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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1304 and 1305

RIN: 0970-AC77

Head Start Designation Renewal System

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

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this NPRM, we propose changes to two of the seven conditions of the Designation Renewal System for Head Start Grantees (DRS): the condition related to the Classroom Assessment Scoring System: Pre-K (CLASS) and the fiscal condition related to audit findings. For the CLASS condition, we propose to remove the lowest 10 percent criterion and set more rigorous minimum thresholds across all three domains that grantees must meet in order to avoid competition. For the fiscal condition, we propose to add a second criterion that would consider additional findings from annual audits. A grantee would be required to compete for continued funding if they met either criterion.

We also propose technical changes within part 1304 subpart B (Designation Renewal) to remove any outdated provisions to the regulation. These technical fixes were not included in the publication of the Head Start Program Performance Standards (performance standards) final rule in 2016 because the Designation Renewal section of the regulation was not open for amendment in the revision of the performance standards.

DATES: Submit either electronic or written comments by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by [docket number and/or RIN number], by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Office of Head Start, Attention: Director of Policy and Planning, 330 C. Street SW, 4th Floor, Washington, DC 20201.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

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.

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I. Background

Designation Renewal System

Since its inception in 1965, Head Start has been a leader in helping children from low-income families reach kindergarten more prepared to succeed in school. Through the *Improving Head Start for School Readiness Act of 2007* (the 2007 Reauthorization) amending the Head Start Act (the Act), Congress required the Department of Health and Human Services to ensure these children and their families receive the highest quality services possible. In support of that requirement, the 2007 Reauthorization directed the Secretary to establish the DRS to: (1) identify Head Start grantees that are delivering high quality services and can receive funding noncompetitively for a five-year period and grantees that will be required to compete for continued funding and (2) to transition all grants from indefinite grants to five-year grant periods.

The DRS requires grantees to compete for continued funding if they meet one or more of the following seven conditions:

- (1) one deficiency under section 641A(c)(1)(A), (C), or (D) of the Act;
- (2) failure to establish, use, and analyze children's progress on agency established School Readiness goals;
- (3) scores below minimum thresholds in any of the three domains of the CLASS or in the lowest 10 percent in any CLASS domain out of the grantees monitored in a given year unless the grantee's score is equal to or above the standard of excellence for that domain;
- (4) revocation of a license to operate a center or program;
- (5) suspension from the program;
- (6) debarment from receiving federal or state funds or disqualified from the Child and Adult Care Food Program; or,
- (7) an audit finding of at risk for failing to continue as a "going concern."

We did not revise the DRS when we issued the new Head Start Program Performance Standards (performance standards) in 2016 because the transition period to five-year grants was not complete.

As required in Section 641(c)(8) of the Head Start Act (42 U.S.C. 9836(c)(8)), ACF has been regularly analyzing data on the implementation of the DRS and on those grantees required to compete. In 2016, ACF's Office of Planning, Research, and Evaluation published a report of its DRS evaluation, titled "Early Implementation of the Head Start Designation Renewal System,"

which examined how the system is addressing its goals of transparency, validity, and reliability.¹ The study further explored whether DRS is identifying lower-performing grantees for competition and how DRS might support program quality improvement.

Request for Comment on Head Start Designation Renewal System Improvements

We published a request for comment in the Federal Register in December 2017 to solicit input from the public on the implementation of DRS broadly, including the implementation of CLASS and other conditions of DRS. See 82 FR 57905. We proposed consideration of the following:

- (1) Remove lowest 10 percent in any of the three CLASS domains
- (2) Increase Emotional Support threshold from 3 to 5;
- (3) Increase Classroom Organization threshold from 4 to 5;
- (4) Allow the Secretary to set Instructional Support (IS) threshold each year using CLASS scores from previous year's monitoring data;
- (5) How Instructional Support and other thresholds could be set and/or adjusted to incentivize continuous program improvement; and
- (6) Administrative changes to DRS to more broadly include ways we can incentivize robust competition with new applicants, facilitate smooth transitions when there is a new grantee as a result of competition, and improve the DRS processes.

We received 145 unique comments in response to the Federal Register notice. It is important to note that one submission had thousands of cosigners from organizations such as

¹ <https://www.acf.hhs.gov/opre/research/project/evaluation-of-the-head-start-designation-renewal-system-drs>

regional and state Head Start associations, grantees, community partners, and national organizations. All comments are available for public view at www.regulations.gov, and we briefly summarize them here.

Some commenters recommended we no longer use CLASS in DRS. Nearly all commenters supported removal of the lowest 10 percent CLASS condition. Most commenters mentioned the lowest 10 percent CLASS condition resulted in a moving target for grantees. A majority supported the use of absolute thresholds and keeping the current thresholds in each domain. Many commenters suggested using CLASS scores from two reviews (e.g., two CLASS reviews) or an opportunity to show improvement before designating grantees for competition. The tribal community suggested establishing mandatory cultural and linguistic awareness training for CLASS observers to be developed and implemented in consultation with tribal nations. Commenters offered various approaches or systems for using CLASS scores in determining designation status, all of which had varying levels of complexity from an implementation perspective.

We believe the DRS has driven increased accountability and improved the quality of services Head Start programs are providing to children and families. The DRS evaluation provides evidence that DRS is incentivizing grantees to engage in a range of quality improvement activities.² In addition, the Head Start Family and Child Experiences Survey (FACES) report from 2016 indicates improvements in Head Start classroom quality from 2006 to 2014, including

² <https://www.acf.hhs.gov/opre/research/project/evaluation-of-the-head-start-designation-renewal-system-drs>

the time during the implementation of DRS.³ However, concerns with the fiscal audit finding and the way CLASS is implemented have become increasingly clear.

For reasons established in this document, we only propose targeted changes to the CLASS condition and the audit-based fiscal condition. The current CLASS condition competes grantees who fall below the 10 percent requirement in any of the three CLASS domains, which often results in grantees being designated for competition that are demonstrating high quality in Emotional Support and Classroom Organization, while grantees who fall below the mid-range for quality in Instructional Support are not always identified for competition. The existing fiscal condition, under-identifies grantees with fiscal challenges documented in their annual audit data and underutilizes important annual audit data. Consequently, we believe revisions to these conditions are necessary to ensure we identify those communities where competition is the most warranted, more effectively hold grantees accountable, and increase the transparency of DRS.

