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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Parts 1301, 1302, 1303, 1304, and 1305**

**RIN 0970-AD01**

**Supporting the Head Start Workforce and Consistent Quality Programming**

**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 makes regulatory changes to the Head Start Program Performance Standards (HSPPS) to support and stabilize the Head Start workforce and improve the quality of services Head Start programs provide to children and families. These changes include requirements for wages and benefits, breaks for staff, and enhanced support for staff health and wellness. The changes also include enhancements to mental health services to better integrate mental health into every aspect of program service delivery. Enhancements are also included in the areas of family service worker family assignments, identifying and meeting community needs, ensuring child safety, services for pregnant women and other pregnant people, and alignment with State early childhood systems. Finally, the changes include minor clarifications to promote better transparency and clarity of understanding for grant recipients.

**DATES:** *Effective date:* August 21, 2024.

*Compliance date:* The compliance date for many of the requirements in this final rule is October 21, 2024, or 60 days after this final rule is published in the **Federal Register**. However, there is a subset of requirements where we expect programs may need more time to implement the

regulatory changes. In these cases, we specify an alternate timeline for compliance. See further discussion of these dates in the section entitled *Effective and Compliance Dates*.

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## **I. Statutory Authority**

This final rule is being issued under the authority granted to the Secretary of Health and Human Services by sections 640(a)(5)(A)(i) and (B)(viii), 641A, 644(c), 645, 645A, 648A, and 653 of the Head Start Act (the Act) (42 U.S.C. 9835, 9836a, 9839(c), 9840, 9840a, 9843a, and 9848), as amended by the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110-134). Under these sections, the Secretary is required to establish performance standards and other regulations for Head Start and Early Head Start programs. Specifically, the Act requires the Secretary to “. . . modify, as necessary, program performance standards by regulation applicable to Head Start agencies and programs . . .”<sup>1</sup> and explicitly directs the Secretary to prescribe eligibility standards, establish staff qualification goals, and assure the comparability of wages. This rule meets the statutory requirements Congress put forth in its 2007 bipartisan reauthorization of the Head Start Act and addresses Congress’s mandate that called for the Secretary to review and revise the performance standards. The Secretary has determined that the modifications to performance standards contained in this final rule are appropriate and needed to effectuate the goals of the performance standards and the purposes of the Act. The requirements outlined in this final rule shall not be construed to supersede or preempt the requirement for Head Start agencies to comply with other laws, including title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act, as amended, the Genetic Information Nondiscrimination Act of 2008, the Pregnant Workers Fairness Act of 2022, the Fair Labor Standards Act, and any other applicable Federal, state, or local labor standards laws when implementing workforce performance standards.

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<sup>1</sup> See section 641A(a)(1) and (2) of the Act.

## II. Background

The Federal Head Start program provides early education and other comprehensive services to well over half a million children prenatal to age five in center- and home-based settings across the country. Since its inception in 1965, Head Start has been a leader in providing high-quality services that support the development of children from low-income families, helping them enter kindergarten more prepared to succeed in school and in life. Evidence continues to support the positive outcomes for children and families who participate in and graduate from Head Start programs.<sup>2</sup> The most essential component to accomplishing Head Start's mission of providing high-quality early childhood education and comprehensive services is the workforce of approximately 248,000 staff<sup>3</sup> who provide the services to children and families each day.

Early educators provide a critical foundation for children to learn and develop<sup>4</sup> and positively impact children's outcomes.<sup>5</sup> Strong, stable relationships between young children and educators are the key to promoting early development. If programs cannot retain high-quality staff, these relationships are disrupted and outcomes for children and families are negatively impacted.<sup>6</sup> Currently, Head Start programs across the nation are experiencing a severe staff shortage with turnover at its highest point in two decades.<sup>7</sup> This severely impacts the ability of programs to fully enroll classrooms and provide consistent high-quality services to children and

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<sup>2</sup> Deming, D. (2009). Early Childhood Intervention and Life-Cycle Skill Development: Evidence from Head Start. *American Economic Journal: Applied Economics*, 1:3, 111-134.; Lipscomb, S.T., Pratt, M.E., Schmitt, S.A., Pears, K.C., and Kim, H.K. (2013). School readiness is children living in non-parental care: Impacts of Head Start. *Journal of Applied Developmental Psychology*, 31 (1), 28-37.

<sup>3</sup> Source: Head Start 2022 Program Information Report (PIR).

<sup>4</sup> Burchinal, M., Zaslow, M., & Tarullo, L. (eds.) (2016). Quality thresholds, features, and dosage in early care and education: Secondary data analyses of child outcomes. *Monographs of the Society for Research in Child Development*, 81(2).

<sup>5</sup> Choi, Y., Horm, D., Jeon, S. & Ryu, D. (2019). Do Stability of Care and Teacher-Child Interaction Quality Predict Child Outcomes in Early Head Start?, *Early Education and Development*, 30:3, 337-356.

<sup>6</sup> Hamre, B., Hatfield, B., Pianta, R., Jamil, F. (2013). *Evidence for General and Domain-Specific Elements of Teacher-Child Interactions: Associations with Preschool Children's Development*. *Child Development*, 85:3; Grunewald, R., Nunn, R., Palmer, V. (2022). *Examining teacher turnover in early care and education*. Federal Reserve Bank of Minneapolis.

<sup>7</sup> Source: Head Start 2022 PIR.

families. Low wages and poor benefits – despite increased expectations and requirements for staff – are a key driver of rapidly increasing staff turnover among Head Start teachers and staff. Research indicates that well compensated early childhood teachers and staff have lower turnover rates and provide higher quality services.<sup>8</sup> Conversely, a higher rate of turnover among early care and education (ECE) staff is associated with lower quality services and care, as well as poorer developmental outcomes for children.<sup>9</sup> For instance, research has demonstrated that turnover among early care and education professionals is linked to worse cognitive and social developmental outcomes for children birth to age 5.<sup>10</sup> For decades, the Head Start program has been subsidized by low paid workers committed to the mission; now is the time to enact clear Federal requirements for staff compensation.

Through the *Improving Head Start for School Readiness Act of 2007* (the 2007 Reauthorization), which amended the Head Start Act (the Act), Congress required the Department of Health and Human Services (HHS) to ensure children and families receive the highest quality Head Start services possible. In line with this, Congress instituted a number of changes to increase qualifications and other requirements for Head Start staff, particularly education staff, and mandated HHS to revise the Head Start Program Performance Standards (HSPPS). The HSPPS, first published in the 1970s, are the foundation on which programs design and deliver high-quality, comprehensive services to children and their families. The HSPPS set forth the requirements local grant recipients must meet to support the cognitive, social,

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<sup>8</sup> Bassok, D., Dornal, J., Michie, M., & Wong, V. (2021). *The Effects of Financial Incentives on Teacher Turnover in Early Childhood Settings: Experimental Evidence from Virginia*. EdPolicyWorks at the University of Virginia.; Whitebook, M., Howes, C., & Phillips, D. (2014). *Worthy Work, STILL Unlivable Wages: The Early Childhood Workforce 25 Years after the National Child Care Staffing Study*. Center for the Study of Child Care Employment. <https://csce.berkeley.edu/publications/report/worthy-work-still-unlivable-wages/>; Whitebook, M., Sakai, L., Gerber, E., & Howes, C. (2001). *Then & Now: Changes in Child Care Staffing, 1994-2000*. Washington, DC: Center for the Child Care Workforce and Institute of Industrial Relations, University of California, Berkeley. <https://csce.berkeley.edu/publications/report/then-and-now-changes-in-child-care-staffing-1994-2000/>.

<sup>9</sup> Hale-Jinks, C., Knopf, H., & Kemple, K. (2006). Tackling teacher turnover in childcare: Understanding causes and consequences, identifying solutions. *Childhood Education*, 82, 219-226.

<sup>10</sup> Hale-Jinks, Knopf, & Kemple (2006). Tackling teacher turnover in childcare: Understanding causes and consequences, identifying solutions. *Childhood Education*, 82, 219-226.

emotional, and healthy development of children enrolled in the program. They include requirements to provide education, health, mental health, nutrition, and family and community engagement services, as well as requirements for local program governance and Federal administration of the program. In response to requirements in the 2007 Reauthorization, HHS conducted a major revision of the performance standards through a final rule published in 2016. The 2016 overhaul of the HSPPS updated and enhanced program standards to reflect the latest science on child development, while also streamlining requirements where possible, to promote stronger transparency and support programs to deliver more efficient and effective services.

Although the 2016 revision to the HSPPS gave careful attention to the type and quality of early education and comprehensive services to be provided to children and their families, as well as requirements for training, professional development, and qualifications for staff, other supports for the Head Start workforce were not included. The 2007 Reauthorization and the 2016 revision to the HSPPS resulted in enhanced requirements and responsibilities for program staff, but lacked specific requirements for staff pay, benefits, and other supports for staff wellness necessary to sustain a workforce that could implement those quality provisions. For instance, while qualifications for Head Start preschool teachers have increased dramatically over the past decade (52 percent nationwide had a bachelor's degree in 2010 compared to 68 percent in 2023), inflation-adjusted salary for these teachers increased by less than 1 percent during this same timeframe, from \$41,389 in 2010 to \$41,691 in 2023.<sup>11</sup> Given the increased expectations and requirements for these staff positions without any significant increases in wages, it is unsurprising that turnover among Head Start classroom teachers, as well as other staff positions, has increased markedly over the past decade, a situation that was exacerbated by the COVID-19

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<sup>11</sup> Source: Head Start 2023 PIR.

pandemic.<sup>12</sup> In 2023, turnover across all staff positions was 17 percent, a large jump from 13.5 percent in 2019 (prior to the pandemic), although marginally improved from an a high of 19 percent in 2022. Turnover for teachers (across both preschool and infant and toddler teachers) was even higher in 2023, at 19 percent.<sup>13</sup> Indeed, the workforce challenges in Head Start have remained intractable even after some other industries have regained pre-pandemic employment levels. The unprecedented rate of turnover and staff vacancies programs are experiencing threaten the stability and future of the national Head Start program and the quality of services it provides, which are a critical resource for hundreds of thousands of families annually. Because Head Start serves the children and families most in need, it is critical the workforce is well-positioned to be stable as communities recover from the pandemic and during and after future emergencies.

While high staff turnover rates are an issue for the entire ECE sector in the United States, HHS has the authority and opportunity to address the systemic problems driving high turnover in Head Start, and stronger workforce supports are necessary to meet the purpose of the Act of promoting school readiness for low-income children (42 U.S.C. 9831). The Act authorizes the Secretary to modify the program performance standards as necessary, and, while the changes through this final rule retain the level of flexibility and discretion that Head Start programs are accustomed to, it is evident by the lagging compensation and other workforce supports that additional guardrails are necessary to maintain quality. Head Start's standards have historically provided a nationwide benchmark for high-quality early childhood programs. This final rule affirms that higher wages and benefits are a key driver of quality in early childhood.

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<sup>12</sup> Source: Head Start 2010-2023 PIR.

<sup>13</sup> Source: Head Start 2023 PIR.



In addition to post-pandemic workforce challenges related to compensation and turnover, mental and behavioral health issues have risen among children and adults over the last decade. Head Start programs must adapt and evolve to continue leading the sector in quality programming for children and families. The final rule enhances requirements for mental health services to integrate mental health more fully into every aspect of program services, as well as elevate the role of mental health consultation. Infant and early childhood mental health consultation services are provided by licensed or licensed-eligible mental health professionals with specialized knowledge in child development, such as social workers or psychologists, who build the capacity of adults to support the mental health and social and emotional development of children. Prior to this final rule, requirements in the performance standards in these areas were broad and contributed to wide variation in the quality of the implementation of those standards.

This final rule also promotes improvements in the quality of program service delivery. The enhancements in this final rule will promote more consistent implementation of program services across a variety of areas, ultimately improving outcomes for enrolled children and their families. For instance, the rule improves services to families by limiting the number of families to which an individual family service worker can be assigned. Additionally, since the inception of the 2016 revision to the HSPPS, ACF received feedback about areas where standards have not been implemented as intended in the field, or areas where standards are not clear. This final rule enhances and clarifies the performance standards across a variety of areas, codifies certain essential best practices, and streamlines processes for programs implementing the standards, with the goal of further improving the quality of Head Start services.

The changes to the HSPPS promulgated through this final rule are necessary to maintain the quality of the Head Start program and respond to the current early childhood landscape,

which has changed dramatically since the HSPPS were first published in the 1970s and even since the 2016 overhaul of the HSPPS. Establishing the new or enhanced standards described in this final rule – particularly for the workforce – will promote higher-quality services for children in Head Start programs across the country and are necessary to ensure there is a stable workforce to maintain consistent operations.

The Head Start program is facing unprecedented levels of programs that are not fully enrolled. ACF is aware of many programs that have waiting lists but cannot open classrooms because they cannot hire teachers at current wage and benefit levels. Thus, many Head Start programs face the conundrum of having vacant slots, but no staff to serve additional children. Short staffing places additional stress on current staff, exacerbating burnout and turnover.

This rule offers a path forward by requiring more competitive wages and benefits to attract and retain staff and align actual and funded enrollment levels. For many programs, costs can be partially or mostly offset through reductions in funded slots that are currently vacant. In addition, while there are costs associated with the rule, ACF notes that there are also costs associated with high staff turnover and vacant slots.

Moreover, the policy changes in this final rule are necessary for the Head Start program to continue to operate effectively and meet its mission and remain the gold standard of early care and education services for young children, particularly for those furthest from opportunity. As noted above, many programs have unfilled slots, providing an opportunity to restructure the budget to support fewer slots in some programs to ensure higher quality of services delivered, including higher wages and benefits for staff without reducing the number of children actually enrolled in the program. In addition to the goal of stabilizing the Head Start workforce that will help minimize empty classrooms, the policies in the final rule seek to mitigate slot loss by

providing a longer implementation timeline for wage and benefit requirements (see a further discussion on this in the sections on *Workforce Supports*), allowing for both program planning as well as future congressional investments in quality improvement. The final rule also includes different wage and benefit requirements for small Head Start agencies (those with 200 or fewer funded slots). Absent additional funding, smaller agencies may have a more challenging time increasing wages and benefits without disproportionately impacting the number of funded slots in their agencies. Finally, in the event that appropriation increases for Head Start are below 1.3% on average for a period of four years, the rule also includes a flexibility for the Secretary to establish a limited waiver process for most of the rule's wage requirements, for programs determined to be meeting quality benchmarks and that would otherwise have to reduce enrolled Head Start slots to implement these requirements.

Overall, for the reasons summarized above, the current staffing shortage needs to be addressed urgently, and regulatory action is warranted and necessary. Failure to put in place a glidepath to higher wages and benefits would further threaten the ability of Head Start to continue to recruit and retain effective staff and thereby deliver high-quality services. This action carefully balances the ability of programs to maintain staffing with the goal of serving as many children as possible, while helping to stabilize the Head Start program over the long-term. Further, the establishment of new or enhanced expectations in program quality through the changes described in this final rule provides a better foundation for more consistent implementation of high-quality services.

### **III. Executive Summary**

This final rule amends the HSPPS to: (1) support and stabilize the Head Start workforce through new requirements for staff wages, benefits, and wellness supports; (2) strengthen mental

health services for children, families, and staff by integrating mental health into all aspects of program service delivery; and (3) improve the quality of services provided to children and families across a variety of other service areas. The rule also makes some technical and other changes to the HSPPS for improved clarity. The final rule makes changes from the notice of proposed rulemaking (NPRM), published on November 20, 2023 (88 FR 80818), based on public comment. These changes are designed to increase flexibility for Head Start programs in achieving the goals and intended outcomes of the final rule. Key changes from the policies in the NPRM to the final rule include modifications to the wage and benefit requirements for small Head Start agencies with a funded enrollment level that is at or below 200 slots; an option for the Secretary to establish a process in 2028 for a limited waiver authority for the final rule's wage requirements, to mitigate slot loss in programs determined to be meeting quality benchmarks, in the absence of a four year annual average increase in Head Start appropriations of at least 1.3 percent; a four year (rather than a two year) timeline for phasing in benefit requirements; removal of the requirement to provide paid family and medical leave beyond the existing requirements in the Family and Medical Leave Act (FMLA); additional flexibility to implement monthly mental health supports; more flexibility in how programs prevent exposure of children to lead in water and paint of Head Start facilities; and maintaining the prior policy of allowing up to seven days for programs to report child safety incidents to the Office of Head Start (as opposed to three days as proposed in the NPRM), as well as further clarification that only serious incidents that should be reported to OHS, including definitions and examples.

#### *Improving Wages, Benefits, and Wellness Supports for the Head Start Workforce*

This final rule makes changes to the HSPPS to support and stabilize the Head Start workforce through new requirements for staff wages, benefits, and wellness supports. First, the

final rule adds a set of new requirements for wages to promote competitive salaries for Head Start staff. Specifically, by August 1, 2031, programs must implement a set of four interrelated standards for staff wages. First, programs must establish or update a salary scale or pay structure that promotes competitive wages for all staff positions and takes into account responsibilities, qualifications, experience, and schedule or hours worked. Programs must review this pay structure at least once every 5 years. Second, programs must ensure annual salaries for Head Start educators are at least comparable to those of preschool teachers in public school settings, adjusted for responsibilities, qualifications, experience, and schedule or hours worked. To support implementation of this requirement, the final rule adds an alternative option to ensure their education staff salaries are comparable to at least 90 percent of public kindergarten teacher salaries (adjusted for responsibilities, qualifications, experience, and schedule or hours worked), in communities where public preschool does not exist or where data on public preschool teacher salaries is hard to access. This alternative benchmark for teacher salaries is described further below in the more detailed discussion of the wage requirements. Overall, this standard for education staff salaries will ensure that programs make measurable progress towards pay parity with public school kindergarten through third grade teachers in local elementary schools, and programs must track data on progress towards pay parity over time. Third, programs must ensure all Head Start staff receive pay that is at least sufficient to cover basic costs of living in their geographic area. Finally, programs must ensure wages are comparable across Head Start Preschool and Early Head Start programs for staff serving in similar positions with similar qualifications and experience.

The final rule includes an option for the Secretary to establish in 2028 a limited waiver process for most of the rule's wage requirements, for eligible programs, if the prior four years of

appropriation increases for Head Start are less than an annual average of 1.3 percent. If the Secretary decides to invoke a waiver due to low appropriations, the waiver would only be available to eligible grant recipients that demonstrate that they meet four conditions: 1) the program would have to reduce enrolled Head Start slots to implement these requirements; 2) the program is meeting quality benchmarks including protecting health and safety and demonstrated improvements in staff wages during the preceding four years, to the greatest extent practicable; 3) the program held the Head Start grant for the service area prior to August 21, 2024 (the effective date of this rule); and 4) the program agrees to make continued progress on wages for Head Start staff over time, to the greatest extent practicable. These eligibility criteria are discussed in more detail below in the section by section discussion of comments and regulatory provisions. Next, this final rule adds a set of requirements for staff benefits. The compliance date for these requirements is August 1, 2028, which is two years later than the timeline initially proposed in the NPRM. For full-time staff – defined as those working 30 hours or more per week while the program is in session – Head Start programs must: provide or facilitate access to high-quality affordable health care coverage; offer paid personal leave; and offer access to short-term, free or minimal cost behavioral health services. The final rule includes changes from the NPRM including requiring paid personal leave more generally, rather than separate paid personal and paid sick time; aligning with existing FMLA requirements rather than adding new requirements for Head Start programs for paid family and medical leave; and removing specific requirements for the number of behavioral health sessions, while still requiring that programs provide access to behavioral health services for staff.

