302.47(b)(4) of this chapter including Cardio Pulmonary Resuscitation (CPR) and first aid.

**§1303.73 Trip routing.**

(a) A program must consider safety of the children it transports when it plans fixed routes.

(b) A program must also ensure:

(1) The time a child is in transit to and from the program must not exceed one hour unless there is no shorter route available or any alternative shorter route is either unsafe or impractical;

(2) Vehicles are not loaded beyond maximum passenger capacity at any time;

(3) Drivers do not back up or make U-turns, except when necessary for safety reasons or because of physical barriers;

(4) Stops are located to minimize traffic disruptions and to afford the driver a good field of view in front of and behind the vehicle;

(5) When possible, stops are located to eliminate the need for children to cross the street or highway to board or leave the vehicle;

(6) Either a bus monitor or another adult escorts children across the street to board or leave the vehicle if curbside pick-up or drop off is impossible; and,

(7) Drivers use alternate routes in the case of hazardous conditions that could affect the safety of the children who are being transported, such as ice or water build up, natural gas line breaks, or emergency road closing.

**§1303.74 Safety procedures.**

(a) A program must ensure children who receive transportation services are taught safe riding practices, safety procedures for boarding and leaving the vehicle and for crossing the street to and from the vehicle at stops, recognition of the danger zones around the vehicle, and emergency evacuation procedures, including participating in an emergency evacuation drill conducted on the vehicle the child will be riding.

(b) A program that provides transportation services must ensure at least two bus evacuation drills in addition to the one required under paragraph (a) of this section are conducted during the program year.

**§1303.75 Children with disabilities.**

(a) A program must ensure there are school buses or allowable alternate vehicles adapted or designed for transportation of children with disabilities available as necessary to transport such children enrolled in the program. This requirement does not apply to the transportation of children receiving home-based services unless school buses or allowable alternate vehicles are used to transport the other children served under the home-based option by the grantee.

Whenever possible, children with disabilities must be transported in the same vehicles used to transport other children enrolled in the Head Start or Early Head Start program.

(b) A program must ensure special transportation requirements in a child's IEP or IFSP are followed, including special pick-up and drop-off requirements, seating requirements, equipment needs, any assistance that may be required, and any necessary training for bus drivers and monitors.

## PART 1304 -- FEDERAL ADMINISTRATIVE PROCEDURES

### Subpart A—Monitoring, Suspension, Termination, Denial of Refunding, Reduction in Funding, and their Appeals

Sec.

1304.1 Purpose.

1304.2 Monitoring.

1304.3 Suspension with notice.

1304.4 Emergency suspension without advance notice.

1304.5 Termination and denial of refunding.

1304.6 Appeal for prospective delegate agencies.

1304.7 Legal fees.

### Subpart B—Designation Renewal

1304.10 Purpose and scope.

1304.11 Basis for determining whether a Head Start agency will be subject to an open competition.

1304.12 Grantee reporting requirements concerning certain conditions.

1304.13 Requirements to be considered for designation for a five-year period when the existing grantee in a community is not determined to be delivering a high-quality and comprehensive Head Start program and is not automatically renewed.

1304.14 Tribal government consultation under the Designation Renewal System for when an Indian Head Start grant is being considered for competition.

1304.15 Designation request, review and notification process.

1304.16 Use of CLASS: Pre-K instrument in the Designation Renewal System.

**Subpart C—Selection of Grantees through Competition**

1304.20 Selection among applicants.

**Subpart D—Replacement of American Indian and Alaska Native Grantees**

1304.30 Procedure for identification of alternative agency.

1304.31 Requirements of alternative agency.

1304.32 Alternative agency—prohibition.

**Subpart E—Head Start Fellows Program**

1304.40 Purpose.

1304.41 Fellows Program.

AUTHORITY: 42 U.S.C. 9801 *et seq.*

## Subpart A—Monitoring, Suspension, Termination, Denial of Refunding, Reduction in Funding, and their Appeals

**§1304.1** Purpose**.**

(a) Section 641A(c) of the Act requires the Secretary to monitor whether a grantee meets program governance, program operations, and financial and administrative standards described in this regulation and to identify areas for improvements and areas of strength as part of the grantee's ongoing self-assessment process. This subpart focuses on the monitoring process. It discusses areas of noncompliance, deficiencies, and corrective action through quality improvement plans.

(b) Section 646(a) of the Act requires the Secretary to prescribe procedures for notice and appeal for certain adverse actions. This subpart establishes rules and procedures to suspend financial assistance to a grantee, deny a grantee's application for refunding, terminate, or reduce a grantee's assistance under the Act when the grantee improperly uses federal funds or fails to comply with applicable laws, regulations, policies, instructions, assurances, terms and conditions or, if the grantee loses its legal status or financial viability. This subpart does not apply to reductions to a grantee's financial assistance based on chronic under-enrollment procedures at section 641A(h) of the Act or to matters described in subpart B. This subpart does not apply to any administrative action based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964. Except as otherwise provided for in this subpart, the appeals and processes

in this subpart will be governed by the Departmental Appeals Board regulations at 45 CFR part 16.

**§1304.2 Monitoring.**

(a) Areas of noncompliance. If a responsible HHS official determines through monitoring, pursuant to section 641(A)(c)(1) and (2) of the Act, that a grantee fails to comply with any of the standards described in parts 1301, 1302, and 1303 of this chapter, the official will notify the grantee promptly in writing, identify the area of noncompliance, and specify when the grantee must correct the area of noncompliance.

(b) Deficiencies. If the Secretary determines that a grantee meets one of the criteria for a deficiency, as defined in section 637(2)(C) of the Act, the Secretary shall inform the grantee of the deficiency. The grantee must correct the deficiency pursuant to section 641A(e)(1)(B) of the Act, as the responsible HHS official determines.

(c) Quality improvement plans. If the responsible HHS official does not require the grantee to correct a deficiency immediately as prescribed under section 641A(e)(1)(B)(i) of the Act, the grantee must submit to the official, for approval, a quality improvement plan that adheres to section 641A(e)(2)(A) of the Act.

**§1304.3 Suspension with notice.**

(a) Grounds to suspend financial assistance with notice. If a grantee breaches or threatens to breach any requirement stated in §§1304.3 through 1304.5, the responsible HHS official may suspend the grantee's financial assistance, in whole or in part, after it has given the grantee notice and an opportunity to show cause why assistance should not be suspended.

(b) Notice requirements. (1) The responsible HHS official must notify the grantee in writing that ACF intends to suspend financial assistance, in whole or in part. The notice must:

(i) Specify grounds for the suspension;

(ii) Include the date suspension will become effective;

(iii) Inform the grantee that it has the opportunity to submit to the responsible HHS official, at least seven days before suspension becomes effective, any written material it would like the official to consider, and to inform the grantee that it may request, in writing, no later than seven days after the suspension notice was mailed, to have an informal meeting with the responsible HHS official;

(iv) Invite the grantee to voluntarily correct the deficiency; and,

(v) Include a copy of this subpart.