In the request for comments, we received a few comments related to the deficiency condition. While ACF is not proposing a change to the deficiency condition in this NPRM, we are seeking comment about whether we should consider a change to the single deficiency trigger. ACF continues to stand by its policy that one deficiency is serious enough to cause a grantee to compete for continued funding. However, we have heard concerns that the single deficiency trigger is too stringent and causes competition for grantees that are high quality and had an isolated issue. We believe this NPRM provides another opportunity for stakeholders to provide

³ Aikens, N., Bush, C., Gleason, P., Malone, L., & Tarullo, L. (2016). Tracking Quality in Head Start Classrooms: FACES 2006 to FACES 2014. Washington, DC: U.S. Department of Health and Human Services.

input to ACF on this issue. We specifically seek comment on whether the condition should be two or more deficiencies rather than a single deficiency.

The CLASS Tool

After extensive expert feedback it was determined that CLASS is the only existing instrument that meets the statutory requirements in Section 641A(c)(2)(F) of the Act. The CLASS is a research-based tool that measures teacher-child interaction on a seven-point scale in three broad domains: *Emotional Support*, *Classroom Organization*, and *Instructional Support*. *Emotional Support* assesses the degree to which teachers establish and promote positive classroom climates through everyday interactions. *Classroom Organization* assesses teachers' productivity, how they organize classroom routines and learning formats, and how they manage children's behaviors. *Instructional Support* assesses the ways in which teachers implement the curriculum to effectively promote cognitive and language development.⁴

The CLASS was developed in response to research findings indicating the importance of teacher-child interactions as a demonstrated measure of classroom quality and as a means to promote children's development and learning. The tool is administered by trained and certified observers using a specific protocol for scoring. Observers assess how teachers interact with children in classrooms and rate each CLASS domain on a 7-point scale, from low to high. Observers assign a score of 1 to 2 (low-range of quality) when teachers poorly manage children's

⁴ Hamre, Bridget K., La Paro, Karen M., & Pianta, Robert C. (2009). Classroom Assessment Scoring System Manual Pre-K. Baltimore, MD: Paul H. Brooks Publishing Co, Inc.

behaviors, when instruction is purely rote, or when there is little teacher-child interaction. Observers assign a score of 3 to 5 (mid-range of quality) when teachers show a mix of effective interactions with periods when interactions are either not effective or are absent. Observers assign a score of 6 to 7 (high-range of quality) if teachers show consistently effective teacher-child interactions throughout the observation period.⁵

Fiscal Condition

Section 641(c)(1) of the Head Start Act requires DRS to include, as a condition for competition, a criteria based on grantee's annual audits. The current DRS fiscal condition requires competition when a grantee is at risk for failing to continue as a going concern, meaning an organization is facing threat of liquidation. As defined in the performance standards, going concern means an organization that operates without the threat of liquidation for a period of at least 12 months. This finding is a very serious fiscal finding related to the viability of an organization. Based on our analysis of the last six cohorts, this condition has identified very few grantees for competition.

The Head Start Act and regulations have required annual audits of grantees for decades. The performance standards conform to the new Uniform Administrative Requirements for HHS Awards (45 CFR part 75) that requires every federal grantee receiving \$750,000 or more to complete an annual audit and report the results to the Federal Audit Clearinghouse (FAC).45 CFR 75.501(a). This requirement applies to a majority of Head Start grantees. Qualified

⁵ Hamre, Bridget K., La Paro, Karen M., & Pianta, Robert C. (2009). Classroom Assessment Scoring System Manual Pre-K. Baltimore, MD: Paul H. Brooks Publishing Co, Inc.

independent audit professionals prepare annual audit reports and file the reports with the FAC. Once an audit report is filed with the FAC, it is final and available to the public. If there are questioned cost or findings in the audit report, ACF implements its audit resolution process to ensure the grantee has addressed any issues. The audit resolution process may require the grantee to implement new fiscal policies and procedures to resolve an issue. Further, the process may require resolution of any questioned costs or any disallowances.

Audit findings according to the Uniform Administrative Requirements for HHS Awards at 45 CFR 75.2 mean “deficiencies which the auditor is required by 75.516(a) to report in the schedule of findings and questioned costs.” An independent auditor evaluates an entity based on a set of several elements related to management of financial systems and prudent fiscal decision making, or internal control.

Internal control, as defined in accounting and auditing, is a process for assuring an organization's objectives in operational effectiveness and efficiency, reliable financial reporting, and compliance with laws, regulations, and policies. The elements of audit findings include significant deficiencies or material weaknesses in internal control; questioned costs, compliance with federal and other statutes and regulations; and known or likely fraud.

In 2005, the United States Government Accountability Office (GAO) issued a report that identified risks in ACF oversight of Head Start grantees financial management weaknesses and recommended considering competing grantees showing fiscal management

and other risks⁶. Subsequently, Congress required that OHS use audit findings in making DRS determinations. The Secretary's Advisory Committee on Re-designation of Head Start Grantees recommended that grantees that are considered to be fiscally "high risk" be required to compete.⁷ While ACF no longer uses the "high risk" designation for grantees, its mention in the report highlights the importance the Advisory Committee placed on mitigating fiscal risk.

In 2010, the DRS Notice of Proposed Rulemaking proposed a two part fiscal condition that included "going concern" and "material weakness." 75 FR 57704, 57717. Commenters responding to the NPRM stated a material weakness finding could represent a minor problem and suggested that we look instead for a pattern of fiscal challenges. 76 FR 70010, 70021. As described in the Section-by-Section Discussion, we believe that a more comprehensive look at the audit report would identify patterns of fiscal challenges and more accurately identify grantees for competition.