For part-time staff, programs must facilitate access to high-quality, affordable health care coverage. For any staff member who may be eligible, programs must facilitate access to

affordable child care and to the Public Service Loan Forgiveness (PSLF) program or other applicable student loan debt relief programs. Finally, at least once every 5 years, and to the extent practicable, programs must determine if their benefits packages are at least comparable to those provided to elementary school staff. Programs are encouraged to offer additional benefits if feasible.

In recognition of the particular challenges potentially faced by small Head Start agencies (defined as those with 200 or fewer funded slots) in implementing the policies for wages and benefits, this final rule includes different requirements for these agencies in response to comments on the NPRM. Specifically, small Head Start agencies are required to make improvements in wages and benefits for staff over time to reduce disparities between wages and benefits in Head Start educators and preschool teachers in public schools. Further, the statutory requirement that agencies maintain full enrollment (as part of the Full Enrollment Initiative) will continue to apply to these agencies. Small agencies are also required to establish or update a salary scale or pay structure that promotes competitive wages for all staff and takes into account responsibilities, qualifications, experience, and schedule or hours worked. While small agencies have flexibility to phase in wage and benefit increases according to their budgets, ACF strongly encourages these programs to invest in higher compensation by restructuring their budgets, targeting the annual cost-of-living adjustment (COLA) to compensation, and seeking other available funding sources that can be used to enhance compensation.

ACF will monitor progress and work with grant recipients to reduce disparities between wages and benefits offered in small and larger Head Start agencies, to reduce disparities in pay in small programs and avoid the unintended consequence of staff leaving small agencies to work in programs that offer higher compensation. Further, it is ACF's expectation that *all* Head Start

programs will work to steadily improve staff compensation over time, and prior to the compliance dates for the full set of wages and benefits requirements in this final rule.

Lastly, this final rule adds a few requirements to support the wellness of the Head Start workforce. First, programs must cultivate a program-wide culture of wellness that empowers staff as professionals and supports them to effectively accomplish daily job responsibilities in a high-quality manner. Second, by August 1, 2027, programs must provide each staff member with regular breaks during their work shifts that are of adequate length based on hours worked. The final rule provides more flexibility than the NPRM for how programs implement break schedules, removing the requirement for unscheduled five-minute breaks as well as the specificity for length of breaks, as proposed in the NPRM. The final rule also removes the requirement proposed in the NPRM for adult sized furniture in classrooms.

Taken together, ACF strongly believes these new standards will support and stabilize the Head Start workforce over the long term. Head Start must be able to effectively recruit and retain high-quality staff in order to keep classrooms open and continue to provide the quality services for which Head Start is known.

#### *Strengthening Mental Health Services for Children, Families, and Staff*

The final rule makes changes to integrate and elevate mental health across the entire Head Start program and incorporates changes from the NPRM based on comments specifically concerned about the lack of mental health professionals available to some Head Start programs. The final rule, like the NPRM, includes important revisions to incorporate strengths-based mental health language throughout the standards and to clarify that mental health supports should promote staff and family well-being, in addition to child well-being. In addition, this final rule



strengthens, clarifies, and enhances specific program standards for mental health. The final rule requires that programs use a multidisciplinary approach, rather than a multi-disciplinary team as proposed in the NPRM, to support a program-wide culture that promotes mental health, social and emotional well-being, and overall health and safety for children and adults. This change better reflects the intent of centering mental health in all aspects of program services as an integral part of Head Start. A multidisciplinary approach will support programs to better promote program-wide wellness by leveraging knowledge and skills across disciplines in the program, rather than taking a siloed approach. The final rule also clarifies the role, qualifications, and responsibilities of mental health consultants and the services they provide to build the capacity of adults to support the mental health and social and emotional development of children. The final rule revises the expectations for mental health consultants to be available at least once a month. The final rule includes additional flexibility to support implementation of the frequency of mental health services. Specifically, the final rule includes a new provision that allows other licensed mental health professionals or behavioral health support specialists to work in coordination and consultation with the mental health consultant to provide mental health supports on at least a monthly basis. This change maintains the requirement for every program to have a mental health consultant and ongoing mental health supports integrated regularly into programs while also recognizing the reality of the mental health workforce shortage. Together these changes in the final rule are designed to enhance mental health support for everyone involved in Head Start programs.

### *Improving the Quality of Head Start Services*

Finally, this rule includes numerous other changes to improve the quality of services that are a hallmark of Head Start programs. First, this rule, as proposed in the NPRM, establishes a

maximum family assignment ratio of 40:1, with some exceptions, to address the long-standing problem of excessive family assignments for many staff who work with families. This change is consistent with section 648A(c)(2) of the Act, which provides ACF with the authority to review and, if necessary, revise requirements related to family assignments, as suggested by best practice, to improve the quality and effectiveness of staff providing services to families. We believe this change will improve staff well-being and the quality of services families receive.

Next, this rule strengthens the ability of programs to meet community needs. First, we emphasize that the community assessment process is an intentional process for Head Start programs to understand the community they serve, design their services accordingly, and strategically review and update their community assessment. We clarify that the comprehensive community assessment is only required once in the five-year grant period, with an annual review to determine if changes in the community may impact services and necessitate an update to the community assessment. Second, we require programs to use their community assessment to identify the population of eligible children and families as well as potential barriers to enrollment and attendance, including access to transportation for the highest need families. Programs are encouraged to address identified barriers where possible, such as by providing or facilitating transportation services. Finally, we allow programs to make an adjustment to a family's gross income calculation for the purposes of determining eligibility in order to account for excessive housing costs. Adjusting income for housing expenses is an effective way to provide additional flexibility for families who are making above or near poverty wages, but face high housing costs, and would be eligible for Head Start services if those housing costs were considered when determining eligibility.

In addition, this final rule strengthens a variety of health and safety provisions to ensure children remain safe in Head Start programs with some changes to the policies as proposed in the NPRM in response to concerns raised by commenters. The rule enhances requirements for programs to prevent and address lead exposure in the water and paint of facilities that serve Head Start children but provides more flexibility for programs compared to the NPRM proposals to determine how they approach prevention of exposure to lead. Specifically, we require programs to ensure Head Start children are not exposed to lead in the water or paint of facilities through regular testing, inspection, and, as needed, remediation or abatement actions. Instead of prescribing specific lead prevention and abatement procedures as proposed in the NPRM, the final rule requires programs have a plan in place to mitigate exposure to lead.

Additionally, we clarify several requirements related to submitting incident reports to ACF to ensure accurate and necessary information is reported in a timely manner. The NPRM proposed a three-day timeframe for reporting child safety incidents to OHS. However, the final rule codifies the prior policy that programs must submit incident reports immediately but no later than seven calendar days following an incident. The final rule also clarifies which incidents affecting the health and safety of children require a report to ACF, in terms of involved participants, settings, and types of incidents. Based on comments received in response to the NRPM, the final rule clarifies that only serious incidents that involve child maltreatment or endangerment should be reported to OHS and provides definitions and examples of what rises to this level. For example, we clarify that those Standards of Conduct pertaining to child maltreatment or endangerment of children must be reported. The final rule also includes several modifications to align ACF descriptions of child maltreatment with Federal guidance and laws related to mandated reporting of child abuse and neglect. Finally, the final rule strengthens

several requirements intended to prevent child health and safety incidents, such as annual trainings on mandated reporting of child abuse and neglect and on positive strategies to support social and emotional development.

### *Effective and Compliance Dates*

*Effective date:* This final rule is effective August 21, 2024.

*Compliance date:* The compliance date for all requirements in this final rule is October 21, 2024, or 60 days after this final rule is published in the **Federal Register**, unless otherwise noted in this section. For § 1302.47(b)(10), while the effective date is upon publication of the final rule, programs will not be monitored on the new regulatory requirements until 1 year after publication of the final rule to give programs additional time to adjust to the new regulatory requirements.

Programs may require more time to implement several sections in this final rule. Therefore, we maintain the timeline as proposed in the notice of proposed rulemaking (NPRM), and programs have until August 1, 2025, or approximately 1 year after publication of the final rule, to comply with the following sections: §§ 1302.11(b); 1302.14(d); and 1302.16(a)(2)(v); the changes made to remove “assistant provider” in §§ 1302.23(b); 1302.45(a); and 1302.82(a).

The following sections also have longer implementation timelines, as outlined below:

- Section 1302.52(d)(2), Family Service Worker Ratios: August 1, 2027, or approximately 3 years after publication of the final rule;
- Section 1302.80(e), Enrolled pregnant women: December 19, 2024, or 120 days after publication of the final rule;

- Section 1302.80(f), Enrolled pregnant women: February 18, 2025, or 180 days after publication of final rule;
- Section 1302.90(e), Staff wages: August 1, 2031, or approximately 7 years after publication of the final rule;
- Section 1302.90(f), Staff benefits: August 1, 2028, or approximately 4 years after publication of the final rule; and
- Section 1302.93(c), Staff Health and Wellness: August 1, 2027, or approximately 3 years after publication of the final rule.

### *Severability*

This is a comprehensive rule containing many subparts that address many distinct aspects of the Head Start program. To the extent any subpart or portion of a subpart is declared invalid by a court, ACF intends for all other subparts to remain in effect. For example, ACF expects that if a court were to invalidate subpart D of part 1302 (or any of subpart D's discrete provisions) relating to Health Program Services, changes to the Head Start Program Performance Standards in all other subparts—such as subpart E (Family and Community Engagement Program Services), subpart F (Additional Services for Children with Disabilities), subpart G (Transition Services), etc.—may continue to operate and should remain operative independently of the invalidated subpart.

Additionally, each subpart also contains many distinct provisions, many of which may also operate independently of one another; thus, the invalidation of one particular provision within a particular subpart would not necessarily have implications for other aspects of that subpart. For example, within subpart D, the requirement pertaining to preventing and addressing lead exposure at § 1302.47 would not be impacted by the invalidation of the requirements related

to mental health consultation at § 1302.45 or the provision of family support services for health, nutrition, and mental health at § 1302.46. ACF intends that if one or more provisions within a subpart are invalidated, that all other provisions of that subpart (and all other subparts of the rule) remain in effect.

#### **IV. Development of Regulation**

Since the 2007 Reauthorization of Head Start and the last major update to the HSPPS in 2016, ACF has listened to and learned from Head Start programs, families, and community members; assessed the evolving ECE landscape; examined the successes and challenges in the reauthorized Act's implementation; and tracked the impact and implications of the COVID-19 public health emergency on Head Start programs. The policies in this final rule are informed by these lessons and are designed to improve on the work of the past and build a stronger Head Start program that more effectively supports the development of children from low-income families, helping them enter kindergarten more prepared to succeed in school and in life.

ACF published an NPRM in the **Federal Register** on November 20, 2023 (88 FR 80818), proposing revisions to the HSPPS regulations. We provided a 60-day comment period during which interested parties could submit comments in writing or electronically. During the public comment period, OHS engaged with the Head Start community through a series of round table discussions with Head Start program leadership in multiple locations around the country and virtually to encourage discussion on the NPRM and generate interest in submitting public comments.

ACF received 1,300 public comments, of which 1,133 were unique comments, on the proposed rule (public comments on the proposed rule are available for review on

*www.regulations.gov*), including comments from numerous Head Start programs; national, regional, and state Head Start associations, including those representing Tribal and Migrant and Seasonal Head Start programs; groups representing community action agencies; labor unions; early childhood researchers and research organizations; individual Head Start staff and families; other notable national organizations focused on early childhood education; individual members of the public; and members of the U.S. Congress. Public comments informed the development of content for this final rule. In sections below, we describe the changes we made to provisions in this final rule, in response to the public comments. To support the analysis of public comments, ACF used a large language model, a type of artificial intelligence, as a tool to tag public comments by topic, sentiment, and intent, alongside topic-based summaries. The output of the model was further analyzed and refined by content experts based on further review of public comments.

The changes outlined in this final rule affect the many local Head Start grant recipients that operate Head Start programs for children and families. ACF has and will continue to provide technical assistance throughout the implementation of this final rule.

## **V. General Comments and Cross-Cutting Issues**

This final rule includes changes in key areas in the HSPPS. ACF received comments on all the significant proposed changes in the NPRM, and we revised various proposals in this final rule in response to these comments. Many comments responded to broader themes that cut across policy proposals, including concerns around the loss of enrollment slots associated with implementing the proposed provisions absent additional Federal funds, the differential impacts of proposals from the NPRM on small and rural programs, the administrative burden of implementing what some commenters described as overly prescriptive requirements, and issues

specific to Tribal programs. Other commenters expressed strong support for the requirements proposed in the NPRM and encouraged ACF to strengthen requirements in the final rule. We believe it is clearer for us to respond to these cross-cutting comments if we group them by theme. We also discuss specific comments on each proposed policy area in the section-by-section analysis later in this final rule.

#### *Impact on Enrollment Slots Absent Additional Federal Funds*

Commenters were generally supportive of the intent behind the proposed changes to improve staff compensation, benefits, and supports for wellness, as well as to enhance mental health services and child safety within Head Start programs. Overall, the majority of the 1,133 unique public comments reflected an appreciation for the goals and intentions of the NPRM proposals. However, many commenters expressed concern that while increasing staff wages and benefits is a positive step towards equity and sustainability within the Head Start workforce, these changes would lead to a reduction in the number of children and families Head Start programs can serve and would lessen Head Start's impact on communities in need if Congress does not appropriate sufficient additional funding. Some commenters expressed support for a more nuanced approach that considers the unique circumstances of programs and communities, rather than a one-size-fits-all mandate. Others requested a reevaluation of the funding formula and a phased-in approach to compensation increases that is directly tied to the availability of Federal funding. In summary, the commenters who expressed concerns on this issue conveyed a request for additional funding to support the wage and benefit increases for Head Start staff proposed in the NPRM. Without additional funding, this group of commenters expressed concern that programs will need to make difficult decisions that result in fewer children and families receiving Head Start services in future years.



ACF acknowledges commenters' concerns about the costs associated with these changes and the possible reduction in slots absent additional appropriations from Congress, and we have given these comments extensive consideration. In response to comments, the final rule includes flexibility for the Secretary to establish a limited waiver process for most of the rule's wage requirements, for programs determined to be meeting quality benchmarks and that would otherwise have to reduce enrolled Head Start slots to implement these requirements. The Secretary must establish this waiver process between January 1, 2028, and December 31, 2028, and only if increases in Federal appropriations for the Head Start program remain below 1.3 percent, on average, in the four fiscal years preceding the waiver establishment. If the waiver process is established, the responsible HHS official will determine whether individual programs are eligible for the waiver, based on the criteria described in other parts of this rule. With the inclusion of this limited waiver authority, we believe the final rule strikes an appropriate balance between the urgent need for improved compensation for Head Start staff and the potential impacts of these regulatory changes on the number of children served, absent additional congressional investment.

We maintain that we are at a critical moment for Head Start, and we must recognize the real costs of providing high-quality early education services to the most vulnerable children and families in our country, including competitive compensation for program staff. Right now, many Head Start programs have empty slots because of workforce shortages. While workforce shortages have become acute in recent years, turnover among Head Start classroom teachers has grown steadily over the last decade. We know programs across the country have waiting lists but closed classrooms because they do not have qualified staff. At the same time, we have not seen meaningful increases in compensation that allow programs to recruit and retain and appropriately

compensate qualified educators, leading to unprecedented rates of turnover and staff vacancies. We believe we need to take purposeful action to stabilize and support the valuable Head Start workforce in the face of this crisis, and to ensure that children and families continue to receive Head Start services at the level of quality defined in the Head Start Act for years to come. That said, we acknowledge commenters' concerns that meeting these requirements could have a differential impact on some Head Start programs that may need to reduce enrolled slots, absent congressional investment. We believe adding this limited waiver authority will help alleviate this concern.

Even with limited waiver authority, ACF fully recognizes that these changes, without additional funding, may require programs to make tradeoffs that include restructuring budgets to reduce the number of funded slots—essentially focusing on how to strengthen services for currently enrolled children. We know that many Head Start programs do not want to reduce funded slots, even if they are currently vacant, especially given the number of eligible children and families who would potentially benefit from Head Start services. However, without additional congressional investment, these steps are necessary to stabilize and sustain the Head Start program for the long term. In addition to including the limited waiver discussed above, we have also intentionally provided a delayed implementation timeline for the most significant policy changes in this final rule, both to give programs time to plan and to create an opportunity for future congressional investments in quality improvement. We also note that, historically, Congress has steadily increased Head Start appropriations, particularly in response to efforts to improve quality. We also note that, even in the absence of additional funding beyond what is needed to keep pace with inflation, the regulatory impact analysis of this rule estimates that Head Start would continue to serve roughly the same number of children actually enrolled today.

### *Concern that Wage and Benefit Requirements Need to be Strengthened*

As mentioned above, the vast majority of commenters expressed support for the goals and intention of the wage and benefit requirements proposed in the NPRM. In addition, several commenters – including labor unions, professional membership organizations, and Head Start staff – suggested that ACF issue a final rule to strengthen wage and benefit requirements and create additional mechanisms for accountability. These commenters stressed the importance of Head Start staff and their contributions to enrolled children and families as well as their communities. They stressed the need for policies to reflect the value of Head Start staff and ensure that flexibility for programs does not undermine the intent of the wage and benefit provisions. For example, commenters suggested that ACF require Head Start programs to benchmark early educators' salaries to the total value of the compensation package in a public school, inclusive of salaries and benefits and account for the number of hours worked, which some commenters indicated could be higher in Head Start. They requested a requirement for Head Start programs to publish their salary scale to create additional accountability, as well as specific enforcement mechanisms by the Office of Head Start. Commenters also suggested a shorter timeline to implement wage and benefit requirements given the urgency of the workforce shortage. Commenters urged more stringent requirements for Head Start programs as they develop their wage and salary scale, including prohibiting or limiting wages from being adjusted downward if a staff member does not have a degree, licensure, or credential and requiring programs to benchmark to either preschool teachers in public schools or kindergarten to third grade teachers in public schools, whichever is higher. Finally, several comments urged ACF to expand the benefits proposed in the NPRM, including requiring retirement benefits with an employer contribution and expanding benefits to part-time staff.

ACF acknowledges the input from these commenters. After careful review, we believe that we have struck an appropriate balance by requiring a wage and salary scale with minimum requirements to benchmark to preschool teachers in public schools or at least 90 percent of kindergarten teacher salaries, adjusting for experience, qualifications, and responsibilities. Given the variation in preschool services around the country, including differences in the availability, auspices, and funding structure in state and local preschool programs, ACF believes this flexibility is needed to account for the differential experiences of local Head Start agencies and the availability of comparable preschool teachers in local public schools. We appreciate that Head Start teachers may work longer hours than teachers in local elementary schools, especially those working in Early Head Start programs that often operate year-round and for an extended day. We have incorporated this feedback to clarify that wages and salaries should reflect hours worked, including time spent for lesson planning, family engagement, administrative paperwork, and other activities outside of hours when children are present. As described in § 1302.90(f)(5), we encourage programs to offer additional benefits not specified in the rule to their staff, including enhanced health benefits, retirement savings plans, flexible savings accounts, or life, disability, and long-term care insurance to remain competitive with other employers in their area.

Throughout the implementation process, OHS will provide technical assistance to support programs in developing a wage and salary scale that appropriately considers qualifications, credentials, and experience. OHS will update its monitoring protocol to include wages and benefits as well as other provisions of the rule.