(2) The responsible HHS official must promptly transmit the suspension notice to the grantee. The notice becomes effective when the grantee receives the notice, when the grantee refuses delivery, or when the suspension notice is returned to sender unclaimed.

(3) The responsible HHS official must send a copy of the suspension notice to any delegate agency whose actions or whose failures to act substantially caused or contributed to the proposed suspension. The responsible HHS official will inform the delegate agency that it is entitled to submit written material to oppose the suspension and to participate in the informal meeting, if one is held. In addition, the responsible HHS official may give notice to the grantee's other delegate agencies.

(4) After the grantee receives the suspension notice, it has three days to send a copy of the notice to delegate agencies that would be financially affected by a suspension.

(c) Opportunity to show cause. The grantee may submit to the responsible HHS official any written material to show why financial assistance should not be suspended. The grantee may also request, in writing, to have an informal meeting with the responsible HHS official. If the grantee requests an informal meeting, the responsible HHS official must schedule the meeting within seven days after the grantee receives the suspension notice.

(d) Extensions. If the responsible HHS official extends the time or the date by which a grantee has to make requests or to submit material, it must notify the grantee in writing.

(e) Decision. (1) The responsible HHS official will consider any written material presented before or during the informal meeting, as well as any proof the grantee has adequately corrected what led to suspension, and will render a decision within five days after the informal meeting. If no informal meeting is held, the responsible HHS official will render a decision within five days after it receives written material from all concerned parties.

(2) If the responsible HHS official finds the grantee failed to show cause why ACF should not suspend financial assistance, the official may suspend financial assistance, in whole or in part, and under terms and conditions as he or she deems appropriate.

(3) A suspension must not exceed 30 days, unless the conditions under section 646(a)(5)(B) are applicable or the grantee requests the suspension continue for an additional period of time and the responsible HHS official agrees.

(4) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until the grantee's suspension is lifted, or as otherwise provided under section 646(a)(5)(B) of the Act.

(f) Obligations incurred during suspension. New obligations the grantee incurs while under suspension are not allowed unless the responsible HHS official expressly authorizes them in the suspension notice or in an amendment to the suspension notice. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations the grantee properly incurred before suspension and

not in anticipation of suspension or termination. The responsible HHS official may allow third-party in-kind contributions applicable to the suspension period to satisfy cost sharing or matching requirements.

(g) Modify or rescind suspension. The responsible HHS official may modify or rescind suspension at any time, if the grantee can satisfactorily show that it has adequately corrected what led to suspension and that it will not repeat such actions or inactions. Nothing in this section precludes the HHS official from imposing suspension again for additional 30 day periods if the cause of the suspension has not been corrected.

**§1304.4 Emergency suspension without advance notice.**

(a) Grounds to suspend financial assistance without advance notice. The responsible HHS official may suspend financial assistance, in whole or in part, without prior notice and an opportunity to show cause if there is an emergency situation, such as a serious risk for substantial injury to property or loss of project funds, a federal, state, or local criminal statute violation, or harm to staff or participants' health and safety.

(b) Emergency suspension notification requirements. (1) The emergency suspension notification must:

(i) Specify the grounds for the suspension;

(ii) Include terms and conditions of any full or partial suspension;

(iii) Inform that grantee it cannot make or incur any new expenditures or obligations under suspended portion of the program; and,

(iv) Advise that within five days after the emergency suspension becomes effective, the grantee may request, in writing, an informal meeting with the responsible HHS official to show why the basis for the suspension was not valid and should be rescinded and that the grantee has corrected any deficiencies.

(2) The responsible HHS official must promptly transmit the emergency suspension notification to the grantee that shows the date of receipt. The emergency suspension becomes effective upon delivery of the notification or upon the date the grantee refuses delivery, or upon return of the notification unclaimed.

(3) Within two workdays after the grantee receives the emergency suspension notification, the grantee must send a copy of the notice to delegate agencies affected by the suspension.

(4) The responsible HHS official must inform affected delegate agencies that they have the right to participate in the informal meeting.

(c) Opportunity to show cause. If the grantee requests an informal meeting, the responsible HHS official must schedule a meeting within five workdays after it receives the grantee's request. The suspension will continue until the grantee has been afforded such opportunity and until the responsible HHS official renders a decision. Notwithstanding provisions in this section, the responsible HHS official may proceed to deny refunding or to initiate termination proceedings at any time even though the grantee's financial assistance has been suspended in whole or in part.

(d) Decision. (1) The responsible HHS official will consider any written material presented before or during the informal meeting, as well as any proof the grantee has adequately corrected what led to suspension, and render a decision within five work days after the informal meeting.

(2) If the responsible HHS official finds the grantee failed to show cause why suspension should be rescinded, the responsible HHS official may continue the suspension, in whole or in part, and under the terms and conditions specified in the emergency suspension notification.

(3) A suspension must not exceed 30 days, unless the conditions under section 646(a)(5)(B) are applicable or the grantee requests the suspension to continue for an additional period of time and the responsible HHS official agrees.

(4) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's emergency suspension is lifted or a new grantee is selected.

(e) Obligations incurred during suspension. Any new obligations the grantee incurs during the suspension period will not be allowed unless the responsible HHS official expressly authorizes them in the suspension notice or in an amendment to the suspension notice. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if those costs result from obligations properly incurred before suspension and not in anticipation of suspension, denial of refunding or termination. The responsible HHS official may allow third-party in-kind contributions applicable to the suspension period to satisfy cost sharing or matching requirements.

(f) Modify or rescind suspension. The responsible HHS official may modify or rescind suspension at any time, if the grantee can satisfactorily show that is has adequately corrected what led to the suspension and that it will not repeat such actions or inactions. Nothing in this section precludes the HHS official from imposing suspension again for additional 30 day periods if the cause of the suspension has not been corrected.

**§1304.5 Termination and denial of refunding.**

(a) Grounds to terminate financial assistance or deny a grantee's application for refunding. (1) A responsible HHS official may terminate financial assistance in whole or in part to a grantee or deny a grantee's application for refunding.

(2) The responsible HHS official may terminate financial assistance in whole or in part, or deny refunding to a grantee for any one or for all of the following reasons:

(i) The grantee is no longer financially viable;

(ii) The grantee has lost the requisite legal status or permits;

(iii) The grantee has failed to timely correct one or more deficiencies as defined in the Act;

(iv) The grantee has failed to comply with eligibility requirements;

(v) The grantee has failed to comply with the Head Start grants administration or fiscal requirements set forth in 45 CFR part 1303;

(vi) The grantee has failed to comply with requirements in the Act;

(vii) The grantee is debarred from receiving federal grants or contracts; or

(viii) The grantee has failed to abide by any other terms and conditions of its award of financial assistance, or any other applicable laws, regulations, or other applicable federal or state requirements or policies.