Goal of this NPRM

We propose changes to the CLASS condition and the fiscal condition related to audit findings to ensure we identify those communities where competition is the most warranted, more effectively hold grantees accountable, and increase the transparency of DRS. For the CLASS condition, our goals are to ensure we are not competing grantees demonstrating high quality in Emotional Support and Classroom Organization, to compete grantees who have Instructional

⁶ GAO (2005). 'Head Start: Comprehensive Approach to Identifying and Addressing Risks Could Help Prevent Grantee Financial Management Weaknesses (GAO-05 176). Washington, DC: U.S. Government Accountability Office. <http://www.gao.gov/new.items/d05176.pdf>.

⁷ HHS (2008). A System of Designation Renewal of Head Start Grantees: Report of the Secretary's Advisory Committee on Re-designation of Head Start Grantees. <https://eclkc.ohs.acf.hhs.gov/report/system-designation-renewal-head-start-grantees-report-secretarys-advisory-committee-re>

Support scores that fall below the mid-range of quality, and to create meaningful competition that maximizes our resources and drives quality improvement. For the fiscal condition, our goal is to broaden our use of information about a grantee's fiscal processes, financial management, and fiscal systems by incorporating additional audit findings to ensure ACF better identifies grantees with fiscal challenges for competition. The additional technical revisions to this subpart will not alter the substance of the regulation, but will ensure the language of the Head Start requirements are clear, updated, streamlined, and transparent to the public.

II. Statutory Authority to Issue NPRM

We publish this NPRM under the authority granted to the Secretary of Health and Human Services by sections 641, 644(c), 645A(b)(12), and 647 of the Act (42 U.S.C. 9836, 9839, 9840a, 9842) as amended by the Improving Head Start for School Readiness Act of 2007 (Public Law 110-134). Generally, under these sections, the Secretary is required to develop a system for designation renewal. The system must determine if a grantee delivers high-quality comprehensive services that meet families' educational, health, nutritional, and social needs and to determine if the grantee meets program and financial management requirements.

III. Section-by-Section Discussion of Proposed Changes to the Designation Renewal System

We propose the following changes to the Head Start regulations, under subpart B of part 1304, Federal Administrative Procedures, at §§ 1304.11, 1304.12, and 1304.15 and part 1305, Definitions. We believe these changes will ensure the regulations are accurate and up to

date; and that they clarify and streamline the language of the existing regulation. For example, we propose to remove all references to December 9, 2011, the effective date of the DRS regulation, because that date has passed. We also propose to remove any references to the transition to five-year grants since all grantees have been evaluated through DRS and transitioned to five-year grants.

Additionally, we propose substantive changes to conditions in §§ 1304.11(c) and (g) to ensure we identify grantees where competition is most warranted, more effectively hold grantees accountable, and increase the transparency of DRS. Specifically, we propose to raise the absolute threshold for each CLASS domain and remove the lowest 10 percent criterion. We also propose to add a second criterion to the fiscal condition related to audit findings.

Section 1304.11 Basis for determining whether a Head Start agency will be subject to an open competition.

Section 1304.11 establishes the conditions that require a grantee to compete for continued funding under the DRS. Congress established the basis for the DRS and we published a final rule codifying these requirements in 2011. If a grantee meets any one of the seven conditions described in this section, an open competition is conducted to determine whether the incumbent grantee or another entity in the community is best qualified to run the Head Start program. This section institutes effective dates for various conditions. Since all grantees have transitioned through DRS and now have five-year grant periods, the various effective dates are no longer relevant. Throughout this part of the NPRM, we describe revisions to remove the outdated language.

1304.11(b) School Readiness Goals

This paragraph establishes requirements for grantees developing and using school readiness goals as required in the Act. Grantees are required to establish school readiness goals, aggregate and analyze child-level assessment data three times a year, and analyze individual child-level assessment data to inform progress on the goals. We propose to maintain this requirement and only remove dates that are no longer relevant. Paragraph (b)(1) sets “December 9, 2011” as the date by which grantees must establish school readiness goals. We propose to remove the phrase, “After December 9, 2011” because it is outdated.

In paragraph (b)(1)(ii), we propose to remove the phrase “Birth to Five Head Start Child Outcomes Framework,” and replace it with “Head Start Early Learning Outcomes Framework: Ages Birth to Five.” In 2015, OHS issued a new framework to include children from birth to age five. Additionally, the new framework now has indicators of what children should know and be able to do at 36 and 60 months of age and the developmental progressions that leads to those outcomes.

For the same reason discussed earlier, we propose to remove the phrase, “After December 9, 2011”, in paragraph (b)(2).

1304.11 (c) CLASS Condition

This paragraph establishes the use of the CLASS: Pre-K tool to assess a grantee's designation status. This condition is a two-part criterion that consists of both an absolute threshold and a relative threshold. With the absolute threshold, grantees must compete if their CLASS scores fall below the following minimum quality thresholds for each of the three domains: 2 for Instructional Support, 3 for Classroom Organization, and 4 for Emotional Support. The relative threshold requires grantees to compete for continued funding if their average scores across classrooms fall in the lowest 10 percent on any of the three CLASS domains for grantees observed in that year. Additionally, the 10 percent criteria includes a high-quality threshold, or "standard of excellence," across all domains that would exempt grantees that score a 6 or above from competition.

Based on our experience implementing the CLASS condition since 2012, analysis of our monitoring data, findings of the implementation evaluation, and comments we received in response to the December 2017 Federal Register notice, we have determined three challenges with the current condition. First, the results of the lowest 10 percent criterion show we are identifying relatively high performing grantees demonstrating high quality in Emotional Support and Classroom Organization to compete for continued funding, but we are not identifying some grantees with Instructional Support scores that fall below the mid-range of quality.