#### *Differential Impacts on Small and Rural Head Start Programs*

Many commenters expressed concerns that implementing the policies in the NPRM without additional Federal funding would require reducing the number of children served or

require programs to close, with an acute impact on small and rural programs. They contended that these closures would then exacerbate the existing challenges in early childhood education access in rural and small communities. Commenters highlighted the importance of integrating mental health supports into everyday programming to prevent staff burnout and to address children's behavioral issues but noted the shortage of mental health professionals that particularly impacts rural areas. Some commenters identified other proposals in the NPRM that could be challenging to implement in rural areas, including locating certified assessors for lead testing and adopting modern technology to facilitate family engagement. In general, many commenters expressed support for consideration of the unique circumstances of small and rural Head Start programs to ensure that the changes do not inadvertently reduce access to essential services for children and families in these communities.

We recognize the specific challenges of small and rural Head Start programs, and we also recognize small programs are particularly important in rural communities where Head Start may be one of the few licensed center-based early childhood options available for children and families. We have made changes in the final rule to provide some accommodations for small agencies, consistent with section 644(c) of the Act, which allows the Secretary, where appropriate, to establish special or simplified requirements for smaller agencies or agencies operating in rural areas. We discuss these changes more fully later in this final rule, but, in brief, the final rule includes different wages and benefits requirements for small Head Start agencies, defined as those with 200 or fewer funded slots, that provides additional flexibility to implement higher wages and benefits for staff. The policy for small agencies acknowledges that implementation of the wages and benefits policies required of larger agencies could be difficult in an agency that does not benefit from the economies of scale available to larger agencies.

More specifically, small agencies are exempt from the requirement to provide wages that are at least comparable to preschool teachers in public schools, setting a wage floor that covers basic living expenses, and wage parity between Head Start and Early Head Start educators. Instead, small programs must show measurable progress over time toward these outcomes. Small agencies are also required to develop or update a pay scale that promotes competitive wages for all staff. While making these accommodations to address potential differential impacts, ACF remains committed to supporting and stabilizing the workforce in all Head Start programs and thus is still requiring small agencies to make measurable improvements in staff wages and benefits over time to reduce disparities between Head Start educators and preschool teachers in public schools. ACF will provide technical assistance to small agencies as needed to support implementation of improvement in staff compensation over time.

We made revisions across several other policy areas that address or mitigate concerns raised about possible differential impacts of the proposed changes in the NPRM, including, for example, mental health and staff benefits. In revising expectations around mental health consultation services, the final rule specifies that if a mental health consultant cannot be available to a program at least once a month, a program must supplement the work of a mental health consultant with other licensed mental health professionals or behavioral health support specialists certified and trained in their profession. This revision broadens the pool of available practitioners to provide programs with mental health supports in recognition of the challenge of securing mental health consultation in many parts of the country, and particularly in rural areas. We have also made changes to staff benefits, including the removal of the paid family leave policy and making the remaining paid leave policy more flexible for all programs.

*Concerns Related to Administrative Burden from Overly Prescriptive Requirements*

Many commenters expressed concerns with increased administrative burden associated with proposals in the NPRM. Specifically, some commenters noted the administrative complexity of implementing pay parity across multiple jurisdictions; lead testing, monitoring, and remediation; and adjusting income for excessive housing costs, among others. In reporting concerns with the administrative burden associated with the proposed policies in the NPRM, some commenters described the proposals as overly prescriptive and reminiscent of the HSPPS prior to the revisions through the final rule published in 2016. Commenters suggested that ACF should provide training and technical assistance (TTA), flexibility, and clear guidance to support programs in implementing the changes.

We have made numerous changes in the final rule that are responsive to commenters' concerns about increased administrative burden, while at the same time retaining the critical requirements that reflect the standards all programs need to meet to achieve high-quality early childhood programming. Regarding commenters' assertions about the prescriptive nature of the NPRM proposals, ACF believes that all the proposed requirements in the NPRM were aligned to the overarching goals of the regulatory changes, including supporting the workforce, enhancing program mental health services, and improving overall program service quality. However, we also recognize that it is important to balance Federal requirements for Head Start with local program flexibility to implement those requirements in a way that best meets individual community needs. Our changes in this final rule strike this appropriate balance.

We highlight three examples of relevant changes here but discuss these and other changes in detail in section V. First, we revised the requirements for programs to prevent and address lead exposure in the water and paint of facilities that serve Head Start children. In the final rule, we include a new simpler, more streamlined standard that requires programs to ensure Head Start

children are not exposed to lead in the water or paint of facilities through regular testing, inspection, and, as needed, remediation or abatement actions.

Second, in response to public comments, we have removed the NPRM proposals for adult size furniture in classrooms and for brief unscheduled breaks for staff. We believe these are important aspects of promoting the well-being of classroom staff. However, we understand that it is more prudent for programs to determine how to implement such approaches in their own programs.

Third, this final rule retains the requirement from the previous program standards related to child health and safety that only those Standards of Conduct pertaining to the maltreatment or endangerment of children by staff, consultants, contractors, and volunteers require an incident report. Based on the comments, ACF agrees that some of the proposed changes in the NPRM to the Standards of Conduct could undermine child safety by creating confusion and over-reporting of less serious incidents. With these changes, we think the final rule is clearer and focuses incident reporting on more serious incidents, thereby allowing Head Start resources at the Federal and program level to focus on protecting children's safety and reducing administrative burden.

### *Tribal Programs*

ACF received many comments focused specifically on how the NPRM would affect Tribal programs, and these comments highlighted concerns both with the rulemaking process and with specific proposed policies. First, commenters reported concerns about the lack of meaningful Tribal consultation prior to the release of the NPRM. Responses shared concern that Tribal leaders were not at the table during the decision-making process and that the timing of the NPRM release was problematic, as it coincided with significant cultural and leadership



transitions for many Tribes. These commenters requested that ACF honor Tribal sovereignty, engage in meaningful Tribal consultation, and consider the unique needs and cultural practices of Tribal communities in the rulemaking process.

Second, while many commenters supported the goals of the NPRM, they expressed concerns that the lack of additional funding to implement the proposed changes could lead to reduced enrollment slots, staff shortages, and program closures, particularly affecting Tribal programs. Some commenters suggested that the costlier proposed changes should be noted as best practices until appropriate funding and consultation opportunities are made available. Many of the commenters from Tribal communities expressed concern about the prescriptive nature of some of the proposed standards, which could conflict with Tribal employment infrastructure and philosophies. For example, some expressed concerns that increases in wages and benefits for Head Start staff would affect wages and benefits across the Tribal government and usurp the Tribes' sovereign right to set its own conditions of employment. Several comments highlighted other unique challenges faced by Tribal communities, such as the need for flexibility in meeting program hour requirements due to cultural and traditional events, and the importance of culturally relevant curricula and assessments. Some commenters requested local autonomy in determining health benefits and other employee benefits. Several comments reported concerns that the proposed changes, such as those that address incident reporting, would add additional administrative burden on overworked staff, noting that Tribes already have internal incident reporting practices in place. Finally, many commenters from Tribal communities called for categorical Head Start eligibility for American Indian and Alaska Native (AIAN) children, similar to other categorical eligibility allowances, such as those for children experiencing homelessness and families receiving Supplemental Nutrition Assistance Program (SNAP)

benefits. These commenters emphasized the importance of ensuring AIAN children in their communities receive comprehensive and culturally relevant services through Tribal Head Start programs.

We appreciate the important feedback received from AIAN communities through ongoing Tribal consultations and the public comment process. ACF conducts an average of five Tribal consultations each year for those Tribes operating Head Start programs. 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 opportunities for most of the 150 Tribes served through Head Start to be able to attend and voice their concerns and issues. The Tribal consultation held on December 5, 2023, in Costa Mesa, California, provided an opportunity for Tribes in attendance to share reactions and input specifically about the NPRM, which was released on November 20, 2023, and was a main focus of discussion during that Tribal consultation. ACF acknowledges that a set of commenters expressed the view that the existing Tribal consultation process has fallen short of their expectations. ACF is committed to improving the nation-to-nation relationship with Tribes and will continue to seek ways to enhance engagement, including formal consultations and listening sessions or meetings.

Through the NPRM and public comment process for this rule, we also received comments from many Tribal communities and stakeholders, including from the National Indian Head Start Directors Association, which directly informed the development of this final rule. We highlight three examples here. First, as noted previously and discussed in more detail in subsequent sections, the final rule includes an exemption from the rule's wages and benefits requirements for small agencies, defined as those with 200 or fewer funded slots for the reasons

discussed above. At the time of the development of this final rule, ACF estimates that 78 percent of Tribal Head Start agencies meet the definition of a small agency; therefore, we anticipate that this small agency exemption will be particularly impactful for programs in Tribal communities.

Second, the final rule makes changes to program requirements related to mental health consultation that will have an important impact on Tribal programs. In revising expectations around mental health consultation services, the final rule specifies that a mental health consultant should be available to a program at a frequency of at least once a month; however, if services by a mental health consultant are not available at that frequency, other licensed mental health professionals or behavioral health support specialists certified and trained in their profession, including traditional practitioners recognized by their Tribal governments, must be used in coordination and consultation with the mental health consultant. This change in the final rule recognizes both the concerns about the availability of mental health professionals broadly, and specifically in rural areas, as well as the traditional practices that are an integral part of many AIAN communities' approach to wellness.

Third, the final rule does not maintain the NPRM proposal for Early Head Start (EHS) duration, which proposed to require that the 1,380 hours of planned class operations for children in EHS center-based programs occur across a minimum of 46 weeks per year. We know this is significant for Tribal programs as they expressed in public comments that the ability to be flexible about how to meet the 1,380 hours requirement through the calendar year has supported traditional Tribal practices and important local and cultural events. Although it is a long-standing expectation of ACF that EHS programs provide continuous, year-round services for enrolled children, ACF is committed to prioritizing flexibility for local programs

to determine the program schedule that best meets their community needs, while still achieving the required 1,380 annual hours of services for children.

On a final note, ACF revises language in the final rule to conform to language in the Consolidated Appropriations Act, 2024 (Pub. L. 118-47), which includes a provision that allows Tribes to consider all children in a Tribal Head Start program's service area to be eligible for services regardless of income. The provision emphasizes that Tribes have the discretion to determine and use selection criteria to enroll those children who would benefit from the program, including children and families for which a child, a family member, or a member of the same household, is a member of an Indian Tribe. This change is consistent with Administration priorities as outlined in the fiscal year (FY) 2025 President's Budget to Congress, and is responsive to a key priority for Tribal leaders.

## **VI. Section-by-Section Discussion of Comments and Regulatory Provisions**

We received comments about changes we proposed to specific subparts of the regulation. Below, we identify each subpart, summarize the comments, and respond to them accordingly.

### *Definition of Head Start and Related Terms (§ 1305.2)*

Section 1305.2 establishes definitions for key terms used throughout the HSPPS. These include terms to define programs that operate Head Start services, including *Early Head Start Agency*, *Head Start Agency*, and *Program*. We add to § 1305.2 a definition for *Head Start* that states that *Head Start* refers to any program authorized under the Head Start Act. Similarly, we add to § 1305.2 a definition for *Head Start Preschool* so that programs that provide services to children from age three to compulsory school age will be referred to as Head Start Preschool (HSP) and a definition of *Early Head Start* that refers to a program that serves pregnant women and children from birth to age three. The term *Head Start* was not previously defined in the

HSPPS nor was it used consistently throughout the standards. Consequently, this inconsistency was also present throughout sub-regulatory policy and TTA documents published by ACF. This inconsistency may be challenging for those who are new to Head Start and troublesome for the field in general.

We also revise two other definitions to align with the revised terms above. First, we revise the the definition of *Program* by striking “a Head Start” and adding “any funded Head Start Preschool;” striking “migrant, seasonal, or” and replacing with “Migrant or Seasonal Head Start;” and striking the word “program” and adding “or other program authorized” after the comma.

Furthermore, we revise the definition of *Head Start Agency* to add the word “Preschool” after “Head Start” and replace the words after “program” with “, an Early Head Start program, or Migrant or Seasonal Head Start program pursuant to the Head Start Act.” We also update the usage of these terms as they are used throughout the HSPPS to align with these above changes. Finally, we remove the term Early Head Start Agency as well as implement a nomenclature change of “grantee” to “grant recipient”.

ACF acknowledges the necessity of maintaining consistent and transparent terminology within this area and is confident that these terminology updates will effectively address those needs.

*Comment:* ACF received very few comments overall regarding the "Definition of Head Start and Related Terms." Of the comments received, the majority were in support of the new terminology, citing increased clarity and consistency. However, a few commenters were concerned about the potential confusion caused by the term Head Start Preschool, especially in

light of widespread expansion of other preschool programs. A few also worried that the use of the term Preschool undermines the unique dual-generation approach to comprehensive services that is characteristic of Head Start programs.

*Response:* ACF maintains the changes proposed in the NPRM related to the definition of Head Start and related terms. The public agreed with ACF that the use of *Head Start* as an umbrella term to represent all program types authorized under the Act, as well as related changes, promote more consistent or clear use of the terms. Specifically, the differentiation between Head Start Preschool and the overall Head Start program aims to improve comprehension for both experienced and novice readers of the HSPPS and codifies the colloquial use of the term Head Start. ACF acknowledges the concerns raised by the commenters regarding the potential overlap in naming with other Preschool programs but does not believe the changes diminish the distinctive approach and comprehensive services provided by Head Start programs.

*Workforce Supports: Staff Wages (§ 1302.90)*

The prior version of the HSPPS did not contain any requirements for salaries or wages for Head Start staff. In this final rule, we add a new paragraph (e) to § 1302.90 that lays out requirements for staff wages to support and stabilize the Head Start workforce. These requirements will ensure that programs make measurable progress towards pay parity with kindergarten to third grade teachers for Head Start educators, as well as improve wages for all other Head Start staff. The final rule includes most of the provisions proposed in the NPRM but includes some refinements as well as two notable changes in recognition of some of the particular challenges noted by commenters. First, the final rule provides a more flexible approach for small agencies with 200 or fewer funded slots that exempts them from most of the

rule's wage (and benefit) requirements that apply to larger agencies. Second, the final rule includes a flexibility for the Secretary to establish a waiver process for most of the wage requirements, in the absence of average annual increases in appropriations of at least 1.3 percent for Head Start in the preceding four years. Programs will be eligible for the waiver if they are determined to be meeting quality benchmarks and would otherwise have to reduce enrolled slots. We discuss both of these changes in more detail later in this section.

Specifically, in this final rule we require that, by August 1, 2031, programs with greater than 200 funded slots must: 1) establish or update a salary scale or pay structure that promotes competitive wages for all staff positions and takes into account responsibilities, qualifications, experience, and schedule or hours worked (§ 1302.90(e)(1)); 2) ensure annual salaries for Head Start educators match those of preschool teachers in public school settings, or at least 90 percent of public school kindergarten teacher salaries, adjusted for responsibilities, qualifications, experience, and schedule or hours worked (§ 1302.90(e)(2)); 3) ensure all Head Start staff receive pay that is at least sufficient to cover basic costs of living in their geographic area (§ 1302.90(e)(3)); and 4) ensure wages are comparable across Head Start Preschool and Early Head Start programs for staff serving in similar positions with similar qualifications and experience (§ 1302.90(e)(4)).

These new wage provisions aim not only to enhance the recruitment and retention of qualified staff through competitive compensation but to improve quality for children and families served in the program by reducing turnover and increasing access to effective teaching and learning practices. These policies go into effect August 1, 2031, approximately seven years after publication of the final rule. We believe this longer implementation window allows programs sufficient time to plan for the needed wage increases and to make improvements in staff wages

over time and to implement wage changes in a manner that minimizes disruptions to enrolled children by incrementally phasing in wage increases while adjusting program budgets and funded enrollment. It also provides opportunities for additional appropriations from Congress or for the Secretary to establish a limited waiver for certain programs if Head Start appropriations are very low in the four fiscal years preceding 2028.

In response to public comments, the final rule provides some additional flexibilities beyond the policies proposed in the NPRM to support successful implementation and mitigate potential unintended consequences. First, as described previously, we provide an exemption for small Head Start agencies, defined as those with 200 or fewer funded Head Start slots, from the majority of the new wage policies (§ 1302.90(e)(5)) and instead require a more flexible approach to increasing wages. As noted previously, section 644(c) of the Act allows the Secretary, where appropriate, to establish special or simplified requirements for smaller agencies, which provides the basis and authority for a different approach to small agencies. Small agencies are still required to establish or update a salary scale or pay structure that promotes competitive wages for all staff positions. Small agencies must also make measurable improvements in staff wages over time, including reducing disparities in wages between Head Start education staff and public school preschool teachers. This approach is discussed in further detail below.

Second, to provide programs more flexibility in determining comparison salaries in public schools for Head Start education staff salaries, we add a clarification that programs can choose to benchmark education staff salaries to at least 90 percent of kindergarten teacher salaries, as an alternative to preschool teacher salaries (§ 1302.90(e)(2)(iv)). Third, we clarify that education staff salaries can be adjusted for schedule or hours worked, in addition to adjusting for responsibilities, qualifications, and experience (§ 1302.90(e)(2)(i) and (ii)). Finally,



we clarify that our intent is for the pay parity standards for education staff to apply to staff who are employees as well as those whose salaries are funded by Head Start through a contract (§ 1302.90(e)(2)(iii)).

Third, as noted previously, we include a flexibility for the Secretary to establish in 2028 a limited waiver of most of the final rule's wage requirements, in the absence of an average annual increase of at least 1.3 percent in Head Start appropriations in the preceding four years for eligible programs. Programs would be eligible for the waiver if they: demonstrate they would have to reduce enrolled slots; demonstrate improvements in wages over the four years preceding the waiver, to the greatest extent practicable; have not been designated for competition under the Designation Renewal System (DRS) after the effective date of this rule; and do not have significant child health, safety, or quality concerns as determined by the responsible HHS official. Any programs granted this waiver are still required to make improvements in wages for Head Start staff over time, to the greatest extent practicable; and to establish or update a salary scale or pay structure that promotes competitive wages for all staff and takes into account staff responsibilities, qualifications, experience, and schedule or hours worked. This waiver is discussed in further detail below.

The majority of comments submitted on the NPRM provided input on the proposed wage policies, with comments addressing the wage policies numbering approximately 850. The comments included a nuanced spectrum of viewpoints, reflecting both strong endorsement of the proposed wage policies and pointed concerns about the practical aspects of implementing the policies and the potential impact on services for children and families.

Many Head Start educators, as well as labor unions, enthusiastically welcomed the new requirements and expressed positive support for proposed wage improvements, advocating for

enhancements such as indexing wages to inflation and advocating for the policies to be implemented and effective on a faster timeline. Many provided personal testimony about the low wages and working conditions they endure, including stories of educators who are laid off and collect unemployment every summer, and who rely on public benefits or work additional jobs to provide for their families, as well as stories of qualified and skilled educators who leave Head Start to pursue better wages, benefits, and financial stability. Most educators highlighted the urgent need for increased compensation, applauding ACF for making an important step forward to address longstanding workforce challenges. This enthusiasm underscored the importance of workforce compensation on educators' personal and professional lives, and on programs' ability to retain and recruit qualified staff.