(b) Notice requirements. (1) The responsible HHS official will notify the grantee and such notice will:

(i) Include the legal basis for termination or adverse action as described in paragraph (a) of this section;

(ii) Include factual findings on which the action is based or reference specific findings in another document that form the basis for termination or denial of refunding;

(iii) Cite to any statutory provisions, regulations, or policy issuances on which ACF relies for its determination;

(iv) Inform the grantee that it may appeal the denial or termination within 30 days to the Departmental Appeals Board, that the appeal will be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, that a copy of the appeal must sent to the responsible HHS official, and that it has the right to request and receive a hearing, as mandated under section 646 of the Act;

(v) Inform the grantee that only its board of directors, or an official acting on the board's behalf can appeal the decision;

(vi) Name the delegate agency, if the actions of that delegate are the basis, in whole or in part, for the proposed action; and,

(vii) Inform the grantee that the appeal must meet requirements in paragraph (c) of this section; and, that if the responsible HHS official fails to meet requirements in this paragraph, the pending action may be dismissed without prejudice or remanded to reissue it with corrections.

(2) The responsible HHS official must provide the grantee as much notice as possible, but must notify the grantee no later than 30 days after ACF receives the annual application for refunding, that it has the opportunity for a full and fair hearing on whether refunding should be denied.

(c) Grantee's appeal. (1) The grantee must adhere to procedures and requirements for appeals in 45 CFR part 16, file the appeal with the Departmental Appeals Board, and serve a copy of the appeal on the responsible HHS official who issued the termination or denial of refunding notice. The grantees must also serve a copy of its appeal on any affected delegate.

(2) Unless funding has been suspended, funding will continue while a grantee appeals a termination decision, unless the responsible HHS official renders an adverse decision, or unless the current budget period is expired. If the responsible HHS official has not rendered a decision

by the end of the current budget period, the official will award the grantee interim funding until a decision is made or the project period ends.

(d) Funding during suspension. If a grantee's funding is suspended, the grantee will not receive funding during the termination proceedings, or at any other time, unless the action is rescinded or the grantee's appeal is successful.

(e) Interim and replacement grantees. The responsible HHS official may appoint an interim or replacement grantee as soon as a termination action is affirmed by the Departmental Appeals Board.

(f) Opportunity to show cause. (1) If the Departmental Appeals Board sets a hearing for a proposed termination or denial of refunding action, the grantee has five workdays to send a copy of the notice it receives from the Departmental Appeals Board, to all delegate agencies that would be financially affected by termination and to each delegate agency identified in the notice.

(2) The grantee must send to the Departmental Appeals Board and to the responsible HHS official a list of the delegate agencies it notified and the dates when it notified them.

(3) If the responsible HHS official initiated proceedings because of a delegate agency's activities, the official must inform the delegate agency that it may participate in the hearing. If the delegate agency chooses to participate in the hearing, it must notify the responsible HHS official in writing within 30 days of the grantee's appeal. If any other delegate agency, person,

agency or organization wishes to participate in the hearing, it may request permission to do so from the Departmental Appeals Board.

(4) If the grantee fails to appear at the hearing, without good cause, the grantee will be deemed to have waived its right to a hearing and consented to have the Departmental Appeals Board make a decision based on the parties' written information and argument.

(5) A grantee may waive the hearing and submit written information and argument for the record, within a reasonable period of time to be fixed by the Departmental Appeals Board.

(6) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

(g) Decision. The Departmental Appeals Board's decision and any measure the responsible HHS official takes after the decision is fully binding upon the grantee and its delegate agencies, whether or not they actually participated in the hearing.

**§1304.6 Appeal for prospective delegate agencies.**

(a) Appeal. If a grantee denies, or fails to act on, a prospective delegate agency's funding application, the prospective delegate may appeal the grantee's decision or inaction.

(b) Process for prospective delegates. To appeal, a prospective delegate must:

(1) Submits the appeal, including a copy of the funding application, to the responsible HHS official within 30 days after it receives the grantee's decision; or within 30 days after the grantee has had 120 days to review but has not notified the applicant of a decision; and,

(2) Provide the grantee with a copy of the appeal at the same time the appeal is filed with the responsible HHS official.

(c) Process for grantees. When an appeal is filed with the responsible HHS official, the grantee must respond to the appeal and submit a copy of its response to the responsible HHS official and to the prospective delegate agency within 30 work days.

(d) Decision. (1) The responsible HHS official will sustain the grantee's decision, if the official determines the grantee did not act arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements.

(2) The responsible HHS official will render a written decision to each party within a reasonable timeframe. The official's decision is final and not subject to further appeal.

(3) If the responsible HHS official finds the grantee did act arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements, the grantee will be directed to reevaluate their applications.

**§1304.7 Legal fees.**

(a) An agency is not authorized to charge to its grant legal fees or other costs incurred to appeal terminations, reductions of funding, or denials of applications of refunding decisions.

(b) If a program prevails in a termination, reduction, or denial of refunding decision, the responsible HHS official may reimburse the agency for reasonable and customary legal fees, incurred during the appeal, if:

(1) The Departmental Appeals Board overturns the responsible HHS official's decision;

(2) The agency can prove it incurred fees during the appeal; and,

(3) The agency can prove the fees incurred are reasonable and customary.

**Subpart B—Designation Renewal**

**§1304.10 Purpose and scope.**

The purpose of this subpart is to set forth policies and procedures for the designation renewal of Head Start and Early Head Start programs. It is intended that these programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start and Early Head

Start grantees be fully protected. The Designation Renewal System is established in this part to determine whether Head Start and Early Head Start agencies deliver high-quality services to meet the educational, health, nutritional, and social needs of the children and families they serve; meet the program and financial requirements and standards described in section 641A(a)(1) of the Head Start Act; and qualify to be designated for funding for five years without competing for such funding as required under section 641(c) of the Head Start Act with respect to Head Start agencies and pursuant to section 645A(b)(12) and (d) with respect to Early Head Start agencies. A competition to select a new Head Start or Early Head Start agency to replace a Head Start or Early Head Start agency that has been terminated voluntarily or involuntarily is not part of the Designation Renewal System established in this Part, and is subject instead to the requirements of §1304.20.

**§1304.11 Basis for determining whether a Head Start agency will be subject to an open competition**.

A Head Start or Early Head Start agency shall be required to compete for its next five years of funding whenever the responsible HHS official determines that one or more of the following seven conditions existed during the relevant time period covered by the responsible HHS official's review under §1304.15:

(a) An agency has been determined by the responsible HHS official to have one or more deficiencies on a single review conducted under section 641A(c)(1)(A), (C), or (D) of

the Act in the relevant time period covered by the responsible HHS official's review under §1304.15.