Second, the relative threshold in the current CLASS condition means there is no clear target grantees can aim to achieve. Instead of a transparent system where grantees know the standard for which they are being held accountable, a relative threshold results in informing

grantees of the expectations after all grantees have been reviewed. The lowest 10 percent criterion also results in a moving target where the expectation of quality changes year to year. The cut-off for a group of grantees monitored in one year is different from the standard for another group of grantees monitored in another year. Recent cut-off scores are as follows; in 2015: Emotional Support 5.6563; Classroom Organization 5.2708; Instructional Support 2.2262; in 2016: Emotional Support 5.5952; Classroom Organization 5.2500; Instructional Support 2.2222; in 2017: Emotional Support 5.7024; Classroom Organization 5.3264; Instructional Support 2.3095.⁸ This lack of transparency was a concern highlighted in ACF's evaluation of DRS.⁹

Third, the current condition creates implementation problems. To determine which grantees score in the lowest 10 percent each year, we must complete all monitoring reviews before we can analyze the full set of data and identify the 10 percent cut-off point. During this waiting period, Head Start programs know their CLASS scores, but do not know whether they are in the lowest 10 percent and will be required to compete. In the DRS evaluation, programs reported uncertainty associated with the waiting period and not knowing whether they would be designated for competition has led to stress and turnover among staff. We know stability and consistency from nurturing responsive caregivers are important for children's development. Research suggests stress compromises the quality of teacher-child interactions and staff turnover disrupts continuity of care and reduces the stability programs can provide to children.^{10 11}

⁸ <https://eclkc.ohs.acf.hhs.gov/data-ongoing-monitoring/article/national-overview-grantee-classr-scores-2017>

⁹ <https://www.acf.hhs.gov/opre/research/project/evaluation-of-the-head-start-designation-renewal-system-drs>

¹⁰ Whitaker, R. C., Dearth-Wesley, T., & Gooze, R. A. (2015). Workplace stress and the quality of teacher-children relationships in Head Start. *Early Childhood Research Quarterly*, 30(1A), 57-69.

Given the emphasis on teacher-child interactions as a critical ingredient of a high quality classroom experience, the CLASS tool has been the observational tool used to address research questions in many studies. Evidence suggests children learn more in well-organized classroom environments that are characterized by sensitive and responsive interactions that promote autonomy, conversation, literacy skills, and executive functioning.¹² Children gain these skills when they experience higher quality teacher-children interactions and instruction.¹³ Research suggests there is a “threshold range,”¹⁴ or “active range,”¹⁵ where we begin to see outcomes related to children’s school readiness. For example, research demonstrates that when teachers were more responsive and sensitive and were rated as providing high-quality emotional support, children showed better social adjustment and fewer behavior problems.¹⁶

Additionally, children showed more advanced academic and language skills when their preschool teachers provided instruction rated in the mid- to high-quality range.¹⁷ In addition to

¹¹ Cassidy, D. J., King, E. K., Wang, Y., Lower, J. K., & Kintner-Duffy, V. L. (2017). Teacher work environments are toddler learning environments: Teacher professional well-being, classroom emotional support, and toddlers' emotional expressions and behaviours. *Early Child Development and Care*, 187(11), 1666-1678.

¹² Hatfield, B. E., Burchinal, M. R., Pianta, R. C., & Sideris, J. (2016). Thresholds in the association between quality of teacher-child interactions and preschool children’s school readiness skills. *Early Childhood Research Quarterly*, 36, 561-571.

¹³ Ibid

¹⁴ National Center for Research on Early Childhood Education In Focus: Increasing knowledge in early childhood (February 2010, NCRECE in Focus Vo. 1 Issue 2). Learning how much quality is necessary to get good results for children.

¹⁵ Burchinal, M., Xue, Y., Tien, H., Auger, A., & Mashburn A. J. (2011, March). *Secondary data analysis looking for thresholds in child care quality*. PowerPoint presentation at the Biennial Meeting of the Society for Research in Child Development, Montreal, Canada.

¹⁶ National Center for Research on Early Childhood Education In Focus: Increasing knowledge in early childhood (February 2010, NCRECE in Focus Vo. 1 Issue 2). Learning how much quality is necessary to get good results for children.

¹⁷ Ibid

suggesting a “threshold range” rather than a specific threshold, there is also general support from the research that classroom quality needs to be out of the low-range (above a 2) to support children’s development.¹⁸

Lastly, there is no national average for CLASS scores, but we can look to numerous studies and settings to tell us how early childhood preschool classrooms typically score across the CLASS domains. Aside from Head Start monitoring, 19 states use CLASS as the classroom observation tool in their state Pre-K programs,¹⁹ and 23 states have adopted it as part of their Quality Rating and Improvement System.²⁰ We acknowledge there are some differences in the way CLASS is implemented across different settings (e.g., the number of classroom observations, whether the scores are averaged at the program or classroom level), but the data are nonetheless useful for understanding the landscape of how classrooms and programs score on the CLASS.

We know the average preschool classroom scores are higher in the domains of Emotional Support and Classroom Organization (5.0-6.0) than in the domain of Instructional Support (2.0-3.0).^{21 22} CLASS scores in the three domains appear consistent across a variety of

¹⁸ HHS (2012) report from the Secretary’s Advisory Committee on Head Start Research and Evaluation. https://www.acf.hhs.gov/sites/default/files/opre/eval_final.pdf

¹⁹ Friedman-Krauss, A. H., Barnett, S. W., Weisenfeld, G. G., Richard Kasmin, R., Nicole DiCrecchio, N., & Horowitz, M. (2018). The state of preschool 2017: State preschool yearbook, Appendix A. New Brunswick, NJ: National Institute for Early Education Research.

²⁰ Teachstone. *CLASS: A Leading QRIS Standard*. Retrieved from <https://teachstone.com/class/>

²¹ Early, D., Barbarin, O., Bryant, D., Burchinal, M., Chang, F., Clifford, R., Crawford, G. & Weaver, W. & Howes, C. & Ritchie, S., & Kraft-Sayre, M., & Piata, B., & Barnett, S. (2005). Pre-Kindergarten in Eleven States: NCEDE’s Multi-State Study of Pre-Kindergarten & Study of State-Wide Early Education Programs (SWEEP).

²² Moiduddin, E., Aikens, N., Tarullo, L., West, J., Xue, Y. (2012). Child Outcomes and Classroom Quality in FACES 2009. OPRE Report 2012-37a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services

settings, even when settings include children of diverse backgrounds and income levels.²³²⁴²⁵²⁶²⁷ While these data do not point to the “right” threshold, it provides the range in which classrooms and programs typically score.