Conversely, many Head Start program leaders as well as national and local organizations representing Head Start programs, while supportive of the intentions behind the wage increases, voiced apprehension primarily centered around the financial implications of such policies. They raised concerns regarding the availability of funds, the practicality of the proposed timeline, and the potential repercussions on service delivery. Commenters expressed fears that these repercussions could include reductions in slots or the number of children and families served as well as potential program closures. Another common theme was the financial strain that the proposed wage provisions could place specifically on small, rural, and Tribal programs. Suggestions for mitigating these challenges included phased implementations, more substantial Federal funding, and the development of clear, achievable benchmarks for progress towards wage parity and improvements. There was a consensus in the comments on the need for ACF to offer comprehensive support, guidance, and flexibility to enable programs to adapt to and meet the new wage requirements effectively.

ACF strongly believes that Head Start program staff are the cornerstone of the Head Start mission to provide high-quality early education and comprehensive services to children and families who need them. Improving wages for Head Start staff is a critical mechanism to enable staff recruitment and retention and program quality in Head Start. Therefore, in this final rule, we maintain the proposed wage provisions, with the additional flexibilities discussed above. We discuss the comments and our rationale for any changes to the regulatory text below.

#### *Cross-Cutting Comments and Themes on Staff Wages*

*Comment:* Many comments expressed concern about the increased operational costs that would result from the proposed wage adjustments and the uncertainty about accompanying Federal funding increases. Many commenters expressed that without additional funding, programs with limited funding would face difficult choices, and would need to reduce the number of slots or children and families served, and in some cases would need to close programs, thereby reducing access to Head Start services for children and families. In light of these financial concerns, some commenters proposed innovative financial strategies to mitigate the impact of wage increases on program operations. Specifically, they suggested that Head Start programs could leverage multiple funding streams and braid funds from Federal, state, local, and private sources as a potential solution to support wage improvements. The comments suggested that this approach would not only address the immediate financial challenges posed by the proposed wage adjustments but also contribute to the long-term sustainability of programs. Commenters also raised concerns that the cost implications of the proposed wage policies in the NPRM would be particularly acute for small, community-based programs that already operate with tight budgets and could be at risk for program closure when wage requirements go into effect. Some commenters who strongly supported wage increases clarified that this is only if

sufficient funding is provided to avoid a reduction in services for children and families, noting the important role Head Start plays in providing access to quality early care and education. Some comments proposed tying wage policies to appropriations increases and including flexibility for the Secretary of HHS to remove or reduce the wage requirements if funding is not sufficient. Other commenters proposed allowing incremental increases over time, demonstrating progress without reaching parity requirements. Some commenters expressed concerns about making additional enrollment reductions following reductions that programs made by choice in previous years to increase staff compensation.

*Response:* ACF acknowledges the complexities surrounding the proposed wage adjustments within the Head Start program, particularly related to the availability of funding and the potential impact on program slots. It is essential to recognize, however, that the chronic issue of unfilled staff positions and the inability of programs to operate at full capacity stem from the challenges in recruiting and retaining qualified staff, primarily due to noncompetitive wages. This situation inadvertently results in many Head Start slots going unfilled, thereby already limiting the program's reach to children and families who could benefit from its services.

We agree with commenters that it is important to balance any quality improvements with the capacity of Head Start to reach children and families in need of services. In response to comments, the final rule includes an option for the Secretary to establish a limited waiver from most of the rule's wage requirements for eligible programs if Federal appropriations for Head Start are less than an average annual increase of 1.3 percent over the preceding four years. In order to be eligible for the waiver, programs must meet quality benchmarks and demonstrate they would need to reduce enrolled slots in order to implement the wage requirements. The criteria for this waiver are discussed in more detail in the following paragraphs.

First, if the Secretary decides to establish this waiver process, the program must demonstrate that it would otherwise have to reduce enrolled Head Start slots to implement the wage requirements. A Head Start slot is considered vacant when a child leaves the program (either because the family removes the child or the child ages out) and the Head Start program does not enroll another child within 30 days (exclusive of summer months if the program is closed). (Separate from this possible waiver process, programs are expected to reduce their funded enrollment to eliminate vacant slots, as needed, to meet the requirements of the final rule.)

Second, if the Secretary establishes a waiver, Head Start agencies must meet quality benchmarks to demonstrate that they are protecting child safety and improving staff wages over time. This approach ensures that flexibility does not undermine child health and safety or quality, for programs that struggle to implement the wage requirements in the absence of additional appropriations. Head Start agencies are not eligible for a waiver if they were designated for competition under the DRS after the effective date of this rule. Further, programs are ineligible if they have significant child health, safety, or quality concerns, as determined by the responsible HHS official. The latter criterion is intended to encompass serious incidents of child maltreatment or a pattern of child safety incidents that may have happened too recently to trigger competition in the DRS. In addition, to meet this criterion, the responsible HHS official must not have significant concerns about program quality that seriously impact the delivery of education and child development program services required in part 1302, subpart C, of the HSPPS. Programs must also demonstrate improvements in staff wages during the four years preceding the start of the waiver to the greatest extent practicable.

Third, a Head Start agency can only be granted a waiver if they held the grant for the service area prior to August 21, 2024 (the effective date of this rule). New grant recipients should apply for Head Start funding with a proposed budget to meet the wage requirements and other provisions of the final rule.

Fourth, any programs granted this waiver are to continue to make improvements in wages for Head Start staff over time, to the greatest extent practicable. These programs are also required to establish or update a salary scale or pay structure that promotes competitive wages for all staff and takes into account staff responsibilities, qualifications, experience, and schedule or hours worked.

Waivers are granted for the duration of the program's five-year grant period. Waiver eligibility will be reassessed for each successive grant period and may be renewed if appropriation increases are below 1.3 percent for the preceding four years and the grant recipient continues to meet the criteria described above.

ACF also recognizes the challenges that some Head Start agencies – particularly small agencies – may face in implementing new policies for wage requirements absent additional appropriations. In this final rule, we also provide an exemption from most of the rule's wage requirements for small Head Start agencies. This exemption is discussed in further detail below, along with wage requirements for small programs that offer more flexibility in how small agencies go about increasing wages over time. The rationale behind the wage requirements is rooted in a strategic effort to address longstanding challenges that have led to poverty level wages for many Head Start staff, which have in turn led to severe staff shortages and closed Head Start classrooms. By supporting the workforce through improved compensation, ACF aims to enhance the ability of Head Start programs to attract and retain the qualified staff necessary

for delivering high-quality programming. This is a critical step toward ensuring that the Head Start mission of supporting the development of children from low-income families through comprehensive services can be fully realized. It is also central to the mission of Head Start, which includes disrupting intergenerational poverty in communities, to ensure that our Federal program investments do not perpetuate poverty level wages that force staff to rely on public benefits themselves. Ultimately, increasing wages for staff will increase Head Start's ability to serve more children over time, as it will put the program on a more sustainable path. ACF agrees with commenters who highlighted the potential of leveraging multiple funding streams and braiding funds as a strategy to support the implementation of wage improvements and program stability. Further, ACF supports programs exploring and utilizing a variety of funding sources, including Federal, state, local, and private funds, which can provide a more robust financial foundation for programs to address wage adjustments without compromising service delivery. Layering funds is an acceptable and encouraged practice that can enhance quality in early childhood programs. This approach aligns with ACF's commitment to innovative and sustainable solutions that support the financial health of Head Start programs while advancing our goal of equitable compensation for all staff. We encourage programs to explore these options as part of their strategic planning for implementing the new wage requirements, while also recognizing that states and localities vary significantly in the availability of non-Federal early childhood investments.

#### *Differential Impacts on Different Program Types*

*Comment:* Many comments highlighted the differential impact of the proposed wage changes on small programs, noting that small Head Start entities will face unique challenges implementing wage improvements, due to their size. Commenters noted that slot reductions are

not a viable option for smaller programs because the volume of slots that would need to be reduced to facilitate compliance with the wage policies in the absence of additional funding would impact financial viability of such programs and potentially lead to program closures. Some commenters raised concerns in particular around small programs that are fully enrolled and fully staffed. Other commenters stressed that small programs that are also rural may be the only high-quality early education option in a community. Commenters urged ACF to consider special provisions or flexibilities for small programs.

*Response:* ACF understands the unique challenges faced by small agencies that operate on thin margins and need to maintain a sufficient number of funded Head Start slots to ensure their agencies are viable in terms of economies of scale. Section 644(c) of the Head Start Act also acknowledges that some requirements may need to differ for small agencies and allows the Secretary, where appropriate, to establish special or simplified requirements for smaller agencies. Therefore, as described previously, the final rule includes an exemption from most of the rule's wages and benefits requirements for small Head Start agencies, defined as those with 200 or fewer funded slots, and creates a simplified requirement for small agencies with more flexibility. As of December 2023, small Head Start agencies with 200 or fewer funded slots represented 35 percent of all Head Start agencies and eight percent of all Head Start funded slots nationally.

The approach that Head Start agencies take to implement the wage requirements will depend on a number of specific variables including current wages and the gap between wages in Head Start and preschool teachers in local public schools, current enrollment levels and the number of vacant slots, and the size and flexibility of their budget especially in relation to fixed costs. Most Head Start programs currently have vacant slots, meaning that their funded enrollment exceeds the number of children who are actually enrolled in their program. However,



the number of slots impacted by lower enrollment and the budgetary impact varies significantly by the size of the program. Most costs in Head Start are not tied to the individual child or family, but rather to the staff, space, supplies, and equipment needed to operate each classroom. For example, consider a small program with 150 funded slots and a larger program with 1,000 funded slots. Assume that both programs are at 90 percent enrollment, meaning that 90 percent of the slots are currently occupied by an enrolled child and 10 percent are vacant. The small program has 15 empty slots and the large program has 100 empty slots. In Head Start, there are generally 17-20 children in a preschool classroom. The large program can reduce the number of classrooms in the program by five and reallocate the budget to increases in staff wages in other classrooms, without significantly impacting actual enrollment. The small program is not able to reduce the number of classrooms without potentially impacting slots that are currently occupied by enrolled children.

Moreover, small programs are limited by the fact that fixed costs represent a higher proportion of their budget. There are many fixed or relatively fixed costs involved in running a Head Start program that exist regardless of agency size or number of classrooms. These include, but may not be limited to: building space, utilities, insurance, marketing, outreach to and enrollment of families, custodial services, curriculum, administrative staff, and staff needed to implement required Head Start comprehensive services (e.g., family service workers, mental health professionals, health services staff, disabilities services staff, etc.). These fixed costs, in general, represent a lower proportion of overall costs in larger Head Start agencies because they can be shared across more classrooms, whereas they represent a larger proportion of overall costs in small agencies. Small Head Start agencies also suffer from a lack of economies of scale in relation to their purchasing and negotiating power, resulting in higher rates for everything from

cleaning supplies to health insurance. If a smaller agency reduces or streamlines classrooms in order to reallocate funding towards compensation, the agency will still bear many – if not all – of their fixed costs, and would be spreading those fixed costs across fewer classrooms.

Leading cost modelers have documented that operating an ECE program that serves fewer than 100 children is very difficult and may not always be financially viable.<sup>14</sup> This threshold arguably may be higher for the Head Start context, since Head Start includes more comprehensive services than a typical child care program. OHS has provided related guidance in past funding opportunities for EHS and Early Head Start – Child Care Partnership (EHS-Child Care Partnership) expansion, encouraging applicants to consider proposing to operate no fewer than 72 EHS slots to ensure they will have the economies of scale necessary to sustain program operations and meet all Head Start program requirements.<sup>15</sup> In this final rule, the small agency exemption applies to those agencies with 200 or fewer funded slots. In the absence of additional appropriations from Congress in the near future, a program with 200 or fewer funded slots would likely need to reduce or streamline the number classrooms and could quickly fall below the research-based recommendation for the minimum number of funded slots to sustainably operate an ECE program.

In addition, of the agencies with fewer than 50 employees, the majority (87 percent) of them also have 200 or fewer funded slots and will therefore be included in the small agency flexibility.<sup>16</sup> Several other existing Federal laws provide flexibilities and exemptions to small

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<sup>14</sup> Mitchell, A. 2010. Lessons from Cost Modeling: The Link Between ECE Business Management and Program Quality. <http://www.earlychildhoodfinance.org/finance/cost-modeling>; Stoney and Blank, 2011. Delivering Quality: Strengthening the Business Side of Early Care and Education. [https://childcareta.acf.hhs.gov/sites/default/files/delivering\\_quality\\_strengthening\\_the\\_business\\_side\\_of\\_ece.pdf](https://childcareta.acf.hhs.gov/sites/default/files/delivering_quality_strengthening_the_business_side_of_ece.pdf).

<sup>15</sup> For example, see: <https://glenpricegroup.com/sites/ehsccpresearch/wp-content/uploads/sites/3/2014/06/Funding-Opportunity-Announcement-EHS-CCP-2014.pdf>.

<sup>16</sup> Head Start 2023 PIR.

businesses, including for those with 50 or fewer employees (e.g., employer mandate of the Affordable Care Act (ACA); FMLA).

This exemption reflects ACF's understanding that small programs play a critical role in their communities, particularly in rural and Tribal communities where a large proportion of Head Start agencies would qualify for the small agency exemption. This exemption also applies to Head Start interim service providers that provide services to children and families temporarily in place of a Head Start agency that would have qualified for the small agency exemption (§ 1302.90(e)(6)). In such instances, the interim service provider is temporarily providing Head Start services for a particular service area, in place of a grant recipient that either relinquished or lost their Head Start grant. Therefore, these interim providers are still operating within the same economies of scale constraints as the small agency that previously served that particular service area. Further, when a new permanent service provider is awarded the grant for that service area, that future provider will also likely be a small agency operating under the same financial constraints.

Though Head Start agencies with 200 or fewer funded slots are exempt from most of the wage requirements, they must still have a pay scale or structure that promotes competitive wages for staff; must make measurable progress over time to increase wages and reduce the gap between wages offered to Head Start educators and preschool teachers in public schools (or 90% of kindergarten teacher salaries in public schools); and must increase wages over time for the lowest paid staff to cover basic living expenses.

In addition, the workforce in small Head Start agencies remains impacted by the current ECE workforce challenges happening nationwide, and the potential impact on services for children and families in the face of ongoing staff shortages may continue without investment in

staff compensation. This is why, as part of the exemption policy, ACF requires small agencies to continue to improve staff wages (and benefits) over time. This flexibility is designed to promote significant wage improvements without unduly compromising service capacity for small agencies. This approach also provides a clear mechanism and expectation for small agencies to increase wages and benefits when Congress provides additional funds through annual appropriations targeted to COLA increases or quality improvement. It underscores ACF's intention to implement the wage adjustments in a manner that is both equitable and pragmatic, ensuring that the benefits of improved compensation extend to all Head Start staff and families while acknowledging the operational realities of smaller Head Start agencies.

We also note that the wage and benefit requirements in the final rule are intended to address concerns related to child health and safety and quality as well. OHS will continue to provide technical assistance and monitor all programs, including small programs, to support child health and safety and adherence to quality standards. Specific changes related to protecting child safety and supporting mental health are further discussed below and apply to all programs regardless of size.

*Comment:* Many commenters noted that it would be particularly challenging for rural programs to implement the wage policies, as they have more limited access to alternative funding sources to support wage improvements, face more severe economic barriers, experience more challenges finding qualified staff and service providers, and for some communities, may be the only early care and education option serving a large geographic area. Therefore, meaning a reduction in slots or program closure could have an outsized impact on the community and its economy. Many requested consideration of the unique circumstances of rural Head Start

programs to ensure that the changes do not inadvertently reduce access to essential services for children and families in these communities.

*Response:* ACF acknowledges the critical role that Head Start plays in rural communities, at times offering the only high-quality early care and education option in a community. We understand commenters' concern about possible reductions in services in rural areas, particularly in small rural communities. Based on ACF's analysis of the geographic distribution of Head Start agencies at the time of the development of this final rule, ACF has determined that the exemption of the wage and benefits policies offered for small agencies will apply to over half of rural Head Start agencies. According to ACF's analysis, approximately 56% of entirely rural Head Start agencies – meaning those where 100% of their slots operate in a rural area – are also small agencies (200 or fewer funded slots).

Many comments referred to challenges for rural programs and largely focused on the challenges recruiting and retaining qualified staff and service providers in remote or rural locations. ACF makes adjustments to requirements on mental health services and protecting children from lead in response to these comments, but notes qualifications for teachers are statutory and not adjusted in the final rule. The new requirements for staff wages and benefits established through this final rule will improve the ability of Head Start programs – including rural programs – to recruit and retain qualified staff. These requirements are critical to ensure Head Start programs can be competitive employers in their communities and retain the qualified staff necessary to provide high quality services to children and families. As needed, ACF will provide TTA to rural programs to support in their efforts to implement the wage and benefit requirements. As described above, the size of a Head Start agency and the resulting economies of

scale and budget flexibility primarily impacts a program's approach to the new wage and benefit requirements.

If necessary, absent additional funding, larger Head Start agencies located in rural areas can restructure their programs and reduce the number of classrooms to invest in improved compensation for staff, while remaining financially viable programs. However, in the case of smaller rural programs, the closure of even one or two classrooms could constitute such a large share of the program and the fixed costs required that the program may no longer be economically viable. The flexibility afforded to small agencies in this final rule will help to mitigate potential negative impacts on rural programs, particularly in small rural communities where Head Start may be the only high-quality early education opportunity available to low-income families.

*Comment:* Many Tribal Head Start program leaders and other commenters from Tribal communities expressed strong support of the policy aims stated in the NPRM for improved wages to address staff retention and program stability. However, these commenters also expressed concerns that Tribal Head Start programs would face significant challenges implementing the proposed wage requirements due to the unique operational contexts of Tribal governments. Commenters from Tribal communities shared concern that the lack of additional funding to implement the proposed changes could lead to reduced enrollment slots, staff shortages, and program closures in their Head Start programs. Some voiced concerns about the administrative burden that Tribal Head Start programs would experience to implement the NPRM policies, and argued that the new requirements were overly prescriptive and did not respect Tribal sovereignty and self-determination, including Tribal employment infrastructure and philosophies.

*Response:* We acknowledge the concerns raised by Tribal Head Start program leaders and other commenters representing Tribal communities. The exemption for small Head Start agencies described previously will allow flexibility for Tribal Head Start agencies that operate with 200 or fewer funded slots regarding whether they meet all of the wage policy requirements in this final rule. At the time of the development of this final rule, ACF estimates that approximately 116 Tribal Head Start agencies will benefit from this flexibility, which represents approximately 78 percent of all Tribal Head Start agencies.

Like the commenters, ACF believes that all Head Start educators deserve competitive wages and benefits that reflect the importance of their work, and that all staff should earn a livable wage, and this includes the Head Start workforce in Tribal communities. OHS will work with Tribal grant recipients to understand their challenges and provide technical assistance and support to develop appropriate wage scales for the Head Start program in light of existing Tribal wage scales.

*Comment:* Representatives of Migrant and Seasonal Head Start (MSHS) programs also expressed concerns about the impact of implementing wage policies on MSHS programs without additional funding, particularly given the seasonal nature of their program schedules. Some commenters noted that they had already reduced enrollment in order to increase wages and that to further increase, they would have to decrease enrollment to a level that would deem them inoperable.

*Response:* ACF is committed to supporting the operation and sustainability of MSHS agencies, as well as ensuring compensation that will support the recruitment and retention of qualified staff. MSHS agencies play a particularly important role in delivering early childhood services in the communities they serve, and improving staff wages will support quality and

stability of programs. However, we recognize there are unique challenges for MSHS agencies given their program structures and schedules. ACF will provide additional support and TA to MSHS agencies on how to implement the wage policies in this rule while continuing to provide critical services in their communities.