(b) An agency has been determined by the responsible HHS official based on a review conducted under section 641A(c)(1)(A), (C), or (D) of the Act during the relevant time period covered by the responsible HHS official's review under §1304.15 not to have:

(1) After December 9, 2011, established program goals for improving the school readiness of children participating in its program in accordance with the requirements of section 641A(g)(2) of the Act and demonstrated that such goals:

(i) Appropriately reflect the ages of children, birth to five, participating in the program;

(ii) Align with the Birth to Five Head Start Child Outcomes Framework, state early learning guidelines, and the requirements and expectations of the schools, to the extent that they apply to the ages of children, birth to five, participating in the program and at a minimum address the domains of language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development;

(iii) Were established in consultation with the parents of children participating in the program.

(2) After December 9, 2011, taken steps to achieve the school readiness goals described under paragraph (b)(1) of this section demonstrated by:

(i) Aggregating and analyzing aggregate child-level assessment data at least three times per year (except for programs operating less than 90 days, which will be required to do so at least twice within their operating program period) and using that data in combination with other program data to determine grantees' progress toward meeting its goals, to inform parents and the community of results, and to direct continuous improvement related to curriculum, instruction, professional development, program design and other program decisions; and,

(ii) Analyzing individual ongoing, child-level assessment data for all children birth to age five participating in the program and using that data in combination with input from parents and families to determine each child's status and progress with regard to, at a minimum, language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development and to individualize the experiences, instructional strategies, and services to best support each child.

(c) An agency has been determined during the relevant time period covered by the responsible HHS official's review under §1304.15:

(1) After December 9, 2011, to have an average score across all classrooms observed below the following minimum thresholds on any of the three CLASS: Pre-K domains from the most recent CLASS: Pre-K observation:

(i) For the Emotional Support domain the minimum threshold is 4;

(ii) For the Classroom Organization domain, the minimum threshold is 3;

(iii) For the Instructional Support domain, the minimum threshold is 2;

(2) After December 9, 2011, to have an average score across all classrooms observed that is in the lowest 10 percent on any of the three CLASS: Pre-K domains from the most recent CLASS: Pre-K observation among those currently being reviewed unless the average score across all classrooms observed for that CLASS: Pre-K domain is equal to or above the standard of excellence that demonstrates that the classroom interactions are above an exceptional level of quality. For all three domains, the “standard of excellence” is a 6.

(d) An agency has had a revocation of its license to operate a Head Start or Early Head Start center or program by a state or local licensing agency during the relevant time period covered by the responsible HHS official's review under §1304.15, and the revocation has not been overturned or withdrawn before a competition for funding for the next five-year period is announced. A pending challenge to the license revocation or restoration of the license after correction of the violation shall not affect application of this requirement after the competition for funding for the next five-year period has been announced.

(e) An agency has been suspended from the Head Start or Early Head Start program by ACF during the relevant time period covered by the responsible HHS official's review under §1304.16 and the suspension has not been overturned or withdrawn. If there is a pending appeal and the agency did not have an opportunity to show cause as to why the suspension should not have been imposed or why the suspension should have been lifted if it had already been imposed under this part, the agency will not be required to compete based on this condition. If an agency has received an opportunity to show cause, the condition will be implemented regardless of appeal status.

(f) An agency has been debarred from receiving federal or state funds from any federal or state department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP) any time during the relevant time period covered by the responsible HHS official's review under §1304.15 but has not yet been terminated or denied refunding by ACF. (A debarred agency will only be eligible to compete for Head Start funding if it receives a waiver described in 2 CFR 180.135.)

(g) An agency has been determined within the twelve months preceding the responsible HHS official's review under §1304.15 to be at risk of failing to continue functioning as a going concern. The final determination is made by the responsible HHS official based on a review of the findings and opinions of an audit conducted in accordance with section 647 of the Act; an audit, review or investigation by a state agency; a review by the National External Audit Review (NEAR) Center; or an audit, investigation or inspection by the Department of Health and Human Services Office of Inspector General.

**§1304.12 Grantee reporting requirements concerning certain conditions.**

(a) Head Start agencies must report in writing to the responsible HHS official within 30 working days of December 9, 2011, if the agency has had a revocation of a license to operate a center by a state of local licensing entity during the period between June 12, 2009, and December 9, 2011.

(b) Head Start agencies must report in writing to the responsible HHS official within 10 working days of occurrence any of the following events following December 9, 2011:

(1) The agency has had a revocation of a license to operate a center by a state or local licensing entity.

(2) The agency has filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement.

(3) The agency has been debarred from receiving federal or state funds from any federal or state department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP).

(4) The agency has received an audit, audit review, investigation or inspection report from the agency's auditor, a state agency, or the cognizant federal audit agency containing a determination that the agency is at risk for ceasing to be a going concern.

**§1304.13 Requirements to be considered for designation for a five-year period when the existing grantee in a community is not determined to be delivering a high-quality and comprehensive Head Start program and is not automatically renewed.**

In order to compete for the opportunity to be awarded a five-year grant, an agency must submit an application to the responsible HHS official that demonstrates that it is the most qualified entity to deliver a high-quality and comprehensive Head Start or Early Head Start program. The application must address the criteria for selection listed at section 641(d)(2) of the Act for Head Start. Any agency that has had its Head Start or Early Head Start grant terminated for cause in the preceding five years is excluded from competing in such competition for the next five years. A Head Start or Early Head Start agency that has had a denial of refunding, as defined in 45 CFR part 1305, in the preceding five years is also excluded from competing.

**§1304.14 Tribal government consultation under the Designation Renewal System for when an Indian Head Start grant is being considered for competition.**

(a) In the case of an Indian Head Start or Early Head Start agency determined not to be delivering a high-quality and comprehensive Head Start or Early Head Start program, the responsible HHS official will engage in government-to-government consultation with the appropriate tribal government or governments for the purpose of establishing a plan to improve

the quality of the Head Start program or Early Head Start program operated by the Indian Head Start or Indian Early Head Start agency.

(1) The plan will be established and implemented within six months after the responsible HHS official's determination.

(2) Not more than six months after the implementation of that plan, the responsible HHS official will reevaluate the performance of the Indian Head Start or Early Head Start agency.

(3) If the Indian Head Start or Early Head Start agency is still not delivering a high-quality and comprehensive Head Start or Early Head Start program, the responsible HHS official will conduct an open competition to select a grantee to provide services for the community currently being served by the Indian Head Start or Early Head Start agency.

(b) A non-Indian Head Start or Early Head Start agency will not be eligible to receive a grant to carry out an Indian Head Start program, unless there is no Indian Head Start or Early Head Start agency available for designation to carry out an Indian Head Start or Indian Early Head Start program.

(c) A non-Indian Head Start or Early Head Start agency may receive a grant to carry out an Indian Head Start program only until such time as an Indian Head Start or Indian Early Head Start agency in such community becomes available and is designated pursuant to this part.