For these reasons, we propose to eliminate the lowest 10 percent criterion of the CLASS condition and raise the absolute thresholds to 2.5 for Instructional Support, 5 for Classroom Organization, and 5 for Emotional Support which we believe will improve quality, address all the concerns previously identified and ensure all grantees are held to the same standard year to year. Since research does not specify an exact threshold for each domain, our proposal uses guidelines from the CLASS manual to set thresholds that align with the broad research principle that programs need to be out of the low-range on quality (i.e. above a 2). These proposed thresholds are higher than our current minimums, and we believe this would strengthen the quality of teacher-child interactions in Head Start classrooms.

In paragraph (c), we propose to remove the colon “:” from the stem sentence. In paragraph (c)(1), we propose to remove the phrase “After December 9, 2011,” because it is outdated and we propose to move the remaining text to the stem sentence. We propose to re-

²³ Early, D., Barbarin, O., Bryant, D., Burchinal, M., Chang, F., Clifford, R., Crawford, G. & Weaver, W. & Howes, C. & Ritchie, S., & Kraft-Sayre, M., & Piata, B., & Barnett, S. (2005). Pre-Kindergarten in Eleven States: NCEDE's Multi-State Study of Pre-Kindergarten & Study of State-Wide Early Education Programs (SWEEP).

²⁴ Burchinal, M., Mokrova, I., Bratsch-Hines, M., Peisner-Feinberg, E. (2018). *Pre-K classroom characteristics and Pre-K gains of children living in rural areas*. PowerPoint presentation at the National Research Conference on Early Childhood on the Early Learning Network Year 1 Results: *Preschool Educational Practices and Child Outcomes*.

²⁵ Moiduddin, E., Aikens, N., Tarullo, L., West, J., Xue, Y. (2012). Child Outcomes and Classroom Quality in FACES 2009. OPRE Report 2012-37a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

²⁶ Tout, K., Cleveland, J., Li, W., Starr, R., Soli, M. & Bultinck, E. (2016). The Parent Aware Evaluation: Initial Validation Report. Minneapolis, MN: Child Trends.

²⁷ Swanson, C., Carran, D., Guttman, A., Wright, T., Murray, M., Alexander, C., & Nunn, J. (2017). Maryland EXCELS Validation Study. Johns Hopkins University, Baltimore, Maryland.

designate paragraph (c)(1) as paragraph (c) and re-designate paragraphs (i) through (iii) as paragraphs (1) through (3).

In new paragraph (c)(1), for the minimum threshold for Emotional Support, we propose to remove “4” and replace it with “5.” We believe this change will increase the standard of quality and move programs closer to the high-quality range. At a score of 5, we would expect to see with more frequency and consistency the behaviors and interactions that matter for children’s social emotional development. For example, we would see more evidence of warm and supportive relationships between the teacher and child; more examples of teacher responsiveness and sensitivity to children’s needs; and more interactions where the teacher supports the child’s interests, motivations, and autonomy.

In new paragraph (c)(2), for Classroom Organization, we propose to remove “3” and replace it with “5.” Like the change we propose as the minimum threshold for Emotional Support, we believe this proposed change will also set a much higher standard that moves programs closer to the high-quality range. At a score of 5, we believe we would see many more consistent examples of classroom processes and management that support children’s learning. For example, we would see more instances of clear behavioral expectations and use of effective methods to prevent and redirect misbehavior. We would see more teacher preparation for activities, more evidence of classroom routines, and more ways in which the teacher maximizes children’s engagement and interest.

In new paragraph (c)(3), for Instructional Support, we propose to remove “2” and replace it with “2.5.” We believe this proposed change would set an expectation that moves programs out of the low range and toward the mid-range of quality. At this higher score, we would expect to see with greater frequency more of the behaviors and interactions that matter for children’s learning. For example, we would expect to see more activities that encourage analysis and reasoning, more use of advanced language, and more evidence of teachers expanding on children’s learning. Setting the threshold at 2.5 would drive quality improvement and set an achievable and transparent target.

Finally, we propose to remove the existing paragraph (c)(2) in its entirety to eliminate the lowest 10 percent criterion and the standard of excellence. With the proposed use of absolute thresholds, this paragraph is no longer applicable. Additionally, we propose to replace this paragraph with the newly designated paragraph (c)(2) to reflect the proposed new threshold for Classroom Organization.

1304.11(e) Suspension by OHS

Paragraph (e) requires a grantee to compete for continued funding if they have been suspended by OHS. When DRS became effective, grantees had an opportunity to appeal a suspension by OHS. However, the grantees’ opportunity to appeal a suspension was removed in the performance standards, so we propose to remove references to appeal. For this reason, we are updating this paragraph but not changing the requirement.

Specifically, we propose to remove the phrase “there is a pending appeal and” in the second sentence. In the third sentence of paragraph (e), we propose to add the phrase “and the suspension remains in place,” and remove the phrase, “regardless of the appeal status.” Additionally, we propose to remove the incorrect reference to “1304.16,” and replace it with “1304.15.”

1304.11 (g) Fiscal Condition

Currently, the fiscal condition of DRS requires a grantee to compete if an audit has indicated the grantee is at risk of ceasing to be a going concern, in other words at risk of liquidation, in the near future. The going concern condition under-identifies grantees with fiscal challenges documented in their annual audit data. Based on our analysis of the last six DRS cohorts, this condition has identified very few grantees for competition. However, our analysis of grantee annual audit reports shows fiscal concerns related to grantees’ Head Start funds is a more prevalent issue. For example, numerous grantees had audit findings related to their Head Start grant in two or more audits during their five-year grant period. In focusing only on fiscal viability rather than broader audit findings in DRS, we are missing an opportunity to compete grantees who have other strong indicators of potential fiscal risks. We believe grantees with indicators pointing to a lack of fiscal viability (going concern) must be required to compete, as well as grantees with challenges in fiscal capacity identified before their viability is at risk. Specifically, the current condition does not capture valuable information to inform us of an organization’s fiscal processes, systems and management. Since the implementation of this condition in 2011, it has become increasingly evident that we need an earlier predictor to ensure

we identify and mitigate potential fiscal risks to an organization prior to facing the threat of a liquidation.