#### *Timing/Phase-In of Wage Policies*

*Comment:* Some comments shared concerns about the sustainability of increased compensation, especially given the uncertainty of continuous Federal funding in future years. Comments urged ACF to allow for flexibility and phased approaches to implementation that consider future economic conditions and changes in the early childhood education landscape. For example, some commenters suggested that programs should be assessed and monitored for progress towards pay parity, such as demonstrating a reduction in pay gaps over time, rather than requiring programs to achieve comparable salaries with preschool teachers in public schools. Comments that addressed the proposed timeline for implementing the new wage standards ranged from some asserting that the seven-year period is too lengthy and could delay necessary improvements to staff compensation, to many others requesting additional time to ensure that comprehensive wage adjustments could be made holistically across new requirements. Many expressed concerns that the timeline might still be too aggressive for programs to feasibly meet without causing financial strain or necessitating reductions in services. Some requested the authority for the Secretary to reduce requirements if additional appropriations from Congress were not provided to fund the wage improvements.

*Response:* Balancing input from commenters, ACF maintains that the seven-year implementation timeline for the wage policies allows programs sufficient time to plan for phased increases while considering the urgency of improving staff compensation. This timeline offers a



phased approach that will enable programs to plan strategically, adapt to changing economic conditions, and ensure that wage increases are sustainable over time, including through possible additional funding increases through future congressional appropriations. This may give programs additional time to seek funding from local, state, or private sources as well as layer funding as previously discussed. It acknowledges the significant variations in local economic conditions, the complexities of wage adjustment processes, and the necessity for Head Start programs to engage in thoughtful, strategic planning. ACF will provide technical assistance and guidance to programs to support implementation of these policies. This may include sharing best practices, developing useful tools and resources, and offering support to address specific challenges as needed.

#### *Administrative Burden/Technical Implementation Challenges*

*Comment:* A considerable number of comments focused on the potential administrative burden associated with developing, implementing, and maintaining the programmatic policies necessary to implement the wage requirements. Commenters raised concerns with conducting wage comparability studies, managing increased complexity in payroll systems, and adhering to new standards while also adhering to other obligations such as collective bargaining agreements and state-specific employment laws. Comments suggested that additional administrative requirements could detract from program resources and focus, potentially impacting service delivery. ACF also heard from at least one large labor union that indicated that the presence of a collective bargaining unit should not pose a barrier to implementing new requirements because the employer and workers representing the collective bargaining unit can work together to meet all requirements in Head Start and applicable local or state requirements, as well as any other employees in the collective bargaining unit. Questions and concerns were raised about the

specifics of how pay scales should be constructed, the technical resources needed to comply with new requirements, and the potential for increased complexity in program administration. Commenters expressed strong concerns with the lengthy timeline associated with getting approval for a change in scope application, which directly impacts a program's ability to restructure programs in a timely fashion to raise compensation. Commenters sought clarity and guidance from ACF on these issues and many requested support from ACF to develop, maintain, and implement pay scales or suggested that this work should be done at a systems level, rather than by individual programs.

*Response:* Understanding the technical support needed to develop and implement equitable pay scales, ACF maintains in the final rule a seven-year implementation timeline to implement the wage requirements. The seven-year implementation timeline not only provides programs with sufficient time to thoughtfully plan and prepare for wage adjustments but also allows for the necessary negotiation with unions representing Head Start staff, for any adjustments that may be needed to contracts, and for possible additional funding to be obtained or appropriated to support implementation. This timeline is crucial for ensuring that wage improvements are implemented smoothly. ACF will provide Head Start programs with the necessary tools and resources to effectively manage the administrative demands of implementing structured pay scales and to ensure an equitable compensation system for all staff members. For instance, ACF recently published the "Early Care and Education Workforce Salary Scale Playbook: Implementation Guide,"<sup>17</sup> a comprehensive resource designed to guide early childhood leaders, including Head Start programs, through the complexities of salary scale development. Finally, ACF is committed to supporting programs' efforts to restructure by

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<sup>17</sup> See: <https://childcareta.acf.hhs.gov/early-care-and-education-workforce-salary-scale-playbook-implementation-guide>.

working with them to process change in scope applications in a timely fashion. ACF recognizes that the timeline for processing change in scope applications has been delayed in the past and is taking steps to improve response times.

*Comment:* Some comments reflected the need to address wage disparities and equity within the Head Start workforce, emphasizing equity across race, setting, and age groups served. There was a strong call for ACF to provide technical assistance and support for conducting wage gap analyses and developing plans to address identified disparities. Some commenters recommended including equity weights to ensure that adjustments for qualifications do not unintentionally exacerbate pay disparities for early educators that are Black, Indigenous, and/or members of other historically marginalized groups, who research has documented are less likely to have accessible pathways to credential and degree attainment. Some commenters also emphasized a need for a coordinated approach to compensation across all ECE settings to ensure a stable, qualified workforce regardless of program type and expressed concern that increasing compensation for the Head Start workforce without making similar adjustments for child care providers could lead to further inequities in the field.

*Response:* ACF appreciates these comments about the importance of addressing wage disparities among different groups and across the ECE sector. Indeed, research indicates that women of color in the ECE workforce are paid less on average than White women, and women of color are also more likely to hold assistant positions as opposed to lead teaching positions.<sup>18</sup> As programs are revising and updating pay scales to implement the new wage standards, ACF encourages programs to intentionally examine possible disparities in pay by race and ethnicity. ACF strongly agrees that Head Start programs should not perpetuate disparities in pay across

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<sup>18</sup> Austin, L. J. E., Edwards, B., Ch?vez, R., & Whitebook, M. (2019). Racial wage gaps in early education employment. Center for the Study of Child Care Employment, University of California. <https://csce.berkeley.edu/racial-wage-gaps-in-early-education-employment/>.

racial and ethnic groups. Further, the new wage standard included in the final rule at § 1302.90(e)(4) requires programs to ensure there are not disparities in pay for Head Start staff based on the age of children served, for those with similar qualifications and experience. While ACF recognizes the concern that increasing wages for Head Start staff may lead to further pay disparities for other parts of the ECE sector including child care, we strongly believe that the wages of Head Start staff cannot continue to be suppressed. Head Start has long been a leader in the field of ECE.

#### *Pay scale*

*Comment:* Some comments expressed concerns over the logistics of policy execution, including potential challenges with the collection of comparable compensation data such as obtaining up-to-date local school district salary information, as well as concerns about the frequency of the five-year review of pay structures. Commenters emphasized the need for additional time for comprehensive wage adjustments post-implementation, alongside concerns regarding wage standard operationalization for varied staff roles funded by Head Start. Comments demonstrated some confusion around the ability to adjust pay based on qualifications, schedule or hours worked, and other factors. Many comments called for ACF to provide a robust framework of support, including technical assistance and training, to navigate the complexities of revising pay structures. Many comments emphasized the need for a strategic approach that includes careful consideration of the unique challenges faced by special populations, as well as input from the broader early childhood program provider community, to ensure that the wage requirements are responsive to their diverse needs. For example, some commenters recommended making positive wage adjustments within salary scales for educators who bring language or cultural skills to the job, as a part of their overall adjustments for qualifications.

Some commenters requested that ACF provide tools, that technical assistance partners develop pay scales for programs, or that state or local governments would be better positioned to develop pay scales rather than requiring each individual program to design, develop, and implement their own.

*Response:* ACF acknowledges the concerns highlighted regarding the logistical challenges and administrative burden associated with implementing the new wage standards, particularly the collection of comparable compensation data and the periodic review of pay structures. ACF encourages programs to leverage and utilize their existing partnerships with local publicly funded preschool and kindergarten programs, including the memorandum of understanding (MOU) required in § 1302.53(b)(1), to identify and gather data on comparable preschool and kindergarten teacher salaries. While it is important for individual programs to tailor their pay scales for their program and community context, ACF believes that technical assistance and support can provide useful guidance and tools from which programs can develop and implement pay scales over time. The final rule retains a seven-year implementation window to allow time for programs to plan and develop the technical capacity to develop and implement pay scales. ACF also aims to provide TTA to programs on these issues to support the development of revised pay scales. The final rule also maintains policies that allow for wages to be adjusted based on responsibilities, qualifications, and experience relevant to the position, and clarifies that adjustments can be made to account for schedules or hours worked. This language provides these minimum adjustments, meaning that programs may include additional equity adjustments or incentives to ensure that the pay scale structure is equitable and supports the development of a Head Start workforce that is well-equipped to meet the needs of children and families. For example, a Head Start program may choose to provide a higher wage or salary to a

staff member who speaks a language shared by a child or children in the program or a Native language, a teacher who has a background in working with children with disabilities, or other skills or training that improve quality and responsiveness in Head Start programs.

*Progress to pay parity for education staff with elementary school staff*

*Comment:* Most commenters shared a strong support for increased compensation for Head Start teachers, and many reflected support for making progress towards pay parity and equity with kindergarten to third grade public school teachers. Many commenters recognized the critical role that Head Start staff play and the complexity of the work and skills required of Head Start teachers to provide high-quality early education. Most comments asserted that equitable compensation is overdue, especially considering the increasing qualifications (including degree requirements) and multifaceted job responsibilities that have evolved since the 2007 reauthorization of the Head Start Act. However, many commenters raised concerns about the practicality of achieving salaries comparable to public school preschool teachers without additional Federal funding, and about the tradeoffs between investments in compensation for teachers and other investments in program quality and the number of children and families served.

Some comments expressed confusion regarding the methodology for adjusting salaries based on qualifications and other factors. The direct comparison between Head Start and public school salaries raised questions about the feasibility and fairness of achieving pay parity, given the differences in staff qualifications across these settings. These comments indicated that some interpreted the proposed standard as mandating a direct match to public school preschool teacher salaries without adjustments; commenters questioned the flexibility of the proposed wage parity policy to allow programs to adjust staff salaries from comparable salaries to account for

differences in qualifications, experience, and other relevant factors, while striving for parity. Some commenters discussed the wide salary gaps between Head Start staff and public preschool teachers in their local school districts and raised questions about whether and how to assess comparable salaries and requested more guidance on how to make adjustments. Other comments raised concerns about reaching and maintaining salaries comparable with public preschool teacher salaries when school districts and other employers tend to more predictably increase their salaries each year, with those adjustments potentially surpassing the cost-of-living adjustments that Head Start receives. Commenters feared that this could leave Head Start programs chasing a “moving target” which could lead to programs continually reducing services to meet salary improvements over time.

*Response:* ACF agrees with the sentiment that Head Start staff should receive equitable compensation based on their skills and qualifications and the critical role they play in early education. The final rule maintains a strong set of wage policies that aim to enhance wage structures to ensure competitive compensation for Head Start staff. The final rule does not require any Head Start program to achieve full pay parity with kindergarten to third grade teachers. Rather, the final rule requires agencies with more than 200 funded slots to benchmark to either 1) the salaries of preschool teachers in local public schools or 2) 90% of salaries in local public schools for kindergarten teachers. In response to concerns about feasibility and the comparison with public school staff, ACF emphasizes that Head Start programs’ efforts to increase educator pay to be comparable to public school preschool teachers can and should consider differences in qualifications, roles, experience, and other factors. For example, suppose a majority of the preschool teachers in a program’s local school district hold a master’s degree, whereas the majority of Head Start teachers hold a bachelor’s degree. The expectation in this

scenario is that the program would consider what public preschool teachers are paid as a starting point and then create a salary scale that considers education level, among other factors. In this case, salaries for Head Start teachers with a bachelor's degree would be lower than a preschool teacher's salary with a master's degree (provided that they have comparable hours, experience, and job responsibilities).

As another example, ACF does not expect that an Early Head Start (EHS) teacher with a Child Development Associate (CDA) would receive the same salary as a public preschool teacher with a bachelor's degree that works the same number of hours; rather, ACF expects that the salary for the EHS teacher would be adjusted down from the target of the public preschool teacher salary, to account for the difference in qualifications. However, ACF does expect that these adjustments should still result in wage increases for most education staff. Moreover, if an EHS teacher works more hours than a preschool teacher in public schools, ACF expects that wages would be increased accordingly to account for the longer hours.

In response to comments, we modify the wage policies in the final rule at § 1302.90(e)(2)(i) and (ii) to further clarify that salaries can be adjusted for schedule or hours worked in addition to responsibilities, qualifications, and experience. This includes both time in the classroom or program as well as time spent on lesson planning, family engagement, administrative paperwork, and other tasks that are necessary to fulfill job requirements. For many Head Start educators, this includes time in the evening or on weekends to prepare classroom activities, conduct home visits, or complete training. For example, if a preschool teacher at the local public school works a full-day, full-school year schedule, and a Head Start teacher with similar qualifications, experience, and job responsibilities works a part-day, full-school year schedule, the expectation is that the Head Start teacher's salary would be adjusted



down to account for this difference in schedule/hours worked after taking into account time for planning and other activities related to the teacher's job responsibilities. On the other hand, if a Head Start teacher with a bachelor's degree and five years of experience works a part-day, year-round schedule, whereas the local school preschool teacher with the same qualifications and experience works a part-day and school-year schedule, the expectation is that the Head Start teacher's salary would be adjusted up to account for the longer year schedule that they work.

ACF also recognizes that not all jurisdictions have preschool teachers in public schools because public preschool is not offered in all states and school districts. In addition, information on salaries for elementary school teachers is often more publicly accessible, depending on the auspices of the preschool program. Therefore, we add a new wage-related standard to the final rule to allow Head Start programs to use an alternate method to determine appropriate comparison salaries for pay parity that is equivalent to at least 90 percent of the annual salary paid to kindergarten teachers in the program's local school district, adjusted for role, responsibilities, qualifications, experience, and schedule or hours worked (§ 1302.90(e)(2)(iv)). ACF anticipates that Head Start programs will use this flexibility when they do not have comparable wage data for preschool teachers in public schools, either because such teachers do not exist in their geographic area, or such information cannot be ascertained. This flexibility should not be used to reduce wages for Head Start staff if preschool teachers are on the same salary scale as elementary school teachers.

For example, suppose a Head Start program is in a community that does not have state or locally funded preschool in their public schools. This program identifies average kindergarten teacher salaries in the local school district at \$70,000, and thereby creates a target benchmark for pay parity at \$63,000, which represents 90 percent of that average kindergarten teacher salary.

The Head Start program then creates a salary scale that adjusts further as needed based on differences in roles, responsibilities, qualifications, experience, and schedule or hours worked. If the Head Start program year or hours worked are shorter than the kindergarten school year or hours, Head Start educator salaries could be adjusted down to account for this. If the opposite is true, such that the Head Start program year runs through the summer, and is therefore longer than the kindergarten school year, Head Start educator salaries could be adjusted up to account for this longer year.

Finally, ACF acknowledges concerns raised by commenters that public school teacher salaries may continue to increase over time in some states and communities, making efforts to reach parity more challenging for Head Start programs in those contexts. However, this does not appear to be substantiated by national data. As demonstrated in the Fiscal Year 2025 President's Budget request, ACF requested the funding needed for a full cost of living adjustment to support Head Start programs in keeping pace with inflation. Further, ACF strongly believes that Head Start programs must continue to keep pace with public school preschool teacher salaries in order to retain qualified educators in Head Start programs that can provide the high-quality early education services for which Head Start programs are known.

ACF will provide further TTA to assist programs in implementing these standards, including examples and strategies for programs to assess parity and develop pay scale structures.

*Comment:* Some comments called for clearer definitions of what constitutes "pay parity" and how it should be measured, especially in diverse operational contexts like multi-district programs or programs spanning different states with varying preschool and kindergarten through 12<sup>th</sup> grade public school salary levels and contexts. Commenters raised concerns about operationalizing the concept of parity with local school districts when considering the variability

in teacher qualifications between preschool, kindergarten through 12<sup>th</sup> grade, and Head Start; the structure of preschool and kindergarten through 12<sup>th</sup> grade education systems; and differing funding mechanisms that support teacher compensation in each of these contexts. Many commenters raised concerns about defining "neighboring school districts" for large Head Start programs whose service area spans many school districts, suggesting that a separate salary schedule for each site would be impractical.

*Response:* ACF understands and agrees with the complexities involved in assessing and moving to pay parity with public school educators. Because of this complexity and the varied context in which Head Start programs operate, the final rule maintains the flexibility that was initially proposed in how pay parity is assessed and operationalized. In addition, we modify the final rule to provide additional flexibility in how a program identifies comparable salaries for the pay parity benchmark. The final rule policy allows programs to use public school preschool teacher salaries as their benchmark for parity, or to use an alternative method that represents at least 90 percent of public school kindergarten teacher salaries. We maintained the phrasing of the pay parity requirement which allows flexibility for programs to determine to which of their local public schools to benchmark salaries. Programs operating in multiple locations are not expected to develop multiple pay scales; however, programs can choose to do so if they serve different geographic regions with different costs of living, in which case it may be most practical for such programs to differentiate wages for these different areas.

ACF believes that maintaining the initially proposed flexibility and providing some additional flexibility in the final rule around how to assess and move to pay parity is responsive to comments about the varied contexts in which programs operate. ACF believes that detailed technical guidance and support for programs in how to define and operationalize pay parity is

best done through guidance and TTA, which ACF will provide following publication of the final rule.

### *Salary Floor*

*Comment:* Most comments expressed strong support for establishing a minimum pay requirement for all Head Start staff, recognizing the need to ensure that every employee receives a living wage that reflects their contribution to early childhood education. However, commenters raised concerns about how the minimum pay requirement would be determined and adjusted over time to reflect the cost-of-living increases and changes in the economic landscape, as well as the potential for this requirement to exacerbate wage disparities among regions with different costs of living. Commenters sought detailed guidance from ACF on establishing fair and equitable minimum pay standards that align with regional economic variations. Commenters suggested that ACF provide clear guidelines for determining an appropriate minimum wage, taking into account regional cost-of-living adjustments, and ensure that additional funding is available to support this requirement without compromising service delivery or increasing the administrative burden on Head Start programs.

*Response:* We maintain this provision in the final rule, which recognizes that cost of living varies across the country and still aims to ensure that all staff members are paid sufficiently to cover basic needs. Small agencies (those serving 200 or fewer funded slots) are exempt from this requirement; however, these agencies must still demonstrate progress in improving wages for the lowest paid staff over time.

ACF agrees with concerns raised by commenters about the importance of carefully considering how to promote minimum pay in a way that balances potential cost impacts and does not deepen disparities in cost of living. There are multiple publicly available tools that can

support Head Start programs in calculating cost of living. It is of note that these are examples only and should not be considered an endorsement by ACF of these specific calculators or tools. One such tool is the Living Wage Calculator developed by experts at the Massachusetts Institute of Technology (MIT).<sup>19</sup> Another is the Self-Sufficiency Standard developed by experts at the Center for Women's Welfare of the University of Washington.<sup>20</sup> An additional example is the Family Budget Calculator developed by the Economic Policy Institute.<sup>21</sup> These types of publicly available calculators take into account a variety of costs for basic needs and how these costs vary by geographic area, to help determine an appropriate hourly wage sufficient to cover these costs. Following publication of the final rule, ACF will offer TTA to support programs with implementation of this requirement.

*Wage comparability for all ages served*

*Comment:* Many comments expressed a great sense of urgency to address the disparities in wages, particularly for staff serving infants and toddlers, who historically receive lower compensation than those serving preschoolers.