**§1304.15 Designation request, review and notification process.**

(a) Grantees must apply to be considered for Designation Renewal.

(1) For the transition period, each Head Start or Early Head Start agency wishing to be considered to have their designation as a Head Start or Early Head Start agency renewed for a five year period without competition shall request that status from ACF within six months of December 9, 2011.

(2) After the transition period, each Head Start or Early Head Start agency wishing to be considered to have their designation as a Head Start or Early Head Start agency renewed for another five year period without competition shall request that status from ACF at least 12 months before the end of their five year grant period or by such time as required by the Secretary.

(b) ACF will review the relevant data to determine if one or more of the conditions under §1304.11 were met by the Head Start and Early Head Start agency's program:

(1) During the first year of the transition period, ACF shall review the data on each Head Start and Early Head Start agency to determine if any of the conditions under §1304.11(a) or (d) through (g) were met by the agency's program since June 12, 2009.

(2) During the remainder of the transition period, ACF shall review the data on each Head Start and Early Head Start agency still under grants with indefinite project periods and for whom ACF has relevant data on all of the conditions in §1304.11(a) through (g) to determine if any of the conditions under §1304.11(a) or (d) through (g) were met by the agency's program since June 12, 2009, or if the conditions under §1304.11(b) or (c) existed in the agency's program since December 9, 2011.

(3) Following the transition period, ACF shall review the data on each Head Start and Early Head Start agency in the fourth year of the grant to determine if any of the conditions under §1304.11 existed in the agency's program during the period of that grant.

(c) ACF will give notice to grantees on Designation Renewal System status, except as provided in §1304.14:

(1) During the first year of the transition period, ACF shall give written notice to all grantees meeting any of the conditions under §1304.11(a) or (d) through (g) since June 12, 2009, by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee, stating that the Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period, identifying the conditions ACF found, and summarizing the basis for the finding. All grantees that do not meet any of the conditions under §1304.11(a) or (d) through (g) will remain under indefinite project periods until the time period described under paragraph (b)(2) of this section.

(2) During the remainder of the transition period, ACF shall give written notice to all grantees still under grants with indefinite project periods and on the conditions in §1304.11(a) through (g) by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee stating either:

(i) The Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions under §1304.11(a) through (g) has been met during the relevant time period described in paragraph (b) of this section, identifying the conditions ACF found, and summarizing the basis for the finding; or

(ii) That such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF finds that none of the conditions under §1304.11 have been met during the relevant time period described in paragraph (b) of this section. If prior to the award of that grant, ACF determines that the grantee has met one of the conditions under §1304.11 during the relevant time period described in paragraph (b) of this section, this determination will change and the grantee will receive notice under paragraph (c)(2)(i) of this section that it will be required to compete for funding for an additional five-year period.

(3) Following the transition period, ACF shall give written notice to all grantees at least 12 months before the expiration date of a Head Start or Early Head Start agency's then current grant by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee, stating:

(i) The Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions under §1304.11 were met by the agency's program during the relevant time period described in paragraph (b) of this section, identifying the conditions ACF found, and summarizing the basis for the finding; or,

(ii) That such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF finds that none of the conditions under §1304.11 have been met during the relevant time period described in paragraph (b) of this section. If prior to the award of that grant, ACF determines that the grantee has met one of the conditions under §1304.11 during the relevant time period described in paragraph (b) of this section, this determination will change and the grantee will receive notice under paragraph (c)(3)(i) of this section that it will be required to compete for funding for an additional five-year period.

**§1304.16 Use of CLASS: Pre-K instrument in the Designation Renewal System.**

Except when all children are served in a single classroom, ACF will conduct observations of multiple classes operated by the grantee based on a random sample of all classes and rate the conduct of the classes observed using the CLASS: Pre-K instrument. When the grantee serves children in its program in a single class, that class will be observed and rated using the CLASS: Pre-K instrument. The domain scores for that class will be the domain scores for the grantee for that observation. After the observations are completed, ACF will report to the grantee the scores

of the classes observed during the CLASS: Pre-K observations in each of the domains covered by the CLASS: Pre-K instrument. ACF will average CLASS: Pre-K instrument scores in each domain for the classes operated by the agency that ACF observed to determine the agency's score in each domain.

## Subpart C—Selection of Grantees through Competition

### §1304.20 Selection among applicants.

(a) In selecting an agency to be designated to provide Head Start, Early Head Start, Migrant or Seasonal Head Start or tribal Head Start or Early Head Start services, the responsible HHS official will consider the applicable criteria at Section 641(d) of the Head Start Act and any other criteria outlined in the funding opportunity announcement.

(b) In competitions to replace or potentially replace a grantee the responsible HHS official will also consider the extent to which the applicant supports continuity for participating children, the community and the continued employment of effective, well qualified personnel.

(c) In competitions to replace or potentially replace a current grantee, the responsible HHS official will give priority to applicants that have demonstrated capacity in providing effective, comprehensive, and well-coordinated early childhood education and development services and programs to children and their families.

## Subpart D—Replacement of American Indian and Alaska Native Grantees

### §1304.30 Procedure for identification of alternative agency.

(a) An Indian tribe whose Head Start grant has been terminated, relinquished, designated for competition or which has been denied refunding as a Head Start agency, may identify an alternate agency and request the responsible HHS official to designate such agency as an alternative agency to provide Head Start services to the tribe if:

(1) The tribe was the only agency that was receiving federal financial assistance to provide Head Start services to members of the tribe; and,

(2) The tribe would be otherwise precluded from providing such services to its members because of the termination or denial of refunding.

(b)(1) The responsible HHS official, when notifying a tribal grantee of the intent to terminate financial assistance or deny its application for refunding, or its designation for competition must notify the grantee that it may identify an agency and request that the agency serve as the alternative agency in the event that the grant is terminated or refunding denied, or the grant is not renewed without competition.

(2) The tribe must identify the alternate agency to the responsible HHS official in writing.

(3) The responsible HHS official will notify the tribe, in writing, whether the alternative agency proposed by the tribe is found to be eligible for Head Start funding and capable of operating a Head Start program. If the alternative agency identified by the tribe is not an eligible agency capable of operating a Head Start program, the tribe will have 15 days from the date of the sending of the notification to that effect from the responsible HHS official to identify another agency and request that the agency be designated. The responsible HHS official will notify the tribe in writing whether the second proposed alternate agency is found to be an eligible agency capable of operating the Head Start program.

(4) If the tribe does not identify an eligible, suitable alternative agency, a grantee will be designated under these regulations.

(c) If the tribe appeals a termination of financial assistance or a denial of refunding, it will, consistent with the terms of §1304.5, continue to be funded pending resolution of the appeal. However, the responsible HHS official and the grantee will proceed with the steps outlined in this regulation during the appeal process.