Fiscal challenges may result in operational challenges that create reduced program quality and stability of services to the children and families grantees serve. While we can only speculate on how many grantees would be impacted by this revised condition, we have experiential knowledge that it is best to prevent fiscal emergencies. In recent years, multiple grantees have been terminated or relinquished their grants due to their inability to correct fiscal problems. Unaddressed fiscal challenges can lead to a grantee's inability to purchase supplies, pay teachers, or ultimately serve children. If a Head Start grantee is terminated or relinquishes the grant due to a fiscal crisis, a disruption in services to children and families may occur. Therefore, we want to compete grantees before their fiscal challenges escalate. Competition allows the incumbent grantee and other entities in the community an opportunity to demonstrate they are best qualified fiscally and programmatically to run the Head Start program. Each community deserves to have a fiscally responsible grantee administering the Head Start program.

Therefore, we propose to add a second criterion to the existing condition based on grantees' annual independent audit findings. In examining options for the proposed condition, we worked with the ACF Office of Grants Management and other ACF divisions. Initially, we considered requiring grantees to compete if they were not deemed a low risk auditee in their audit filing. The determination of low risk auditee considers elements that indicate fiscal soundness, strong internal controls, and prudent financial management. A low risk determination includes the following elements: (1) less than five percent total costs questioned, (2) continues

as a going concern, and (3) no material weaknesses. A “material weakness” is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the entity's annual or interim financial statements will not be prevented or detected on a timely basis.

After analyzing this option, we decided that a not low risk determination could indicate potential fiscal risk at the agency level. However, it does not necessarily indicate major ongoing problems in financial management of a Head Start grant. Instead, we propose to focus on audit findings specifically related to the Head Start grant. We believe a grantee should be required to compete if it had any audit findings associated with Head Start funds in two or more annual audit reports within the first three fiscal years of its five-year grant cycle. We believe adding this second criterion to the fiscal condition addresses the current weaknesses in two ways.

First, examining additional audit data gives a more comprehensive picture of the grantee's fiscal management capacity relative to Head Start funding. This process identifies grantees with known multiple fiscal weaknesses and requires them to compete for continued funding. Using additional audit findings allows us to assess more information about potential risk to Federal Head Start funds or Head Start property caused by ineffective financial management systems. These findings demonstrate a pattern and indicate significant fiscal concern that should require these grantees to compete. This Head Start-specific use of audit findings in DRS determinations allows us to identify indicators of fiscal management weaknesses and oversight risks earlier and consistently in DRS.

Second, going concern does not directly target fiscal challenges in managing the Head Start grant. We believe the proposed additional criterion would ensure that we use specific Head Start data in making DRS determinations. Many Head Start grantees manage grants from multiple Federal agencies and the annual audit report encompasses all the programs run by a grantee. We would only consider audit findings in any Head Start grants for purposes of DRS to specifically mitigate fiscal risks to the Head Start program.

Our proposal changes the timeframe for using a finding of going concern but maintains the existing requirement for competition. Instead of competing a grantee that has been found at risk of failing to be a going concern in the previous 12 months, we believe that a finding of going concern at any time during the five-year grant period is significant and we revise the regulatory text accordingly.

This proposed revision to the fiscal condition does not impose a new requirement on Head Start grantees. Conversely, it allows OHS to use existing requirements and data more effectively for ongoing oversight and improvement of grantees' fiscal systems. We believe this proposal is in line with the goal of DRS to promote accountability and continuous improvement of grantees. Competition is not an adverse action. It requires the current grantee to demonstrate that renewal of their grant is warranted, while providing other entities in the community an opportunity to apply for funding.

Specifically, we propose to revise paragraph (g) and add new paragraphs (g)(1) and (g)(2). The proposed new paragraph (g) outlines the two fiscal criteria and would read as

follows, “An agency meets one of the two criteria of this fiscal requirement:” Existing paragraph (g), the current criteria requiring a grantee to compete if it is at risk of failing to be a going concern, will be redesignated as (g)(1). We propose to amend new paragraph (g)(1) by changing the timeframe from within the twelve months preceding the designation determination to a timeframe within the five-year grant period.

Proposed new paragraph (g)(2) will establish a second fiscal criterion that a grantee with audit findings associated with its Head Start funds (CFDA 93.600) in two or more audit reports in the first three years of the grant period will be required to compete.

1304.12 Grantee reporting requirements concerning certain conditions.

This section requires grantees to report to OHS when certain events have occurred. Grantees are required to report to OHS within 10 working days in the case of the following events: (1) revocation of a license; (2) bankruptcy; (3) debarment; and (4) audit finding of at risk for ceasing to be a going concern. We do not propose any policy changes, but propose to remove dates that are no longer relevant. We propose to remove paragraph 1304.12 (a) in its entirety and in paragraph (b) we propose to remove the phrase “following December 9, 2011.” Because paragraph (a) is removed, we propose to redesignate paragraphs (b)(1) through (4) as paragraphs (a), (b), (c), and (d) respectively.

1304.15 Designation request, review and notification process.

This section creates the processes for a grantee requesting non-competitive renewal, for OHS determining designation, and for OHS notifying grantees of their designation renewal status. In this section, we propose to remove the language that refers to the transition to five-year grants and the process before and after the transition. This language is no longer relevant as all grantees have transitioned through DRS to five-year grants. Our proposal seeks to simplify, clarify, and update this section. We also revise language to make it clear that only data from the grantee's current grant period will be reviewed for designation determinations. In addition, we no longer send communication to grantees via certified mail and therefore we propose to remove that language.

We propose to remove paragraph (a)(1) entirely. In existing paragraph (a)(2), we propose to remove the phrase "After the transition period," at the beginning of the first sentence because it is out of date. Next, we propose to redesignate paragraph (a)(2) as paragraph (a). The newly redesignated paragraph (a) will read: "Grantees must apply to be considered for Designation Renewal. A Head Start or Early Head Start agency wishing to be considered to have its designation as a Head Start or Early Head Start agency renewed for another five-year period without competition must request that status from ACF at least 12 months before the end of their five-year grant period or by such time required by the Secretary." In paragraph (b), we propose to add the phrase "during the current grant period," at the end of the sentence since all grantees are now on five-year grant periods and only data from the current grant period will be reviewed. We also propose to remove the colon ":" and replace it with a period ".". We propose to remove paragraphs (b)(1), (2) and (3) in their entirety because they are out of date.