*Response:* ACF recognizes the importance of addressing wage disparities across all staff roles within Head Start programs, with a particular focus on those serving infants and toddlers, who historically have received lower compensation. In response to public comments highlighting the urgency of this issue, ACF maintains in the final rule our policy and commitment to ensuring wage improvements and comparability across all educational staff roles, regardless of the age group they serve, such that wages would not differ by age of children served for similar program staff positions with similar qualifications and experience. Specifically, the final rule mandates

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<sup>19</sup> Glasmeier, A. K. Living Wage Calculator. 2020. Massachusetts Institute of Technology. [livingwage.mit.edu](https://livingwage.mit.edu).

<sup>20</sup> The Center for Women's Welfare. The Self-Sufficiency Standard. University of Washington. <https://selfsufficiencystandard.org/>.

<sup>21</sup> Economic Policy Institute. Family Budget Calculator. <https://www.epi.org/resources/budget/>.

that agencies with more than 200 slots must have a wage or salary structure that does not differ by the age of children served for similar program staff positions with similar qualifications and experience, ensuring that disparities in wages, particularly for staff serving infants and toddlers, are addressed comprehensively.

*Staff for Whom Wage Standards Apply*

*Comment:* Comments expressed both support and concern over the application of wage standards to all staff roles within the Head Start program. The NPRM's intention to extend wage improvements to encompass all educational staff roles – including assistant teachers, home visitors, and family child care providers – was widely endorsed. However, some comments urged for an even more inclusive consideration of staff roles that involve regular engagement with children, suggesting for example, that the pay parity requirements should apply to all staff roles who contribute to the Head Start mission, not just teaching staff, to recognize and compensate the diverse contributions of all program personnel. Some comments specifically called out a need to include more substantial wage improvements for family service workers, administrators, and support staff who play critical roles but often face lower compensation.

*Response:* ACF affirms the NPRM's intention to ensure wage improvements for all educational staff roles, including assistant teachers, home visitors, and family child care providers, while also recognizing the critical contributions of other staff in the program. While the requirements for pay parity maintain a focus on educational staff, the final rule also requires that programs develop or update a pay scale that applies to all staff positions. The intent of this pay scale standard is to promote competitive wages for all positions and ensure that all staff have sufficient wages to cover basic needs. Head Start agencies can increase wages for other non-education roles at their discretion and may choose to benchmark to similar positions in their

community to ensure that Head Start provides competitive pay and to mitigate the effects of wage compression that would otherwise occur if salaries for education staff are raised but not those for other positions.

*Comment:* Some commenters raised questions about whether the NPRM's wage requirements apply to staff of child care partner agencies as well as contracted staff who are not employees of the Head Start program. Some comments also raised concerns about applying the wage standards to staff paid in part with Head Start funds, highlighting the potential impact on a broad array of staff roles and the need for clarity on the implementation of wage standards for contracted staff, those involved in EHS-Child Care Partnerships, staff of child care partner agencies, and contracted staff not directly employed by Head Start programs.

*Response:* To address the questions and lack of clarity raised through public comments about extending wage standards to all staff, including those at partnership sites or contracted staff, we revise the final rule to clarify our expectations for how the wage standards should apply to contracted staff. Specifically, the pay parity requirements described in § 1302.90(e)(2)(i) apply to all teachers and education staff funded by Head Start, including both grant recipient employees and those whose salaries are funded by Head Start through a contract. This may include, for example, education staff in EHS-Child Care Partnership sites, as well as any education staff who are contracted directly.

*Workforce Supports: Staff Benefits (§ 1302.90)*

The prior HSPPS did not include any requirements for programs to provide benefits to their staff. In this final rule, we add in § 1302.90(f) new requirements that apply to Head Start agencies with more than 200 funded slots for staff benefits to support and stabilize the Head Start workforce, including: the provision of or facilitated access to health care coverage for all

staff; paid leave for full-time staff; access to free or low-cost, short-term behavioral health services for full-time staff; facilitated access to PSLF and child care subsidies for staff who may be eligible; and an option for programs to prioritize enrollment in Head Start for the eligible children of staff. Programs are also required in § 1302.90(f)(5) to assess and determine at least once every five years if their benefits package for full-time staff is at least comparable to those provided to elementary school staff in the program's local or neighboring school district, to the extent practical. All requirements in § 1302.90(f) will take effect August 1, 2028, approximately four years after publication of the final rule.

Similar to the staff wage requirements, this final rule includes in § 1302.90(f)(6) an exemption from the rule's benefits policies for small Head Start agencies, defined as those agencies with 200 or fewer funded Head Start slots. This exemption also applies to Head Start interim service providers that provide services to children and families temporarily in place of a Head Start agency that would have qualified for the small agency exemption (§ 1302.90(f)(7)). These small Head Start agencies are still required to demonstrate measurable improvements in staff benefits over time.

The benefits requirements included in the final rule represent a change in some of the policies as proposed in the NPRM. Specifically, the final rule removes the proposed requirement for paid family leave (though programs are reminded they must still comply with requirements under the Family and Medical Leave Act (FMLA), if applicable to their organization). The final rule also provides more flexibility for the provision of paid sick, vacation, and personal leave.

The public comments on the benefits for staff proposed in the NPRM revealed a mix of support, concern, and suggestions for improvement. The vast majority of commenters



supported the intent behind the proposed staff benefits. However, many commenters called for additional funding, flexibility, and clarity to ensure the requirements are feasible and do not negatively impact children and families. Other commenters called for stronger requirements for benefits, such as requiring Head Start programs to benchmark to benefits offered in public schools or the Federal Government.

The final rule balances the desire for more flexibility for Head Start programs, costs to support the workforce, and implementation costs. ACF strongly believes in the importance of benefits for staff as a mechanism to greatly improve staff recruitment and retention across Head Start programs, and in turn, program quality. Therefore, in this final rule, the requirements for staff benefits provide more flexibility to programs than the NPRM proposals, but still recognize the importance of benefits as part of a competitive compensation package that supports an overall high-quality workforce.

#### *Cross-Cutting Comments and Themes on Staff Benefits*

*Comment:* ACF received over 500 comments on the staff benefits policies proposed in the NPRM. We received comments indicating general support regarding the need for better wages, benefits, and wellness support for Head Start staff, recognizing that such measures are crucial for staff retention, recruitment, and overall program quality. Many commenters expressed that the proposed changes could significantly improve the working conditions for Head Start employees and improve staff recruitment and retention. Several commenters noted and appreciated the existing benefits provided by their agencies, including health insurance, mental health support, and leave, while others expressed their desire for better benefits. Many, including multiple organizations that represent Head Start workers, encouraged ACF to expand upon the benefits requirements included in the NRPM, such as retirement benefits and

paid leave. Some also called for benefits to be required for part-time staff. There were suggestions to engage all Head Start staff and partners in a transparent, equitable process to work toward meeting the revised wage and benefit standards.

*Response:* We agree that the provision of staff benefits is crucial for attracting and retaining qualified staff, and for promoting staff well-being and program quality. In the final rule, we retain from the NPRM the majority of requirements for benefits for full-time staff, though with flexibility, including paid leave, access to behavioral health support, and the provision of or facilitated access to health care coverage. In the NPRM, we requested public comment on whether we should require programs to offer retirement benefits to full time staff. In the final rule, we do not add a requirement for retirement benefits. However, ACF encourages programs to provide retirement benefits to staff if feasible, such as offering 401(k) or similar mechanisms with or without employer contributions. As discussed below, we maintain requirements from the NPRM for facilitating access for eligible staff to PSLF and child care subsidies, and for part-time staff, to health care coverage. We encourage programs to develop staff benefit packages in consultation with staff, unions, and other partners, as appropriate.

*Comment:* Many comments called for flexibility in implementing the changes to accommodate the diverse nature of Head Start programs and the communities they serve. Specifically, there were concerns about the prescriptive nature of the proposed benefits. Some indicated that the proposed requirements were too detailed and did not account for the unique needs of different programs, their communities, or the existing benefits that programs may already offer. Some voiced concerns about equitable implementation, union agreements, or non-Head Start employees across different programs within the same agency. Others called

attention to additional staff wellness considerations, such as flexible work arrangements, paperwork burden, work satisfaction, or challenging behaviors in the classroom. Some comments suggested that the benefits not be mandated but encouraged and communicated through guidance. A few comments suggested that programs should provide competitive benefits packages appropriate for their community or region, noting this could be determined by community assessment data. There was a recommendation to shorten the implementation period due to the need for the Head Start workforce to earn adequate wages and benefits more immediately. There was some misunderstanding that programs would be required to extend health insurance benefits to part-time workers.

*Response:* The final rule includes several changes to the policies as proposed in the NPRM to make the staff benefits requirements more flexible and allow programs to create benefit packages that meet the varying needs of their workforce.

First, we recognize that, while these benefits are important for recruiting and retaining staff, some programs will have to re-negotiate union contracts or agreements with contractors, while others may need more time to research and implement changes. To enable this, and as summarized previously, we have extended the timeline for the effective date of the benefits requirements from approximately two years after final rule publication (as proposed in the NPRM) to approximately four years after final rule publication. The effective date for these provisions is now August 1, 2028. We believe this change carefully balances the concerns unions have raised that timely implementation is important for retaining and attracting staff with the concerns from programs that these changes will take time to implement, as well as acknowledging the cost considerations of shorting the implementation timeline.

Second, the final rule in § 1302.90(f)(1)(ii) requires programs to provide paid leave to all full-time staff. But the final rule does not differentiate between sick, vacation, or personal leave or require specific accrual rates, allowing programs to pool types of leave or to offer different systems of determining leave. In the final rule, we also fully remove the NPRM proposal for paid family leave, though we strongly encourage programs who are already offering paid family leave to continue to do so and encourage programs that do not to offer those benefits if feasible. Many Head Start agencies are already required to follow the FMLA, which provides job protections for most employees during extended illness, caregiving, or following the birth or adoption of a child. Many states and municipalities also have paid leave laws and programs that apply to Head Start agencies.

Third, in § 1302.90(f)(1)(iii) of the final rule, we retain the requirement to provide full-time staff with short-term free or low-cost behavioral health services, but we remove the specificity of “three to five” visits as proposed in the NPRM. We agree with comments that such a level of specificity is not needed in regulation. This change allows programs to determine the best way to structure behavioral health supports for their staff.

Fourth, it was not our intent to imply that programs must provide employer-sponsored health care coverage to part-time workers. Programs are required in § 1302.90(f)(2) to facilitate access for these employees to health care coverage options for which they may be eligible in the Marketplace or Medicaid.

Fifth, in the NPRM, we sought comment on a potential requirement for retirement benefits. The final rule does not require programs to provide staff with retirement benefits. However, ACF also recognizes that retirement savings are an important benefit for staff and

are often provided to public school employees. Therefore, ACF strongly encourages programs to create and offer retirement mechanisms if feasible, such as 401(k) accounts.

Finally, we maintain other benefits requirements from the NPRM, including provided or facilitated access to health care coverage for full-time staff in § 1302.90(f)(1)(i), and facilitated access to child care subsidies and PSLF for any eligible staff in § 1302.90(f)(3) and (4), respectively.

Together, these improvements in staff benefits in the final rule will improve staff well-being and work satisfaction, reduce staff turnover, and improve program quality, while offering programs reasonable flexibility around implementation.

*Comment:* Many commenters were concerned about the potential financial burden the proposed staff benefits requirements could impose on programs, particularly in small or community-based organizations, without additional Federal funding. Commenters feared that without increased funding, programs may have to reduce enrollment or lay off staff, which could lead to fewer children being served or program closures. Others noted the difficulty in maintaining full enrollment despite rigorous recruitment efforts due to enrollment competition for four-year-old children with other early childhood programs and losing staff to other careers. There were suggestions to phase in requirements in tandem with increased funding, to add secretarial discretion to not enforce the rule if sufficient dollars are not allocated, and to institute processes for waivers and flexibility particularly for certain programs. Many commenters suggested that ACF make these provisions effective only upon funding from Congress.

*Response:* As discussed in other areas of this rule, ACF appreciates and recognizes concerns from commenters about the cost of implementing the staff benefits requirements in

the absence of additional congressional funding. We made some changes from the NPRM to address these concerns, including the longer timeline until these requirements go into effect, the removal of paid family leave requirements beyond those in FMLA, and the reduction in the prescriptiveness of other benefit requirements (as described previously). However, ACF has determined that the benefits requirements included in this final rule are necessary for Head Start programs to retain staff and continue to effectively meet their mission to provide high-quality services to children and prepare them for success in elementary school and beyond. As previously described, wage and benefit improvements are necessary so that Head Start can recruit and retain effective staff and thereby deliver high-quality services.

*Comment:* Some commenters raised the issue of equitable access to benefits for smaller programs. Some suggested that small programs cannot access the large insurance plans that could provide benefits comparable to what public schools provide. Commenters also raised concerns about potential differential impacts on Tribal programs when implementing the benefits standards.

*Response:* ACF recognizes the specific challenges faced by small programs and made several changes in the final rule to accommodate small programs or extend flexibility to all programs in a manner that will address concerns raised by small programs. First, as described above, the final rule extends the implementation timeline for the staff benefits requirements from two to four years to allow more time for planning and implementation for all programs. Second, as described previously, the final rule includes an exemption from the rule's wages and benefits requirements for small agencies, defined as those with 200 or fewer funded slots. This exemption recognizes that small agencies need additional flexibility to address wages and benefits in a sustainable way given lack of economies of scale. As previously stated above,

research demonstrates that operating an early childhood program that serves fewer than 100 children may not always be financially viable.<sup>22</sup> OHS has established 200 slots so that, in the absence of additional appropriations from Congress, these agencies do not need to streamline the number of classrooms below this recommended threshold. This approach roughly aligns with other policies that exempt employers with fewer than 50 employees, as the vast majority of agencies with fewer than 50 Head Start employees have fewer than 200 funded slots.

This exemption reflects ACF's understanding that small programs play a critical role in their communities, particularly in rural communities where Head Start may be one of the few center-based early childhood options available for children and families. However, ACF remains concerned about the workforce in small Head Start agencies and the resulting impact on services for children and families in the face of ongoing staff shortages. For this reason, the exemption requires that small agencies still improve benefits for staff over time and make progress towards achieving the benefits requirements that apply to larger Head Start agencies. ACF believes this is critically important so that small agencies can sustain high-quality services over time. This exemption balances the need for better compensation for staff with the recognition that our smallest agencies may be very challenged to execute these policies in the absence of additional funding, given economies of scale. The exemption also applies to Head Start interim service providers that provide services to children and families temporarily in place of a Head Start agency that would have qualified for the small agency exemption (§ 1302.90(f)(7)). As with wages, ACF will work with small agencies to identify opportunities to

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<sup>22</sup> Mitchell, A. 2010. Lessons from Cost Modeling: The Link Between ECE Business Management and Program Quality. <http://www.earlychildhoodfinance.org/finance/cost-modeling>; Stoney and Blank, 2011. Delivering Quality: Strengthening the Business Side of Early Care and Education. [https://childcareta.acf.hhs.gov/sites/default/files/delivering\\_quality\\_strengthening\\_the\\_business\\_side\\_of\\_ece.pdf](https://childcareta.acf.hhs.gov/sites/default/files/delivering_quality_strengthening_the_business_side_of_ece.pdf).

make progress on access to benefits, especially to avoid staff leaving small programs for larger programs.

We also acknowledge the concerns raised by Tribal Head Start program leaders and other commenters representing Tribal communities. ACF believes that all Head Start educators deserve competitive benefits that reflect the importance of their work, and this includes the Head Start workforce in Tribal communities. The exemption for small Head Start agencies described previously will allow flexibility for Tribal Head Start agencies that operate with 200 or fewer funded slots regarding whether they meet all the staff benefits policy requirements in this final rule. However, as with other small agencies, small Tribal Head Start agencies are still required to make improvements in staff benefits over time. As previously noted, at the time of the development of this final rule, ACF estimates that approximately 116 Tribal Head Start agencies will benefit from this flexibility, which represents approximately 78 percent of all Tribal Head Start agencies.

ACF recognizes that Tribes may offer different benefit structures and has thus worded the benefit requirements to account for differences in benefit structures. For example, the final rule requires “health care coverage” which might include health insurance or access to health care through a Tribally operated clinic. ACF will work with Tribes to offer support and technical assistance to implement these provisions in a way that honors Tribes’ approaches to benefits for employees.

*Comment:* A few comments noted that Head Start’s family child care partners will have difficulty implementing requirements due to their small size and that this may serve as a disincentive for the family child care option. A few comments noted the importance of timely,



predictable payments for Head Start's child care partners, particularly family child care, needed to meet the compensation requirements.

*Response:* Nothing in this rule should be interpreted as a disincentive for the family child care option, and we agree that timely, predictable payments are necessary for Head Start's child care partners.

*Comment:* A few comments suggested additional benefits for consideration, such as training or other types of leave. There was a suggestion for the creation of concrete, measurable midpoint benchmarks toward implementing the revised standards. A few comments suggested that Head Start programs be required to participate in state early childhood workforce registries, and that registries could be used as a data source for wages and benefits, including for creating salary scales. A few comments suggested that benefits be extended to part-time staff, potentially through a proportional allocation based on number of hours worked.

*Response:* We appreciate the need for improved staff benefits, and the final rule includes requirements for several benefits that will improve staff well-being, recruitment, and retention. While we do not include additional requirements suggested by commenters in this rule, as noted in § 1302.90(f)(5), programs may offer additional benefits not specified in the rule to their staff, including enhanced health benefits, retirement savings plans, flexible savings accounts, or life, disability, and long-term care insurance.

*Comment:* Commenters suggested that the requirements in the final rule should align with existing Federal standards and laws, like the FMLA, the Fair Labor Standards Act (FLSA), the ACA, and the Bureau of Labor Statistics' (BLS) definition of full-time work, as well as state and local labor laws, to avoid creating additional administrative burdens. Some

comments voiced concern about the definition of full-time employees and suggest following existing Federal standards or allowing for local autonomy in defining full-time. Other commenters supported the definition of full-time as 30 hours, recognizing the need to align the definition with the typical school year calendar.

*Response:* The final rule retains the definition of “full-time staff” as those working 30 hours per week or more while the program is in session. This definition is based on an existing Federal law. Specifically, for the purposes of the ACA’s Employer Shared Responsibility Provision, the Internal Revenue Service (IRS) specifies that: “a full-time employee is, for a calendar month, an employee employed on average at least 30 hours of service per week, or 130 hours of service per month.”<sup>23</sup> This definition of full-time staff allows Head Start staff who work with children in school-day programs (e.g., approximately six hours a day) to be considered full-time. Head Start programs should also account for time spent when children are not present, which might include time for lesson planning, family engagement, and paperwork.

*Comment:* A few commenters expressed concern that Head Start grant recipients may limit workers’ rights to organize or exercise voice through collective bargaining and urged ACF to use oversight and enforce union neutrality. ACF also heard from a few national labor unions indicating support for the proposed benefit requirements and comments indicating that labor unions could partner in implementing required changes through the collective bargaining agreement negotiation process.

*Response:* ACF reiterates that Head Start funds cannot be used to assist, promote, or deter union organizing per 42 U.S.C. 9839(e), and nothing in the final rule is intended to limit

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<sup>23</sup> See the IRS website for more details: Employer Shared Responsibility Provisions | Internal Revenue Service ([irs.gov](https://www.irs.gov)).

workers' rights to organize or exercise voice through collective bargaining. Head Start agencies with and without collective bargaining units are encouraged to engage staff in implementing wage and benefit provisions in this final rule. ACF encourages any individual, including Head Start staff and union leaders, who experiences or becomes aware of violations of Head Start's neutrality clause to report such violations by contacting the Office of Head Start or HHS Office of the Inspector General (OIG) complaint hotline.<sup>24</sup>

*Comment:* Some comments suggested taking employer-sponsored health insurance and other employee benefits into account when calculating total staff compensation and evaluating progress toward pay parity to avoid an unintended consequence of decreasing existing benefits in order to increase wages. A few comments raised the issue that some Head Start staff are laid off by their agency and receive unemployment benefits during the summers as factors in compensation. Other commenters suggested that Head Start should benchmark to the total value of the compensation package in public schools, inclusive of salaries and benefits.