(d) If the tribe does not identify an agency and request that the agency be appointed as the alternative agency, the responsible HHS official will seek a permanent replacement grantee under these regulations.

**§1304.31 Requirements of alternative agency**.

The agency identified by the Indian tribe must establish that it meets all requirements established by the Head Start Act and these requirements for designation as a Head Start grantee and that it is capable of conducting a Head Start program. The responsible HHS official, in deciding whether to designate the proposed agency, will analyze the capacity and experience of the agency according to the criteria found in section 641(d) of the Head Start Act and §1304.20.

**§1304.32 Alternative agency—prohibition.**

(a) No agency will be designated as the alternative agency pursuant to this subpart if the agency includes an employee who:

(1) Served on the administrative or program staff of the Indian tribal grantee described under section 646(e)(1)(A) of the Act; and

(2) Was responsible for a deficiency that:

(i) Relates to the performance standards or financial management standards described in section 641A(a)(1) of the Act; and,

(ii) Was the basis for the termination of assistance under section 646(e)(1)(A) of the Act or denial of refunding described in §1304.4.

(b) The responsible HHS official shall determine whether an employee was responsible for a deficiency within the meaning and context of this section.

## Subpart E—Head Start Fellows Program

### §1304.40 Purpose.

As provided in section 648A(d) of the Act, the Head Start Fellows Program is designed to enhance the ability of Head Start Fellows to make significant contributions to Head Start and to other child development and family services programs.

### §1304.41 Fellows Program.

(a) Selection. An applicant must be working on the date of application in a local Head Start program or otherwise working in the field of child development and family services. The qualifications of the applicants for Head Start Fellowship positions will be competitively reviewed.

(b) Placement. Head Start Fellows may be placed in the Head Start national and regional offices; local Head Start agencies and programs; institutions of higher education; public or

private entities and organizations concerned with services to children and families; and other appropriate settings.

(c) Restrictions. A Head Start Fellow who is not an employee of a local Head Start agency or program may only be placed in the national or regional offices within the Department of Health and Human Services that administer Head Start or local Head Start agencies. Head Start Fellows shall not be placed in any agency whose primary purpose, or one of whose major purposes is to influence federal, state or local legislation.

(d) Duration. Head Start Fellowships will be for terms of one year, and may be renewed for a term of one additional year.

(e) Status. For the purposes of compensation for injuries under chapter 81 of title 5, United States Code, Head Start Fellows shall be considered to be employees, or otherwise in the service or employment, of the federal government. Head Start Fellows assigned to the national or regional offices within the Department of Health and Human Services shall be considered employees in the Executive Branch of the federal government for the purposes of chapter 11 of title 18, United States Code, and for the purposes of any administrative standards of conduct applicable to the employees of the agency to which they are assigned.

**PART 1305 -- DEFINITIONS**

Sec.

1305.1 Purpose.

1305.2 Terms.

AUTHORITY: 42 U.S.C. 9801 *et seq.*

**§1305.1 Purpose.**

The purpose of this part is to define terms for the purposes of this subchapter.

**§1305.2 Terms.**

For the purposes of this subchapter, the following definitions apply:

*ACF* means the Administration for Children and Families in the Department of Health and Human Services.

*Act* means the Head Start Act, Sec. 635 *et seq*., Pub. L. 97-35, 95 Stat. 499-511 (codified as amended at 42 U.S.C. Section 9801, *et seq*.).

*Agency* means the body that receives the Head Start grant.

*Aggregate child-level assessment data* means the data collected by an agency on the status and progress of the children it serves that have been combined to provide summary information about groups of children enrolled in specific classes, centers, home-based or other options, groups or settings, or other groups of children such as dual language learners, or to provide summary information by specific domains of development.

*Allowable alternate vehicle* means a vehicle designed for carrying eleven or more people, including the driver, that meets all the Federal Motor Vehicle Safety Standards applicable to school buses, except 49 CFR 571.108 and 571.131.

*Budget period* means the interval of time, into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

*Case plan* is defined as presented in 42 U.S.C. 675(1) which, in summary, is a written document that must include a number of specified items including, but is not limited to, a plan for safe and proper care of the child in foster care placement, health records, and a plan for ensuring the educational stability of the child in foster care.

*Child-level assessment data* means the data collected by an agency on an individual child from one or more valid and reliable assessments of a child's status and progress, including but not limited to direct assessment, structured observations, checklists, staff or parent report measures, and portfolio records or work samples.

*Child records* means records that:

(1) Are directly related to the child;

(2) Are maintained by the program, or by a party acting for the program; and

(3) Include information recorded in any way, such as print, electronic, or digital means, including media, video, image, or audio format.

*Child restraint system* means any device designed to restrain, seat, or position children that meets the current requirements of Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, 49 CFR 571.213, for children in the weight category established under the regulation, or any device designed to restrain, seat, or position children, other than a Type I seat belt as defined at 49 CFR 571.209, for children not in the weight category currently established by 49 CFR 571.213.

*Child with a disability* is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

*CLASS: Pre-K* means The Classroom Assessment Scoring System (CLASS). The CLASS is an observational instrument that assesses classroom quality in preschool through third grade classrooms. This tool meets the requirements described in 641(c)(1)(D) and 641A(c)(2)(F) of the Head Start Act (42 U.S.C. 9836(c)(1)(D) and 9836a(c)(2)(F)). The CLASS assesses three domains of classroom experience: Emotional Support, Classroom Organization, and Instructional Support.

(1) Emotional Support measures children's social and emotional functioning in the classroom, and includes four dimensions: Positive Climate, Negative Climate, Teacher Sensitivity and Regard for Student Perspectives. Positive Climate addresses the emotional connection, respect, and enjoyment demonstrated between teachers and children and among children. Negative Climate addresses the level of expressed negativity such as anger, hostility, or aggression exhibited by teachers and/or children in the classroom. Teacher Sensitivity addresses teachers' awareness of and responsivity to children's academic and emotional concerns. Regard for Student Perspectives addresses the degree to which teachers' interactions with children and classroom activities place an emphasis on children's interests, motivations, and points of view.

(2) Classroom Organization measures a broad array of classroom processes related to the organization and management of children's behavior, time, and attention in the classroom. It includes three dimensions: Behavior Management, Productivity, and Instructional Learning Formats. Behavior Management addresses how effectively teachers monitor, prevent, and redirect behavior. Productivity addresses how well the classroom runs with respect to routines and the degree to which teachers organize activities and directions so that maximum time can be spent on learning activities. Instructional Learning Formats addresses how teachers facilitate activities and provide interesting materials so that children are engaged and learning opportunities are maximized.