We propose to amend paragraph (c) by deleting the colon “:” at the end and replacing it with a comma “,”. At the end of paragraph (c), we propose to add the phrase “at least 12 months before the expiration date of a Head Start or Early Head Start agency's current grant stating.” Further, due to the mention of the transition period, we propose to eliminate paragraphs (c)(1), (c)(2) and (c)(3) entirely. Consequently, we propose to redesignate paragraph (c)(3)(i) as paragraph (c)(1) and paragraph (c)(3)(ii) as paragraph (c)(2). In paragraph (c)(2), we propose to remove the reference to “(c)(3)(i),” and replace it with “(c)(1).”

Section 1305.2 Terms

Section 1305.2 defines the terms used in the performance standards. We propose to add to §1305.2 a definition of “denial of refunding” which was referenced in §1304.13 and accidentally omitted from the performance standards published in 2016.

Effective Dates: Current Head Start CLASS standards remain in effect until this NPRM becomes final. We propose for this rule to become effective with the fiscal year immediately following the publication of the final rule, but not less than 30 days after the publication date. We specifically request comments on this proposed effective date.

IV. Regulatory Process Matters

Regulatory Flexibility Act.

The Regulatory Flexibility Act (RFA),²⁸ 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.

The term "small entities," as defined in the RFA, comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Under this definition, some Head Start grantees may be small entities. However, in accordance with the RFA, we certify this proposed rule would not have a significant economic impact on a substantial number of small entities.

In this NPRM, we are not imposing a negative impact on small entities so we do not need to consider relief. The action we propose here is intended to ensure accountability for Federal funds is consistent with the purposes of the Head Start Act and is not duplicative of other requirements. If you think your business, organization, or governmental jurisdiction qualifies as a small entity and this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

²⁸ See 5 U.S.C. 605(b).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA)²⁹ was enacted to avoid imposing unfunded Federal mandates on state, local, and tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately \$154 million. This rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, in excess of the threshold.

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.

We believe it is not necessary to prepare a family policymaking assessment, because the action we propose in this NPRM will not have any impact on the autonomy or integrity of the family as an institution. However, if you think this action would have a negative effect on family well-being, please submit a comment explaining why (see ADDRESSES).

²⁹ See 2 U.S.C. 1501 et seq.

Federalism Assessment Executive Order 13132

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 proposed rule will 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 action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Congressional Review

The Congressional Review Act (CRA) allows Congress to review “major” rules issued by Federal agencies before the rules take effect.³⁰ 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.³¹ This action is not expected to be a major rule.

³⁰ 5 U.S.C. 802(a).

³¹ 5 U.S.C. 804.

Paperwork Reduction Act of 1995

This proposed rule establishes new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). As required by the Paperwork Reduction Act of 1995, we will submit a copy of these sections to the Office of Management and Budget (OMB) for review and they will not be effective until they have been approved and assigned an OMB control number.

Requirement	Annual Respondents	Average annual burden (hours) per respondent	Total annual burden hours
1304.15(a): Each Head Start or Early Head Start agency wishing to be renewed for five years without competition shall request that status from ACF. (Existing)	Total grants 2,000 400 grants impacted annually	0.25 Hour	100 Hours
1304.13: Agencies required to compete	120 Grants	60 Hours	7,200

will have to complete an application for each grant competed. (Existing)			Hours
Revisions to 1304.11 CLASS and fiscal conditions (New)	14 Grants	60 Hours	840 Hours

Annual Burden Hours for Existing Requirements

45 CFR 1304.15(a) requires Head Start grantees to submit a letter requesting renewal for a new non-competitive 5-year grant and the estimated burden to submit a letter is 15 minutes for 400 grants. The non-competitive renewal request consists of filling in a template letter and sending it through OHS system, so the burden is small. This calculation assumes in any given year, about one-fifth of all 2,000 grants, or 400 grants, are nearing the end of their current 5-year project period and therefore a designation under DRS will be made for these grants. Head Start grantees may hold more than one grant (Head Start, Early Head Start, EHS – CC Partnership, Migrant Seasonal Head Start, and American Indian Alaska Native Head Start) and each grant is considered separately in DRS.

When a Head Start grant meets any of the conditions outlined in 45 CFR 1304.11 the grantee is designated for competition and must submit an application during competition to be

considered for continued funding as required under 45 CFR 1304.13. The burden to submit an application is estimated at 60 hours for an estimated 120 grants each year. This figure assumes that about one-third of the 400 grants, or 120 grants, are required to compete. The total annual burden for existing requirements is 7,300 hours.

Annual Burden Hours for Proposed Revisions

We estimate the proposed revisions to the CLASS and fiscal conditions will increase the number of grants required to compete by 70 over five years, or 14 annually. The total burden hours for the additional 14 grants is 840 hours,

Annual Cost for Existing Requirements

The total annualized cost for existing requirements is estimated at \$345,874. This figure is based on job code 11-9031 and wage data from May 2017 at \$23.69 per hour. To account for fringe benefits and overhead the rate is multiplied by two, which is \$47.38. The estimate of annualized cost to respondents for hour burden is \$47.38 times 7,300 or \$345,874; <https://www.bls.gov/oes/2017/may/oes119031.htm> (child day care services).

Annual Cost for Proposed Revisions

The total annualized cost for revisions to the CLASS and fiscal conditions is \$47.38 times 840 or \$39,799. This is using the same job code and wage data used for existing requirements.

We invite comments on: (1) Whether the proposed collection of information is necessary for the DRS, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate and other forms of information technology.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-7285, or oir_submission@omb.eop.gov, Attention: Desk Officer for the Administration for Children and Families. All comments should be identified with the title, "NPRM for Proposed DRS Rule."