*Response:* We decline to include employer-sponsored health care coverage and other employee benefits as part of Head Start staff salaries for the purposes of understanding progress toward pay parity as described in § 1302.90(e)(2) of this final rule. Research indicates that Head Start staff earn lower wages and have fewer benefits than staff at public elementary schools.<sup>25</sup> The intent of the benefits policies in the final rule is to markedly improve benefits for the Head Start workforce and ensure Head Start programs can be competitive employers in their local communities. Average hourly wages and fringe rates for public school teachers are higher than those at Head Start programs. For instance, in

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<sup>24</sup> Reports may be made to the Office of Head Start either online at <https://eclkc.ohs.acf.hhs.gov/contact-us> or by calling 866-763-6481. Reports may be made to OIG online at <https://oig.hhs.gov/fraud/report-fraud/> or by calling 1-800-447-8477.

<sup>25</sup> See [Comparison-of-Personnel-Systems-K12-and-Early-Childhood-Teachers.pdf](#) (berkeley.edu).

September 2023, benefits accounted for 35.6 percent of total compensation for elementary and secondary teachers.<sup>26</sup> The benefits we require for full-time staff in this final rule – health care coverage and paid leave – are basic benefits widely available in the labor force and key to ensuring staff well-being and program quality in Head Start. We encourage programs that have been offering other types of employee benefits to continue to do so and encourage others to expand their benefits offerings if feasible. Programs can take into account all benefits they provide to full-time staff when they assess and determine if their benefits package is at least comparable to those provided to elementary school staff in the program’s local or neighboring school district, to the extent practicable, as required at least once every five years by § 1302.90(f)(5) of this rule. When implementing the benefits requirements in this final rule, ACF declines to include consideration of unemployment benefits for staff laid off during the summer months. ACF discourages Head Start agencies from laying off staff in the summer months, as this introduces financial uncertainty to staff and can exacerbate challenges with retaining staff and worsen turnover as a result.

#### *Comments on Individual Staff Benefits*

*Comment:* Many commenters expressed that the proposed changes to health benefits could significantly improve the working conditions for Head Start employees and improve staff recruitment and retention. Several comments noted and appreciated the existing health insurance benefits provided by their agencies, while others expressed a desire for better benefits.

*Response:* As noted previously, this final rule retains the health care coverage benefits proposed in the NPRM and requires a program to provide or facilitate access to high-quality,

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<sup>26</sup> See elementary and secondary schools in Table 3: Employer Costs for Employee Compensation for state and local government workers by occupational and industry group. ecec.pdf (bls.gov).

affordable health care coverage for all staff. Specifically, for all full-time staff (defined as those working 30 or more hours per week when the program is in session), programs are required to either (1) provide and contribute to employer-sponsored health care coverage, or (2) educate, connect, and facilitate the enrollment of employees in health insurance options in the Healthcare.gov Marketplace (Marketplace), the appropriate State-specific health insurance Marketplace, or Medicaid. Employees are not obligated to accept employer-provided or employer-facilitated health care coverage, such as those receiving insurance coverage through a partner or another manner. If programs are required to offer employer-sponsored coverage under the ACA or elect to do so anyway, we encourage coverage similar to that offered by silver, gold, or platinum plans in the Marketplace. The requirements for health care coverage allow programs to facilitate full-time staff members' enrollment in health insurance options in the Marketplace, which helps with the logistical difficulties of negotiating employee benefits plans with insurers, and we recognize that programs may require technical assistance to connect with Navigators or other resources.

For part-time staff who work fewer than 30 hours per week, the final rule requires programs to facilitate the enrollment of these staff in health care coverage options in the Marketplace or through Medicaid for which they may be eligible. Programs are not required to offer nor precluded from offering employer-sponsored health care coverage to part-time staff, but the final rule requires, at a minimum, that programs make part-time staff aware of potential benefits through premium tax credits for which they may be eligible and facilitate their connection to the Marketplace or Medicaid.

*Comment:* Some comments raised concerns regarding the administrative burden of or the need to clarify benefits requirements, such as facilitating access to health insurance for

part-time employees, particularly for small employers, and to define “facilitate access.” Some comments voiced concern about the administrative burden of providing employees with information about the health insurance Marketplace and other resources and contended that it is the employees’ responsibility to learn about and enroll in those opportunities. Other comments noted that the requirement to inform staff of their health insurance options through the Marketplace is likely not a major change in practice and is already required for new employees through the FLSA.

*Response* We acknowledge that under the ACA, employers to which the FLSA applies are already required to provide a notice to employees about the health insurance Marketplaces in the states in which they operate. This final rule seeks to set a higher standard for Head Start programs to “facilitate access” to health coverage, which they can do in a variety of ways: by distributing information or hosting information sessions about Marketplace options, including handouts and the Marketplace website; providing internet or computer access to employees so they can learn more or enroll; and connecting staff to Navigators or benefits specialists at Head Start programs or elsewhere to help staff enroll. Programs already have extensive experience connecting the families they serve to other programs for which they may be eligible and, therefore, are uniquely suited to help connect staff with health care coverage options for which they may be eligible.

*Comment:* Commenters shared several thoughts in response to the request for comment on requiring retirement benefits for staff. Some commenters noted they already provide benefits to staff, including some on par with local public schools or state employees, and would have to adjust or change plans to fit any new requirements. Many commenters said that programs should have the flexibility to tailor benefits to their specific circumstances and to be

inclusive of multiple types of retirement plans, including individual retirement accounts and pensions. They suggested that mandates or minimum required employer contributions to retirement could be burdensome and that a one-size-fits-all approach may not be appropriate. Some comments called for requirements for programs to provide a matching 401(k) plan or similar retirement options, with education on retirement planning. A few comments supported a minimum employer contribution to staff retirement benefits. A few commenters suggested that retirement benefits should be available for all staff. A few discussed the positive implications for gender, racial, and ethnic equity in expanding benefits.

*Response:* The final rule does not require that programs offer a retirement savings benefit for staff. While we agree with commenters that noted the importance of retirement benefits, we also recognize the additional substantial cost this could have for employers. However, ACF strongly encourages programs to offer retirement benefits to staff, if feasible, to improve staff recruitment and retention.

*Comment:* There was some misunderstanding that Head Start retirement benefits would be required to align with those of public school systems. Some comments suggested that the government provide Head Start employees with the same health care and retirement benefits that most government employees receive, that their benefits be on par with public schools, that benefits not require employee contributions, and/or that the government should facilitate a collective into which small programs could buy.

*Response:* The final rule does not require that Head Start health care coverage benefits be on par or aligned with those of the public school system or offered to most government employees. As described previously, the final rule does not include or add any requirements for retirement benefits for staff.

*Comment:* Commenters expressed a variety of thoughts on the paid leave policies as proposed in the NPRM. Many commenters identified that they already provide sick and vacation leave to staff through existing paid time off policies. Many commenters expressed concern that separating sick leave and vacation leave, as proposed in the NPRM, would increase administrative burden and be less desirable for staff. Some commenters requested the option to rollover accrued time off rather than provide leave commensurate with experience or tenure and raised concerns about the ability to pay out accrued time off at the end of employment. Commenters also noted the importance of providing benefits to part-time staff and suggested a pro-rata approach based on hours worked.

*Response:* We agree with commenters regarding the need for flexibility around paid leave policies, and therefore, the final rule requires programs to offer paid leave without distinguishing between sick and vacation leave. To increase flexibility and local autonomy, we also do not specify how paid leave should be accrued. Although we encourage programs to provide sick and vacation leave to part-time staff, we decline to require this in the final rule. As described further in other areas, we also do not maintain the requirement for paid family leave in the final rule.

*Comment:* Many commenters emphasized the need for clear and consistent guidance on minimum standards for paid leave to avoid inequitable implementation. Some commenters requested that ACF provide a minimum requirement that aligns with existing policies in states that provide sick leave, while others requested alignment with private industry leave policies.

*Response:* We appreciate the desire from some commenters to have clear and consistent guidance on minimum leave standards. To increase flexibility and local autonomy, we decline to require minimum standards for paid leave in the final rule.



*Comment:* Many commenters raised concerns that the paid family leave requirements as proposed in the NPRM exceeded the intent of the Federal FMLA standards or may not align with existing state or Tribal policies. For example, the NPRM proposed that paid family leave apply to agencies with fewer than 50 employees, which commenters noted is not consistent with FMLA. Some commenters expressed confusion about whether the policy as proposed in the NPRM would require full wage replacement, which commenters were concerned could lead to potential misuse of intermittent family and medical leave. A majority of comments that discussed this issue recommended that ACF align its policy with Federal FMLA requirements. Some commenters expressed support for enhancing paid family and medical leave beyond existing Federal laws (e.g., apply to grant recipients of all sizes) due to historically inequitable access to leave for workers who do not qualify for FMLA. Many commenters expressed worry that the proposed policy would be expensive to implement, leading to financial strain for programs.

*Response:* ACF has removed the requirement for paid family leave in the final rule. While some commenters expressed support for enhancing access to paid family leave, we appreciate the concerns from many commenters that the policy as proposed in the NPRM would exceed the intent of Federal FMLA requirements by requiring all Head Start programs, regardless of employer size, to provide partial or full wage replacement during qualified periods of leave. However, for staff who are eligible for and utilize periods of family leave under FMLA, ACF still strongly encourages programs to provide partial or full wage replacement for such employees. The majority of the Head Start workforce are women who have often taken on the bulk of caregiving responsibilities for their own families. Ensuring

some consistency in wages for employees during the birth or adoption of a child or to care for themselves or family members with health conditions is an important tool for staff retention.<sup>27</sup>

*Comment:* Many commenters supported the intent of the proposed requirement to provide short-term behavioral health services for staff and emphasized the need for such supports, recognizing the high-stress nature of the work and the recent increase in children's behavioral issues in classrooms. A few commenters expressed concern about the challenges of accessing mental health services, with long wait times for appointments, especially in rural areas.

*Response:* We agree with commenters that access to free or low-cost short-term behavioral health services for staff is important for promoting staff well-being and child development. We recognize the challenge of accessing mental health services, especially in rural areas. In the final rule, we retain the behavioral health requirement for staff, but with additional flexibility, as discussed further in other areas. We encourage programs to use a variety of strategies to connect staff to mental health resources and providers.

*Comment:* Many commenters expressed concern about the prescriptive nature of the behavioral health services requirement for staff as proposed in the NPRM, which specified three to five outpatient visits per year. Commenters argued for local autonomy in decision-making, suggesting that the specific needs of staff and programs vary and that a one-size-fits-all approach may not be appropriate. They also pointed out that there is no equivalent requirement for other health concerns for staff, such as physical therapy or diabetes care management.

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<sup>27</sup> Fact Sheet #28F: Reasons that Workers May Take Leave under the Family and Medical Leave Act | U.S. Department of Labor (dol.gov).

*Response:* To support flexibility and local autonomy in decision-making, in the final rule ACF removes the specific requirement to provide approximately three to five outpatient visits per year. While the final rule still requires programs to offer access to behavioral health services to staff, the policy as revised provides more flexibility to programs to determine the best way to provide such access to behavioral health services. However, we encourage programs to provide a minimum of three to five outpatient behavioral health visits per year if they choose.

*Comment:* Some commenters requested clarification about what mental health services and benefit plans would meet the requirement to provide short-term behavioral health services for staff, while others suggested this requirement could be met through an Employee Assistance Program (EAP), existing comprehensive health plans and coverage that include behavioral health services, or by developing partnerships with community behavioral health agencies. A few commenters raised specific concerns about the cost of the mental health benefit requirement, noting that additional funding would be needed if programs are required to purchase health insurance that includes coverage for behavioral health services with low out-of-pocket costs.

*Response:* ACF clarifies that programs may use a variety of strategies to ensure staff have access to short-term, free or low-cost behavioral health services, some of which may result in no additional cost to employers who are providing or facilitating access to high-quality, affordable health care coverage. For instance, employers may meet this standard through existing employer-sponsored group health plans or through an EAP that qualifies as

an excepted health benefit.<sup>28,29</sup> In a 2020 nationally representative survey, among those reporting perceived unmet mental health care needs in the prior year, 19 percent reported that their health insurance did not pay enough for mental health services.<sup>30</sup>

*Comment:* Regarding the proposed requirement for programs to facilitate access to and enrollment in affordable child care, some comments noted the importance of child care for their staff and community and supported increased access to child care resources. A few suggested providing child care options to staff such as onsite child care or partnering with a local child care center may be a better way to support the workforce while meeting the needs of the community. Several commenters requested clarification and guidance regarding the definitions of “facilitate access to” and “facilitate enrollment in” child care.

*Response:* The early childhood workforce, including Head Start staff, are disproportionately women,<sup>31</sup> many of whom need child care for their own children in order to

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<sup>28</sup> When offering access to the behavioral health services required under this final rule, an employer should be aware that other provisions of law may apply to that arrangement. In general, the provision of medical care, including the provision of behavioral health services, could result in the arrangement being considered a group health plan subject to the relevant provisions of the Employee Retirement Income Security Act (ERISA) that applies to group health plans, unless the arrangement qualifies as an excepted benefit. For an Employee Assistance Program (EAP) to qualify as an excepted benefit, the EAP must meet the requirements of 26 CFR 54.9831-1(c)(3)(vi), 29 CFR 2590.732(c)(3)(vi), and 45 CFR 146.145(b)(3)(vi), including that the program may not provide significant benefits in the nature of medical care, the benefits provided may not be coordinated with benefits under another group health plan, and that no employee premiums or contributions or cost-sharing can be required as a condition of participation in the EAP. To the extent the arrangement that provides the behavioral health visits required under this final rule does not meet the requirements to qualify as an excepted benefit, the arrangement may be considered a group health plan subject to the requirements of part 7 of ERISA. For example, the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, which added ERISA section 712, requires that group health plans and health insurance coverage ensure that financial requirements and treatment limitations on mental health and substance-use disorder services are no more restrictive than the predominant financial requirements and treatment limitations applicable to medical and surgical health services, and that there are no financial requirements and treatment limitations applicable only with respect to mental health and substance use disorder services. 26 CFR 54.9812-1; 29 CFR 2590.712; and 45 CFR 146.136.

<sup>29</sup> Section 1251 of the Affordable Care Act provides that grandfathered health plans are not subject to certain provisions of the Internal Revenue Code (Code), ERISA, and the Public Health Service (PHS) Act, as added by the Affordable Care Act, for as long as they maintain their status as grandfathered health plans. See 26 CFR 54.9815-1251, 29 CFR 2590.715-1251, and 45 CFR 147.140. For a list of the market reform provisions applicable to grandfathered health plans under title XXVII of the PHS Act that the Affordable Care Act added or amended and that were incorporated into the Code and ERISA, visit <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/affordable-care-act-for-employers-and-advisers/grandfathered-health-plans-provisions-summary-chart.pdf>.

<sup>30</sup> Council of Economic Advisors (2022, May). Reducing the economic burden of unmet mental health needs. The White House. <https://www.whitehouse.gov/cea/written-materials/2022/05/31/reducing-the-economic-burden-of-unmet-mental-health-needs/>.

<sup>31</sup> Coffey, M. (2022). *Still underpaid and unequal: Early childhood educators face low pay and a worsening wage gap*. Center for American Progress. <https://www.americanprogress.org/article/still-underpaid-and-unequal/>; Mayfield, W., & Cho, I. (2022). *The National Workforce Registry Alliance 2021 Workforce Dataset: Early Childhood and School-age Workforce Trends, with a Focus on Racial/Ethnic Equity*. National Workforce Registry Alliance. <https://www.registryalliance.org/wp-content/uploads/2022/05/NWRA-2022-ECE-workforce-data-report-final.pdf>; Smith, L., McHenry, K., Morris, & Chong, H. (2021). *Characteristics of the child care workforce*. Bipartisan Policy Center. <https://bipartisanpolicy.org/blog/characteristics-of-the-child-care-workforce/>.

work, but high-quality, affordable child care is difficult to find.<sup>32</sup> The final rule retains the proposed policy and requires that programs connect staff to local child care information sources, including distributing information about child care resource and referral agencies. Among staff who may be eligible for child care subsidies, the final rule contains revised language requiring programs to “facilitate access” rather than “facilitate enrollment” in the child care subsidy program and is now consistent with the requirements regarding facilitating staff access to PSLF. Facilitating access to child care may involve referring staff to State and local agencies that administer child care subsidy programs, providing computer or internet access and support to apply for child care subsidies, providing printed resources about child care subsidies, providing timely income and employment documentation, and assisting staff in completing the application as needed.

*Comment:* Regarding the proposal in the NPRM that programs can choose to prioritize the enrollment of staff members’ children, many comments supported the prioritized enrollment for the children of eligible staff. Some commenters were concerned about the implications of prioritizing such children for enrollment over serving those most at-risk in their community. A few comments urged that the children of Head Start staff be categorically eligible to attract and retain staff. A few comments suggested that the language of the policy could be broadened to include “children for whom staff is the primary caretaker” to be inclusive of grandparents who are primary caregivers or those providing kinship or guardianship care.

*Response:* We retain this provision in the final rule. As described above, many in the ECE workforce rely on child care to work and their families may benefit from Head Start’s

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<sup>32</sup> Child Care Aware (2022). *2021 Child Care Affordability*. <https://www.childcareaware.org/catalyzing-growth-using-data-to-change-child-care/#ChildCareAffordability>.

services. The final rule provides an option for programs to prioritize the enrollment of staff members' children through selection criteria. This is not a requirement of programs, and Head Start agencies may choose whether to include prioritization of staff members in their selection criteria. In addition, staff members' children must meet one or more eligibility categories described in § 1302.12(c) or (d). Because of the wage increases required through this final rule, ACF acknowledges that it is likely that fewer staff members' children will be eligible for Head Start over time. Programs are reminded that through their selection criteria, they must still prioritize those most in need of Head Start services. We acknowledge the suggestion to allow for categorical eligibility for the children of Head Start staff; however, as eligibility categories are largely determined by Head Start statute, we do not incorporate this suggestion in the final rule.

*Comment:* Commenters supported the policy proposed in the NPRM that would facilitate greater ease of access to PSLF for Head Start staff, including a suggestion for Head Start to work with the Department of Education or automatically enroll Head Start staff in PSLF. Some expressed concern about the administrative burden of facilitating access to PSLF, and several commenters requested clarification and guidance about what is meant by “facilitate access,” with a few suggesting replacing this with a requirement to share information. A few comments noted that workers at for-profit agencies do not qualify for PSLF, and there was confusion that this would prohibit Head Start from partnering with for-profit child care partners. A few comments suggested that this provision would be more appropriate in guidance instead of in regulation.

*Response:* The final rule retains the requirement that programs facilitate access to the PSLF program. A 2022 study found that 19 percent of the ECE workforce reported they had

student debt, compared to 17 percent of the U.S. adult population overall, and 17 percent reported they carried debt for others.<sup>33</sup> Maintaining the “facilitate access” language is important to ensure that programs both share information and provide support and timely certification for enrollment in PSLF. Activities considered “facilitating access” include, but are not limited to, providing information to and hosting information sessions for staff, providing internet or computer access to employees during dedicated time away from their normal job duties so they can learn more or enroll, and connecting staff to benefits specialists at Head Start programs or elsewhere to help staff enroll. We recognize not all Head Start staff will be eligible for PSLF, given that some may not have eligible employment if the Head Start program or child care partner site does not meet the employer requirements because they are for-profit entities. However, of those that do, the timely certification of employment is necessary for staff who are applying.

