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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1302

RIN 0970-AC63

Head Start Program

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

ACTION: Final rule; delay of compliance date.

SUMMARY: The Office of Head Start will delay the compliance date for background checks procedures described in the Head Start Program Performance Standards final rule that was published in the Federal Register on September 6, 2016. We are taking this action to afford programs more time to implement systems that meet the background checks procedures and to align with deadlines for states complying with background check requirements found in the Child Care and Development Block Grant (CCDBG) Act of 2014.

DATES: The compliance date for the background checks procedures described in 45 CFR 1302.90(b) is delayed until September 30, 2017.

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, Division Director of Early Childhood Policy and Budget, Office of Early Childhood Development, OHS_NPRM@acf.hhs.gov, (202) 358-3263 (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 Standard Time.

SUPPLEMENTARY INFORMATION:

The Head Start program provides grants to local public and private non-profit and for-profit agencies to provide comprehensive child development services to economically disadvantaged children and families and to help preschoolers develop the skills they need to be successful in school. We amended our Head Start program performance standards in a final rule that published in the Federal Register on September 6, 2016.

Head Start Program Performance Standards are the foundation for Head Start's mission to deliver comprehensive, high-quality individualized services to support children from low-income families prepare for school. They outline requirements grantees and delegate agencies must implement to operate high quality Head Start or Early Head Start programs and provide a structure to monitor and enforce quality standards.

Our performance standards highlight child safety as a top priority. We strengthen our criminal background checks process at 45 CFR 1302.90(b), in the final rule, to reflect changes in the Improving Head Start for School Readiness Act of 2007 (Act), 42 U.S.C. 9801 et seq., and to complement background check requirements in the Child Care and Development Block Grant (CCDBG) Act of 2014, 20 U.S.C. 1431 et seq., 20.

In the **SUPPLEMENTARY INFORMATION** section of the final rule, we provided a table, *Table 1: Compliance Table* that lists dates by which programs must implement specific standards. We list August 1, 2017 as the date by which programs must comply with background checks performance standards at 45 CFR 1302.90(b)(2), (4), and (5) in the final rule.

Generally, before a person is hired, we require programs to conduct a sex offender registry check and obtain either a state or tribal criminal history records, including fingerprint checks, or a Federal Bureau of Investigation (FBI) criminal history records, including fingerprint checks, before a person is hired. This performance standard under section 1302.90(b)(1) became effective the date the final rule was published. Programs were to have systems in place, by August 1, 2017, to accommodate this part of the background checks process.

In sections 1302.90 (b)(2), (4), and (5), we afford programs 90 days to obtain which ever check they could not obtain before the person was hired, as well as child abuse and neglect state registry check, if available; we require programs to have systems in place that ensure these newly hired employees do not have unsupervised access to children until their background process is complete; and we require programs to conduct complete background checks that consist of a sex offender registry check, state or tribal history records, including fingerprint checks and an FBI criminal history records, including fingerprint check, as well as a child abuse and neglect state registry check, if available, for each employee at least once every five years.

We believe programs will need more time to implement systems to complete the backgrounds checks process listed at sections 1302.90(b)(2), (4), and (5) in our final rule.

Also, we recognize most states will have systems that can accommodate our programs' background checks requests by September 30, 2017. The reason being, Congress requires states that receive CCDBG funds to use the same set of comprehensive background checks for all child care teachers and staff. These states must have requirements as well as policies and procedures to enforce and conduct criminal background checks for existing and prospective child care providers by September 30, 2017. We can minimize burden on programs that operate with both Head Start and Child Care Development Funds if we extend the time by which our programs must comply with section 1302.90 (b) to September 30, 2017. Until September 30, 2017, the criminal record check requirements from section 648A of the Act remain in place.

We ordinarily publish a notice of proposed rulemaking in the Federal Register to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

We find good cause to waive public comment under Section 553(b) of the Administrative Procedure Act because it is unnecessary and contrary to the public interest to provide for public comment in this instance. The delayed compliance date poses no harm or burden to programs or the public. To have provided a period for public comment would have only extended concern in the Head Start community of how they were going to comply with the requirement in a different timeframe than that afforded the child care

program. Programs may voluntarily come into compliance at an earlier date if they have the processes already in place.

Dated: November 22, 2016.

Mark H. Greenberg
Acting Assistant Secretary
for Children and Families.

Approved: November 30, 2016.

Sylvia M. Burwell,
Secretary.

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