(3) Instructional Support measures the ways in which teachers implement curriculum to effectively support cognitive and language development. It includes three dimensions: Concept Development, Quality of Feedback, and Language Modeling. Concept Development addresses how teachers use instructional discussions and activities to promote children's higher order thinking skills in contrast to a focus on rote instruction. Quality of Feedback addresses how

teachers extend children's learning through their responses to children's ideas, comments, and work. Language Modeling addresses the extent to which teachers facilitate and encourage children's language.

(4) Assessments with the CLASS involve observation-based measurement of each dimension on a seven point scale. A score ranging from 1 (minimally characteristic) to 7 (highly characteristic) is given for each dimension and represents the extent to which that dimension is characteristic of that classroom. Relevant dimension scores are used to calculate each domain score.

*Commercial Driver's License (CDL)* means a license issued by a state or other jurisdiction, in accordance with the standards contained in 49 CFR part 383, to an individual which authorizes the individual to operate a class of commercial motor vehicles.

*Construction* means new buildings, and excludes renovations, alterations, additions, or work of any kind to existing buildings.

*Continuity of care* means Head Start or Early Head Start services provided to children in a manner that promotes primary caregiving and minimizes the number of transitions in teachers and teacher assistants that children experience over the course of the day, week, program year, and to the extent possible, during the course of their participation from birth to age three in Early Head Start and in Head Start.

*Deficiency* is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

*Delegate agency* is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

*Development and administrative costs* mean costs incurred in accordance with an approved Head Start budget which do not directly relate to the provision of program component services, including services to children with disabilities, as set forth and described in the Head Start program performance standards (45 CFR part 1304).

*Disclosure* means to permit access to or the release, transfer, or other communication of PII contained in child records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

*Double session variation* means a center-based option that employs a single teacher to work with one group of children in the morning and a different group of children in the afternoon.

*Dual benefit costs* mean costs incurred in accordance with an approved Head Start budget which directly relate to both development and administrative functions and to the program component services, including services to children with disabilities, as set forth and described in the Head Start program performance standards (45 CFR part 1304).

*Dual language learner* means a child who is acquiring two or more languages at the same time, or a child who is learning a second language while continuing to develop their first language. The term "dual language learner" may encompass or overlap substantially with other terms frequently used, such as bilingual, English language learner (ELL), Limited

English Proficient (LEP), English learner, and children who speak a Language Other Than English (LOTE).

*Early Head Start agency* means a public or private non-profit or for-profit entity designated by ACF to operate an Early Head Start program to serve pregnant women and children from birth to age three, pursuant to Section 645A(e) of the Head Start Act.

*Enrolled (or any variation of)* means a child has been accepted and attended at least one class for center-based or family child care option or at least one home visit for the home-based option.

*Enrollment year* means the period of time, not to exceed twelve months, during which a Head Start program provides center or home-based services to a group of children and their families.

*Facility* means a structure, such as a building or modular unit, appropriate for use in carrying out a Head Start program and used primarily to provide Head Start services, including services to children and their families, or for administrative purposes or other activities necessary to carry out a Head Start program.

*Family* means all persons living in the same household who are supported by the child's parent(s)' or guardian(s)' income; and are related to the child's parent(s) or guardian(s) by blood, marriage, or adoption; or are the child's authorized caregiver or legally responsible party.

*Federal interest* is a property right which secures the right of the federal awarding agency to recover the current fair market value of its percentage of participation in the cost of the facility in the event the facility is no longer used for Head Start purposes by the grantee or upon the disposition of the property. When a grantee uses Head Start funds to purchase, construct or renovate a facility, or make mortgage payments, it creates a federal interest. The federal interest includes any portion of the cost of purchase, construction, or renovation contributed by or for the entity, or a related donor organization, to satisfy a matching requirement.

*Federal Motor Vehicle Safety Standards (FMVSS)* means the National Highway and Traffic Safety Administration's standards for motor vehicles and motor vehicle equipment (49 CFR part 571) established under section 30111 of Title 49, United States Code.

*Financial viability* means that an organization is able to meet its financial obligations, balance funding and expenses and maintain sufficient funding to achieve organizational goals and objectives.

*Fixed route* means the established routes to be traveled on a regular basis by vehicles that transport children to and from Head Start or Early Head Start program activities, and which include specifically designated stops where children board or exit the vehicle.

*Foster care* means 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 pre-adoptive 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.

*Full-working-day* means not less than 10 hours of Head Start or Early Head Start services per day.

*Funded enrollment* means the number of participants which the Head Start grantee is to serve, as indicated on the grant award.

*Going concern* means an organization that operates *without* the threat of liquidation for the foreseeable future, a period of at least 12 months.

*Grantee* means the local public or private non-profit agency or for-profit agency which has been designated as a Head Start agency under 42 U.S.C. 9836 and which has been granted financial assistance by the responsible HHS official to operate a Head Start program.

*Head Start agency* means a local public or private non-profit or for-profit entity designated by ACF to operate a Head Start program to serve children age three to compulsory school age, pursuant to section 641(b) and (d) of the Head Start Act.

*Head Start Early Learning Outcomes Framework: Ages Birth to Five* means the Head Start Early Learning Outcomes Framework: Ages Birth to Five, which describes the skills, behaviors, and knowledge that programs must foster in all children. It includes five central domains: Approaches to Learning; Social and Emotional Development; Language and Literacy; Cognition; and Perceptual, Motor, and Physical Development. These central domains are broken into five domains for infants and toddlers and seven domains for preschoolers. Infant and Toddler domains are Approaches to Learning; Social and Emotional Development; Language and Communication; Cognition; and Perceptual, Motor, and Physical Development. Preschool domains are Approaches to Learning; Social and Emotional Development; Language and Communication; Literacy; Mathematics Development; Scientific Reasoning; and Perceptual, Motor, and Physical Development. Domains are divided into sub-domains with goals that describe broad skills, behaviors, and concepts that are important for school success. Developmental progressions describe the skills, behaviors and concepts that children may demonstrate as they progress. As described in the Head Start Act, the Framework is central to program operations that promote high-quality early learning environments (42 U.S.C. 9832(21)(G)(iv)(II)(aa), 42 U.S.C. 9835(o), 42 U.S.C. 9836(d)(2)(C), 42 U.S.C. 9836a(g)(2)(A), 42 U.S.C. 9837(f)(3)(E), 42 U.S.C. 9837a(a)(3), 42 U.S.C. 9837a(a)(14), 42 U.S.C. 9837b(a)(2)(B)(iii), 42 U.S.C. 9837b(a)(4)(A)(i), and 42 U.S.C. 9837b(a)(4)(B)(iii)).

*Homeless children* means the same as *homeless children and youths* in Section 725(2) of the McKinney-Vento Homeless Assistance Act at 42 U.S.C. 11434a (2).

*Home visitor* means the staff member in the home-based program option assigned to work with parents to provide comprehensive services to children and their families through home visits and group socialization activities.