Regulatory Planning and Review Executive Order 12866, Executive Order 13563, and Executive Order 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches

that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. This rule is significant under the meaning of section 3(f); accordingly, it has been reviewed by OMB.

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017 (82 FR 9339, February 3, 2017) and requires that the costs associated with significant new regulations “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.” This

rulemaking is not expected to be subject to the requirements of EO 13771 because it would result in no more than *de minimis* costs.

V. Regulatory Impact Analysis

Estimated Impact of these Proposed Changes on Competition

Based on our analysis of our data, this proposed policy change would have little to no impact on the number of grantees competing due to the CLASS condition. The increase in the number of grantees competing for their Instructional Support scores would offset any decrease in the numbers of grantees competing for their Emotional Support or Classroom Organization scores.

Based on our analysis of our fiscal data from 2015 through 2017, this proposed policy change to the fiscal condition would significantly increase the number of grantees that would be required to compete due to the condition. Approximately 70 grantees (four percent) had audit findings related to its Head Start funds in two or more audit reports covering years one, two, and three of the current five-year grant period. By comparison, in the first six cohorts of DRS, very few grantees competed because of the going concern fiscal condition. We believe this increase in the number of grantees that will be required to compete is warranted to ensure we are competing grantees with fiscal concerns. Competing grantees before known fiscal challenges escalate to a crisis point could prevent potential termination or relinquishment of the grant. A disruption in services to children and families may occur if a Head Start grantee is terminated or relinquishes the grant.

These changes proposed in this NPRM would revise policies promulgated in a prior rule. In the case of CLASS revisions, grantees have discussed revisions since the initial requirements were implemented. This proposed regulation does not impose new requirements on grantees. For the CLASS condition, it streamlines the requirement. For the fiscal condition, it uses an existing requirement to make designation renewal decisions.

We do not believe there will be a significant economic impact from this regulatory action. We estimate that roughly one-third of grantees reviewed in each review cycle will be affected by the regulation. The costs of implementation of these rules for the subset of grantees that would be required to compete in any year (estimated to be approximately \$1,500 for each grantee) is well under \$1 million. The estimated \$1,500 per-grantee cost is based on the time to complete a competitive application. It assumes 60 hours per application at a cost of \$25 per hour in staff time. Applications would likely be completed by a combination of the Head Start Assistant Director and other managers in the program (i.e. Child Development Manager or Family and Community Partnership Manager). The average annual salary for these positions is \$50,000 or \$25 per hour. As a reference point, even if every grantee reviewed each year were required to compete, the costs still would not exceed \$100 million.

List of Subjects

45 CFR Part 1304

Audit, Classroom Assessment Scoring System (CLASS), Competition, Designation renewal system, Education of disadvantaged, Fiscal, Grant programs, Head Start, Monitoring, Social programs.

45 CFR Part 1305

Administrative practice and procedure.

Dated: June 13, 2019.

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

Approved: June 20, 2019.

Alex M. Azar II,
Secretary.

For reasons stated in the preamble, we propose to amend 45 CFR parts 1304 and 1305 as follows:

PART 1304—FEDERAL ADMINISTRATIVE PROCEDURES

1. The authority citation for part 1304 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

Subpart B—Designation Renewal

2. Revise § 1304.11 paragraphs (b)(1) introductory text, (b)(1)(ii), (b)(2) introductory text, (b)(2)(i) and (ii), (c), (e), and (g) to read as follows:

§1304.11 Basis for determining whether a Head Start agency will be subject to an open competition.

* * * * *

(b) * * *

(1) 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:

* * * * *

(ii) Align with the Head Start Early Learning Outcomes Framework: Ages Birth to Five, state early learning guidelines, and the requirements and expectations of the schools, to the extent that they apply to the ages of children 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;

* * * * *

(2) 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 fewer 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 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 that 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 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:

- (1) For the Emotional Support domain the minimum threshold is 5;
- (2) For the Classroom Organization domain, the minimum threshold is 5;
- (3) For the Instructional Support domain, the minimum threshold is 2.5.

* * * * *

(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 §1304.15 and the suspension has not been withdrawn. If 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 part 1304, the agency will not be required to compete based on this condition. If an agency has received an opportunity to show cause and the suspension remains in the place, the condition will be implemented.

* * * * *

(g) An agency meets one of the two criteria of this fiscal requirement:

(1) Has been determined within the first four years of the five-year grant period 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; or,

(2) Has been determined by the responsible HHS official within the first four years of the five-year grant period to have audit findings associated with its Head Start funds (CFDA 93.600) in two or more audit reports covering years one, two, and three of the current project period submitted to the Federal Audit Clearinghouse (in accordance with section 647 of the Act).

3. Revise §1304.12 as follows:

§1304.12 Grantee reporting requirements concerning certain conditions.

Head Start agencies must report in writing to the responsible HHS official within 10 working days of occurrence any of the following events:

- (a) The agency has had a revocation of a license to operate a center by a state or local licensing entity.
- (b) The agency has filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement.
- (c) 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).
- (d) 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.

4. Revise §1304.15 to read as follows:

§1304.15 Designation request, review and notification process.

(a) Grantees must apply to be considered for Designation Renewal. A Head Start or Early Head Start agency wishing to be considered to have its designation as a Head Start or Early Head Start agency renewed for another five-year period without competition must request that status from ACF at least 12 months before the end of their five-year grant period or by such time 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 during the current grant period.

(c) ACF will give notice to all grantees on Designation Renewal System status, except as provided in §1304.14, at least 12 months before the expiration date of a Head Start or Early Head Start agency's current grant stating:

(1) 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,

(2) 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 has 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)(1) of this section that it will be required to compete for funding for an additional five-year period.

PART 1305—DEFINITIONS

5. The authority citation for part 1305 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

6. Section 1305.2 is amended by adding, in alphabetical order, the definition “Denial of Refunding” to read as follows:

§1305.2 Terms.

* * * * *

Denial of Refunding means the refusal of a funding agency to fund an application for a continuation of a Head Start program for a subsequent program year when the decision is based on a determination that the grantee has improperly conducted its program, or is incapable of doing so properly in the future, or otherwise is in violation of applicable law, regulations, or other policies.

* * * * *

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