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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1302

RIN 0970-AC78

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 further delay the compliance date for programs to meet background checks requirements and participate in their state or local Quality Rating and Improvement Systems (QRIS). The Department delayed the compliance dates for these standards through a previous document in the Federal Register. Since then, we have learned programs could benefit from more time as they work to align with state systems to meet these federal standards.

DATES: The date for programs to comply with background checks procedures as described in 45 CFR 1302.90(b) and to participate in QRIS as described in 45 CFR 1302.53(b)(2), as

published at 81 FR 61294 and delayed at 81 FR 87843 and 82 FR 45205, is further delayed until September 30, 2019.

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, Office of Head Start, Planning, Oversight, and Policy Division Director, (202) 358-3263, OHS_NPRM@acf.hhs.gov. 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:

Background

The Head Start Program Performance Standards (81 FR 61294) define standards grantees and delegate agencies must implement to operate high quality Head Start or Early Head Start programs. As part of our effort to prioritize child safety, we strengthened our criminal background check procedures at 45 CFR 1302.90(b) in the final rule to reflect changes in the Improving Head Start for School Readiness Act of 2007, Public Law 110-134, and to complement background check requirements in the Child Care and Development Block Grant (CCDBG) Act of 2014, Public Law 113-186.

In addition to more comprehensive background check standards, we aim to strengthen partnerships between states and Head Start programs. At 45 CFR 1302.53(b) in the final rule, we require Head Start programs to actively promote coordinated early childhood systems, including those in their state. As part of these requirements, most Head Start programs must participate in QRIS, if they meet certain conditions.

Currently, Head Start programs must comply with background check requirements and participate in their states' QRIS, by September 30, 2018. We have already delayed the date for programs to comply with background check requirements in the final rule to align with the background check requirement deadline in the Child Care Development Block Grant Act of 2014, Public Law 113-186, through a document published in the Federal Register (82 FR 45205) on September 28, 2017. In the same Federal Register document, we extended the date for programs to participate in QRIS.

Through conversations with programs and states, we are concerned programs are still not be able to fully implement either background check or QRIS requirements by September 30, 2018, without assuming unintended regulatory and administrative burden.

Background Checks Procedures in the Final Rule

Generally, 45 CFR 1302.90(b)(1) requires that before a person is hired, programs must 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.

In 45 CFR 1302.90(b)(2), (4), and (5), we afford programs 90 days to obtain whichever check they could not obtain before the person was hired, as well as child abuse and neglect state registry check, if available. However, programs must ensure newly hired employees do not have unsupervised access to children until their background check process is complete. A complete

background check process consists of a sex offender registry check, state or tribal history records, including fingerprint check and FBI criminal history records, including fingerprint check, as well as a child abuse and neglect state registry check, if available. We also require programs to conduct complete background checks for each employee at least once every five years.

We believe programs require more time to implement systems to complete the background checks process listed at 45 CFR 1302.90(b)(2), (4), and (5) in our final rule. We aligned our compliance date for our background checks requirements with the background check requirement deadline the CCDBG Act because states that receive CCDBG funds are required to establish systems that implement the same set of comprehensive background checks for all child care teachers and staff. These systems will enable Head Start programs to meet background check requirements in the final rule.

We understand, however, states may request additional time-limited waivers of up to two years, in one year increments (i.e., potentially through September 30, 2020) to design systems that can accommodate our programs' background checks requests. To minimize burden on programs, we will extend the compliance date for 45 CFR 1302.90(b) to September 30, 2019. However, until Head Start programs have systems in place that fully comply with 45 CFR 1302.90(b), we require them to continue to adhere to the criminal record check requirements in section 648A of the Head Start Act, as amended by the Improving Head Start for School Readiness Act of 2007, Public Law 110-134.

QRIS Requirement in the Final Rule

We require programs that meet certain conditions, except for American Indian and Alaska Native programs, to participate in state or local QRIS, as prescribed at 45 CFR 1302.53(b)(2) in the final rule. A QRIS is a systemic approach to assess, improve, and communicate the level of quality in early and school-age care and education programs within a state or locality. It awards quality ratings to programs that meet a set of criteria as defined by the QRIS. Criteria Head Start programs must meet to enter the QRIS and maintain participation greatly vary by state. We recognize many Head Start programs were already participating in their state and local quality improvement efforts before we introduced this standard to the final rule. Now that we have included this standard in the final rule, we understand programs have taken steps to participate in QRIS and that many states are assessing their QRIS with new Head Start QRIS participation policies. However, programs and states need additional time to align these systems. We want to minimize any unintentional burden on states that choose to adapt their systems to allow Head Start programs to participate in QRIS, as well as alleviate programs' concerns about meeting the current compliance date. To avoid duplication efforts between Head Start and QRIS monitoring systems as well as eliminate undue burden on Head Start programs and states as they work to align these systems, we will delay the compliance date for this standard for another year.

CONCLUSION

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 for this finding in the notice.

We find good cause to waive public comment under section 553(b) of the APA because it is unnecessary and contrary to the public interest to provide for public comment in this instance. States, localities, and Head Start grantees will likely be subjected to undue and unnecessary administrative burden as they expend time trying to find ways to implement these standards without support from local and state law enforcement agencies and without QRIS systems that can accommodate Head Start programs. A period for public comment would only extend programs' concerns as they attempt to meet these standards by the compliance dates. Head Start programs are still required to comply with statutory background check requirements in the Improving Head Start for School Readiness Act of 2007, Public Law 110-134, until they can develop systems that will enable them to conduct complete background checks with fingerprints. Therefore, if we delay compliance dates, we will pose no harm or burden to programs or the public. Moreover, programs that already have systems in place to meet background check standards at 45 CFR 1302.90(b) and to participate in their states' QRIS at 45 CFR 1302.53(b)(2) may voluntarily come into compliance by the compliance date. However, programs that do not have systems in place have until September 30, 2019 to comply.

Dated: September 14, 2018.

Lynn A. Johnson,
Assistant Secretary
for Children and Families.

Approved: September 20, 2018.

Alex M. Azar II,
Secretary.

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