*Hours of planned class operations* means hours when children are scheduled to attend. Professional development, training, orientation, teacher planning, data analysis, parent-teacher conferences, home visits, classroom sanitation, and transportation do not count toward the hours of planned class operations.

*Income* means gross cash income and includes earned income, military income (including pay and allowances, except those described in Section 645(a)(3)(B) of the Act), veteran's benefits, Social Security benefits, unemployment compensation, and public assistance benefits. Additional examples of gross cash income are listed in the definition of "income" which appears in U.S. Bureau of the Census, Current Population Reports, Series P-60-185 (available at https://www2.census.gov/prod2/popscan/p60-185.pdf).

*Indian Head Start agency* means a program operated by an Indian tribe (as defined by the Act) or designated by an Indian tribe to operate on its behalf.

*Indian tribe* is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

*Individualized Education Program* is defined in the same manner as presented in the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq*.).

*Individualized Family Service Plan* is defined in the same manner as presented in the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq*.).

*Legal status* means the existence of an applicant or grantee as a public agency or organization under the law of the state in which it is located, or existence as a private nonprofit or for-profit agency or organization as a legal entity recognized under the law of the state in which it is located. Existence as a private non-profit agency or organization may be established under applicable state or federal law.

*Local agency responsible for implementing IDEA* means the early intervention service provider under Part C of IDEA and the local educational agency under Part B of IDEA.

*Major renovation* means any individual or collection renovation that has a cost equal to or exceeding $250,000. It excludes minor renovations and repairs except when they are included in a purchase application.

*Migrant family* means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who changed their residence by moving from one geographic location to another, either intrastate or interstate, within the preceding two years for the purpose of engaging in agricultural work and whose family income comes primarily from this activity.

*Migrant or Seasonal Head Start Program* means:

(1) With respect to services for migrant farm workers, a Head Start program that serves families who are engaged in agricultural labor and who have changed their residence from one geographic location to another in the preceding 2-year period; and,
(2) With respect to services for seasonal farmworkers, a Head Start program that serves families who are engaged primarily in seasonal agricultural labor and who have not changed their residence to another geographic location in the preceding 2-year period.

*Minor renovation* means improvements to facilities, which do not meet the definition of major renovation.

*Modular unit* means a portable prefabricated structure made at another location and moved to a site for use by a Head Start grantee to carry out a Head Start program, regardless of the manner or extent to which the modular unit is attached to underlying real property.

*National Driver Register* means the National Highway Traffic Safety Administration's automated system for assisting state driver license officials in obtaining information regarding the driving records of individuals who have been denied licenses for cause; had their licenses denied for cause, had their licenses canceled, revoked, or suspended for cause, or have been convicted of certain serious driving offenses.

*Parent* means a Head Start child's mother or father, other family member who is a primary caregiver, foster parent or authorized caregiver, guardian or the person with whom the child has been placed for purposes of adoption pending a final adoption decree.

*Participant* means a pregnant woman or child who is enrolled in and receives services from a Head Start, an Early Head Start, a Migrant or Seasonal Head Start, or an American Indian and Alaska Native Head Start program.

*Personally identifiable information (PII)* means any information that could identify a specific individual, including but not limited to a child's name, name of a child's family member, street address of the child, social security number, or other information that is linked or linkable to the child.

*Program* means a Head Start, Early Head Start, migrant, seasonal, or tribal program, funded under the Act and carried out by an agency, or delegate agency, to provide ongoing comprehensive child development services.

*Program costs* mean costs incurred in accordance with an approved Head Start budget which directly relate to the provision of program component services, including services to children with disabilities, as set forth and described in the Head Start Program Performance Standards (45 CFR part 1304).

*Purchase* means to buy an existing facility, including outright purchase, down payment or through payments made in satisfaction of a mortgage or other loan agreement, whether principal, interest or an allocated portion principal and/or interest. The use of grant funds to make a payment under a capital lease agreement, as defined in the cost principles, is a purchase subject

to these provisions.  Purchase also refers to an approved use of Head Start funds to continue paying the cost of purchasing facilities or refinance an existing loan or mortgage beginning in 1987.

*Real property* means land, including land improvements, buildings, structures and all appurtenances thereto, excluding movable machinery and equipment.

*Recruitment area* means that geographic locality within which a Head Start program seeks to enroll Head Start children and families. The recruitment area can be the same as the service area or it can be a smaller area or areas within the service area.

*Relevant time period* means:

(1) The 12 months preceding the month in which the application is submitted; or

(2) During the calendar year preceding the calendar year in which the application is submitted, whichever more accurately reflects the needs of the family at the time of application.

*Repair* means maintenance that is necessary to keep a Head Start facility in working condition. Repairs do not add significant value to the property or extend its useful life.

*Responsible HHS official* means the official of the Department of Health and Human Services who has authority to make grants under the Act.

*School readiness goals* mean the expectations of children's status and progress across domains of language and literacy development, cognition and general knowledge, approaches

to learning, physical well-being and motor development, and social and emotional development that will improve their readiness for kindergarten.

*School bus* means a motor vehicle designed for carrying 11 or more persons (including the driver) and which complies with the Federal Motor Vehicle Safety Standards applicable to school buses.

*Service area* means the geographic area identified in an approved grant application within which a grantee may provide Head Start services.

*Staff* means paid adults who have responsibilities related to children and their families who are enrolled in programs

*State* is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

*Termination of a grant or delegate agency agreement* means permanent withdrawal of the grantee's or delegate agency's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or delegate agency. Termination does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's or delegate agency's underestimate of the unobligated balance in a prior period;

(2) Refusal by the funding agency to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation renewal, extension or supplemental award);

(3) Withdrawal of the unobligated balance as of the expiration of a grant; and

(4) Annulment, i.e., voiding of a grant upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

*Total approved costs* mean the sum of all costs of the Head Start program approved for a given budget period by the Administration for Children and Families, as indicated on the Financial Assistance Award. Total approved costs consist of the federal share plus any approved non-federal match, including non-federal match above the statutory minimum.

*Transition period* means the three-year time period after December 9, 2011, on the Designation Renewal System during which ACF will convert all of the current continuous Head Start and Early Head Start grants into five-year grants after reviewing each grantee to determine if it meets any of the conditions under §1304.12 of this chapter that require recompetition or if the grantee will receive its first five-year grant non-competitively.

*Transportation services* means the planned transporting of children to and from sites where an agency provides services funded under the Head Start Act. Transportation services can involve the pick-up and discharge of children at regularly scheduled times and pre-arranged sites, including trips between children's homes and program settings. The term includes services provided directly by the Head Start and Early Head Start grantee or delegate agency and services which such agencies arrange to be provided by another organization or an individual. Incidental trips, such as transporting a sick child home before the end of the day, or such as might be required to transport small groups of children to and from necessary services, are not included under the term.

*Verify* or any variance of the word means to check or determine the correctness or truth by investigation or by reference.