ACF appreciates the comments encouraging coordination with the Department of Education on PSLF and will continue to explore ways the Federal Government can work across agencies to make it easier for early educators to apply for PSLF.

#### *Workforce Supports: Training and Professional Development Plans (§ 1302.91)*

In this standard, we describe the minimum requirements for annual professional development, and we codify the requirements of the 2007 Head Start Act for teaching staff within the HSPPS. The NPRM further codified the requirements of section 648A(f) of the Head Start Act. Section 648A(f) of the Act requires programs to develop, with input from the employee, individual professional development plans for every full-time staff providing direct

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<sup>33</sup> RAPID Survey, Student Debt in the Early Childhood Workforce, May 2022. Retrieved from: <https://rapidsurveyproject.com/our-research/student-debt-in-the-early-childhood-workforce>.

services to children. These plans serve as a mechanism for programs to help ensure their staff have the skills, knowledge, and competencies to effectively perform their roles and deliver high-quality program services.

While the requirement is stated in the Act, it has not been previously codified in the HSPPS, and data from OHS monitoring findings show that programs are being cited for lacking professional development plans for their education staff. From fiscal year 2020-2022, a top cited finding for programs in education was related to professional development plans.<sup>34</sup> Revising language in § 1302.92(b)(1) to include individual professional development plans aligns the HSPPS with the Act and reminds programs of the requirement. It also emphasizes the importance of leveraging staff's input to identify their professional needs and drive their career growth.

*Comment:* Many commenters expressed support for the revision. One commenter noted this revision will streamline information and make it easier for programs to reference and adhere to all regulations and mandates. Another commenter noted that when individual professional development plans are done well, they can improve staff retention and job satisfaction. Further, professional learning opportunities designed and delivered in a way that elevate educator expertise and autonomy can increase children's learning and development.

*Response:* ACF agrees with commenters and retains the language proposed in the NPRM to include individual professional development plans.

*Comment:* While section 648A(f) of the Act requires programs to co-create a professional development plan with each full-time employee who provides direct services to children, a few

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<sup>34</sup> Data from narrative responses from monitoring reviews from fiscal years 2020-2022.



commenters noted the importance of such plans for all Head Start positions. A few commenters also noted the importance of individual staff input (including staff in family child care settings) in developing goals and identifying next steps within their individual professional development plans. Such input makes plans meaningful to their role and tasks and allows staff to build upon the valuable skills they already possess. Another commenter recommended programs leverage existing infrastructure, such as professional development offerings and tools within early childhood professional registries.

*Response:* ACF encourages programs to implement individual professional development plans with all staff. We agree that these plans can be effective tools to support professional and career development for everyone. We also acknowledge that staff's input on their plans is an important step to individualize professional development approaches. The goal is for staff to build on existing strengths and implement effective practices to deliver quality program services. Individuals and programs can also consider future career opportunities as they develop plans. ACF encourages programs to leverage existing infrastructure and services to support their delivery of impactful professional development.

While ACF acknowledges commenters' recommendations, we do not revise the provision to address these comments. We feel programs can access technical assistance and resources on the Early Childhood Learning and Knowledge Center (ECLKC) to enhance their professional development planning processes. Additionally, we note that programs can elect to go beyond the minimum requirement of a professional development plan for each full-time employee who provides direct services to children and support such a plan for all Head Start staff positions.

*Comment:* One commenter offered additional revisions to the NPRM language. The commenter suggested that ACF revise § 1302.92(b) to encourage programs to consider various

strategies that elevate the early educator profession and pair these with holistic improvements to professional development opportunities. Additionally, the commenter advised that professional development opportunities build on the linguistic and cultural strengths of educators. The commenter also proposed adding language to § 1302.92(b)(3) that expands training for child and family services staff on best practices for implementing family engagement strategies to include a focus on a holistic approach to child development, inclusive of mental health and social and emotional development.

*Response:* While ACF encourages programs to consider strategies that build on staff's strengths and offer professional development opportunities to help staff meet the unique needs of their enrolled children and families, we do not revise this provision to address this comment. We think these provisions are sufficient in directing programs to provide a systemic approach to staff training and professional development that supports staff in acquiring or increasing the knowledge and skills needed to provide high-quality, comprehensive services. By codifying the statutory requirement for individualized professional development plans in regulation, we reinforce the importance of tailoring professional development experiences to each staff members' unique cultural, linguistic, and educational backgrounds.

*Comment:* A few commenters noted that professional development plans are a helpful mechanism to support and track staff's attainment of their educational requirements, and they are particularly needed when recruiting qualified staff continues to be challenging. One commenter requested that programs be able to provisionally hire staff who do not meet the educational requirements without needing to submit individual waivers when assistant teachers have two-year plans to attain the CDA credential and when teachers have a five-year plan to get their degree.

*Response:* ACF agrees that professional development plans can be a vehicle to track timely progress and attainment of educational credentials and qualifications. However, since the qualification requirements of Head Start educators are prescribed in legislation, we do not revise this provision to address this comment.

*Workforce Supports: Staff Wellness (§ 1302.93)*

Section 1302.93 outlines program requirements for promoting staff health and wellness, including ensuring that staff have regular health examinations; do not pose a risk of exposing others in the program to communicable diseases; and are provided access to mental health and wellness information. This final rule adds requirements to § 1302.93 for programs to provide regular breaks for staff and cultivate a program-wide culture of wellness for staff. In response to public comments, this final rule does not include the proposed requirements in the NPRM for unscheduled breaks and adult-sized furniture in classrooms, as described further below. The changes in this section of the rule are intended to further amplify the crosscutting efforts across multiple areas in the HSPPS to improve staff recruitment and retention through an intentional focus on staff wellness. ACF believes these changes will help reduce burnout and staff turnover, as well as promote high-quality services for children and families.

*Staff Breaks*

The previous standards in § 1302.93 lacked critical requirements to promote staff wellness on the job. This final rule adds a new paragraph (c) to § 1302.93 which outlines requirements for break times during work shifts. In new paragraph (c)(1), we specify that, for each staff member, a program must provide regular breaks of adequate length and frequency based on hours worked, including (but not limited to) time for meal breaks as appropriate.

New paragraph (c)(2) requires programs to comply with Federal, State, or local laws or regulations that are more stringent for staff breaks, if applicable.

For staff members who regularly work in classrooms with children, the breaks for staff described in paragraph (c)(1) are subject to required staff-child ratios. However, in new paragraph (c)(3), we specify that during break times for classroom staff, one teaching staff member may be replaced by one staff member who does not meet the teaching qualifications required for the age, so long as this staff member has the necessary training and experience to ensure the safety of children and minimal disruption to the quality of services. ACF expects that, for classroom staff, these regular breaks will be scheduled for periods that are least disruptive for classroom instruction or routines, such as during nap times, meals, or outside play periods, and will be covered by staff who have completed and passed the appropriate background checks.

This final rule does not include paragraph (c)(4) that was included in the NPRM, which proposed unscheduled wellness breaks for staff. As described below in the public comment analysis, ACF believes that early childhood staff need restroom breaks and an opportunity to step away during stressful situations. Such breaks are important to staff health and child safety. However, ACF will defer to Head Start agencies to determine how to implement breaks.

We respond to the comments we received on staff breaks in response to the NPRM in this section-by-section discussion below.

*Comment:* We received several public comments on our proposals regarding required staff breaks. They reflected a mix of support and concern. Of those that commented on this issue, many agreed that breaks for staff are beneficial for mental health and can improve the

quality of services provided to children. They recognized the importance of supporting staff well-being to reduce burnout and turnover, and some said their agencies already provide such breaks, scheduled and unscheduled.

*Response:* We strongly agree with the importance of staff breaks for supporting overall staff wellness. In alignment with the overarching goal of this final rule, to promote higher-quality services for children in Head Start programs and better support the mental and physical well-being of staff, children, and families, ACF adds to § 1302.93 a new paragraph (c), including paragraphs (c)(1) through (3), which outlines requirements for break times during work shifts, but with some modifications to the policy as proposed in the NPRM. This standard for regular staff breaks is discussed further below.

*Comment:* Regarding the proposed scheduled breaks policy, the majority of comments were supportive of the requirement, noting some programs already provide breaks for staff when possible. However, commenters found the proposed language for scheduled breaks to be too prescriptive because of the specific time requirements proposed in the standard. Commenters highlighted potential contradictions with State requirements as well. A few commenters also expressed concern that the new requirements for breaks were unfunded, which could lead to a reduction in slots to accommodate the additional staffing costs.

*Response:* ACF believes in the critical importance of regular breaks for staff to promote physical health and wellness, and in turn promote higher quality interactions and services for children and families. However, ACF understands that programs have unique structures and programmatic considerations that might dictate how breaks are implemented, and therefore, in this final rule, we retain the requirement for scheduled breaks but with some modifications to provide more flexibility for programs. Specifically, the staff breaks standard

added in § 1302.93(c)(1) requires that each staff member receive regular breaks of adequate length and frequency based on hours worked, including, but not limited to, time for meal breaks as appropriate. With these revisions to the staff breaks policy, ACF believes the requirement now better supports programs' autonomy to execute a break schedule that is most effective for each program's staff and overall organizational health while maintaining child safety and ratios. ACF expects that breaks for staff will be provided away from their regular job duties including being away from the classroom for those staff. The phrasing "of adequate length and frequency" in the new standard is meant to imply that staff who work longer shifts may need longer or more frequent breaks. For instance, ACF expects that staff who work longer shifts will be provided a regular break that is of adequate length to allow for a meal and regular restroom breaks.

As discussed in other sections, ACF recognizes that the implementation of some of the policies in the final rule will come with associated costs and may require adjustments in funded enrollment if additional congressional appropriations are not available. This final rule also delays the effective date for the staff breaks requirement to August 2027, approximately three years after the publication of the final rule. This will allow programs more time to plan for and implement this new policy.

*Comment:* Regarding the proposed unscheduled wellness breaks, there were significant concerns about their practicality and feasibility of implementation. Commenters expressed worry about maintaining child-to-staff ratios, violating licensing requirements, the financial and logistical burden of hiring additional staff to cover breaks, and the potential for abuse of the unscheduled break policy.

*Response:* The safety of children is of the utmost importance to ACF, and we recognize this is a key priority for programs as well. As such, ACF agrees with the public concerns regarding the need for programs to have flexibility in how they structure brief, unscheduled breaks for staff safely, particularly for small and rural programs and those that are geographically dispersed. While the proposed requirement was intended to reduce potential child incidents by allowing an overwhelmed classroom staff member an opportunity to briefly step away from a situation, ACF acknowledges that some programs need flexibility in terms of how they implement, particularly those whose licensing requirements would not allow for such unscheduled breaks without another staff member immediately available to step into the room. We agree that programs will need to determine how to implement breaks in a way that does not pose a safety risk for smaller and understaffed programs. As such, the proposed requirement for brief unscheduled breaks for staff is not included in this final rule, and instead we include a more flexible policy that requires breaks of appropriate length and frequency.

However, being an early educator, including in Head Start, involves actively educating, caring for, and supervising young children. These jobs require the full attention of staff members and can be physically, mentally, and emotionally demanding, particularly if done for long shift periods. It is critically important that programs allow staff to step away for restroom breaks and support overwhelmed staff that may need a moment away from the classroom. Unscheduled breaks allow staff the opportunity to briefly step away from an overwhelming situation, think through an appropriate approach to handling the given situation, and may ultimately help prevent or reduce child safety incidents in classrooms. Lack of access to breaks at work may be part of a constellation of workplace stressors faced by Head Start

staff including the significant responsibility entrusted to Head Start staff who are charged with supporting the children and families who are furthest from opportunity. Work climate and stressors are associated with teacher psychological well-being,<sup>35</sup> and in turn, contribute to staff turnover.

Further, it is also critically important for classroom staff to have access to unscheduled bathroom breaks as needed, to promote physical wellness. Research indicates that ECE teachers have higher rates of urinary tract infections relative to the general population of women, a troubling finding.<sup>36</sup> This is thought to be due to staff not feeling as though they can regularly access the bathroom as needed. Therefore, ACF remains convinced of the benefits of offering staff unscheduled breaks as needed and urges programs to develop staffing systems that incorporate such an approach as feasible, while ensuring child safety.

*Comment:* Some commenters found the language around unscheduled breaks to be too prescriptive and felt that programs should have the autonomy to support their employees' health and wellness in ways that are practical for their specific circumstances. A few commenters noted the rigidity of the proposed requirements could lead to a culture of micromanagement, eroding morale and undermining the judgment and expertise of staff.

*Response:* As noted above, ACF concurs with public sentiment that programs need flexibility in structuring staff breaks, so this is not included as a requirement in this final rule.

### *Adult-Sized Furniture*

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<sup>35</sup> Jeon, L., & Ardeleau, K. (2020). Work climate in early care and education and teachers' stress: Indirect associations through emotion regulation. *Early Education & Development*, 31(7), 1031–1051; Jeon, L., Buettner, C., & Grant, A. (2018). Early childhood teachers' psychological well-being: Exploring potential predictors of depression, stress, and emotional exhaustion. *Early Education & Development*, 29(1), 53–69.

<sup>36</sup> Kwon, K., et al. (2022). Neglected elements of a high-quality early childhood workforce: Whole teacher well-being and working conditions. *Early Childhood Education Journal*, 50, 157–168.



Based on the feedback received from the public on the NPRM, ACF is not retaining the proposed new paragraph (d) in § 1302.93, which would have required programs to ensure staff have access to adult-size furniture in classrooms. The requirement was not well-supported by the public for a variety of reasons. ACF ultimately agrees that the presence of the adult-sized furniture in a classroom is better left to the discretion of individual programs. However, ACF remains committed to the benefits of access to adult-sized furniture, particularly chairs, for classroom staff and encourages programs to implement changes to better support the physical health of teachers. ACF's support for access to adult-sized furniture is motivated by the data indicating that staff in Head Start programs experience elevated levels of work-related ergonomic pain. For example, a survey of Head Start teachers in Baltimore found that 80 percent reported musculoskeletal pain as a result of their work.<sup>37</sup> In an Oklahoma sample of Head Start teachers, more than seven in ten (73 percent) Head Start staff reported work-related ergonomic pain, including in routine activities like diapering or stooping to pick up children.<sup>38</sup> Programs should continue to align with ACF's goal of improving and investing in staff health and wellness including strengthening support for Head Start early educators' physical well-being whenever possible.

We respond to the comments we received on adult-sized furniture in classrooms in response to the NPRM in this section-by-section discussion below.

*Comment:* The majority of the public comments regarding staff access to adult-size furniture in classrooms were not supportive of the requirement. Commenters were generally apprehensive about the requirement for adult-sized furniture in classrooms, citing safety

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<sup>37</sup> The Happy Teacher Project (2020). *Strengthening Health, Wellness, and Psychosocial Environments in Head Start: Technical Report 2020*. Johns Hopkins University and Oklahoma State University.

<sup>38</sup> Kwon, K., Ford, T., Randall, K., Castle, S. (2021). *Head Start Teacher Paradox: Working conditions, well-being, and classroom quality*. The Happy Teacher Project: Johns Hopkins University and Oklahoma State University.

concerns for children, reduced usable space, and potential conflicts with both state licensing standards and the Early Childhood Environment Rating Scale (ECERS). Most of the comments on this issue also reflected a desire for less prescriptive rules that focus on a desired outcome and allow for more locally designed approaches to achieve those outcomes.

*Response:* Due to the overwhelming negative feedback ACF received on adult-sized furniture in classrooms for staff, we do not retain it as a requirement in this final rule. ACF finds commenters' concerns regarding a potential conflict with state licensing standards and ECERS to be compelling. However, as noted previously, ACF remains committed to supporting the health and well-being of Head Start program staff. ACF encourages programs to ensure classroom staff at minimum have adult-size chairs in classrooms and a dedicated space with adult-size furniture for breaks and meals as needed. This can help promote ergonomic health and minimize physical pain for staff associated with consistently sitting on child-sized chairs or the floor.

*Comment:* Of the supportive comments received, many supported the idea of adult-sized chairs for adult comfort but argued against adult-sized desks, which commenters believed were not suitable for EHS classrooms due to space constraints and safety issues. Additionally, some commenters stated that adult-sized furniture could create barriers and negatively impact teacher-child interactions. Some commenters agreed with the benefits of access to adult-sized furniture but suggested instead focusing on creating a dedicated workspace for staff outside of the classroom.

*Response:* As discussed previously, ACF does not retain this requirement in the final rule.

*Culture of Wellness for Staff*

This final rule adds a new paragraph (d) to § 1302.93 that states that a program should cultivate a program-wide culture of wellness that empowers staff as professionals and supports them to effectively accomplish their job responsibilities in a high-quality manner, in line with the requirement at § 1302.101(a)(2). This language clarifies that program-wide wellness supports extend to staff and that these supports include addressing program management such as implementing positive employee engagement practices, opportunities for training and professional development, and ongoing supervisory support.<sup>39</sup> As noted in changes made to § 1302.101(a)(2), meaningful and effective employee engagement practices that promote clear roles and responsibilities are needed to improve the well-being of the workforce. Additionally, knowing that the mental health of young children is intertwined with the mental health of the adults who care for them, it is critical to foster a supportive environment for staff well-being, reduce burnout, and improve retention in order to promote the highest quality of services for children and families.

*Comment:* Of the few comments received on the new requirement for programs to cultivate a program-wide culture of wellness, most were supportive, citing the importance of fostering a healthy work environment, preventing burnout, and the unintended negative impact on the children and families served. About half of the commenters were also concerned with the subjective nature of the requirement and how ACF would be able to monitor it.

*Response:* ACF maintains the proposed requirement, with the general support of the public, requiring programs to foster a program-wide culture of wellness. Staff who are not as emotionally committed to or proud of their work or organization, are less motivated and are more eager to leave, which can in turn negatively affect the quality of their work and the

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<sup>39</sup> <https://www.cdc.gov/workplacehealthpromotion/planning/leadership.html>; [https://aspe.hhs.gov/sites/default/files/private/pdf/76661/rpt\\_wellness.pdf](https://aspe.hhs.gov/sites/default/files/private/pdf/76661/rpt_wellness.pdf).

attitudes held toward children.<sup>40</sup> ACF believes in the intent of this requirement and the positive impact on programs, staff wellness, and the children and families served, as a result. After publication of the final rule, ACF will determine how best to monitor programs on this requirement in a way that is fair and equitable across programs. As needed, ACF will also provide TA to programs on how to meet this requirement, including examples of best practices from other programs.

*Workforce Supports: Employee Engagement (§§ 1302.92, 1302.101)*

Section 1302.101(a)(2) requires programs to implement a management system that promotes clear and reasonable roles and responsibilities for all staff and provides regular and ongoing staff supervision with meaningful and effective employee engagement practices. The language in the final rule is intended to discourage staff supervision approaches that are primarily top-down and is grounded in an understanding that staff engagement is critical to both employee well-being and program quality. The final rule also reflects provisions in the Head Start Act that emphasize the importance of employee development and active engagement.

Meaningful and effective employee engagement practices will vary among programs, but examples include discussions of explicit and implicit expectations; recognition for high-quality work; open communication between management, staff, and their representatives; conducting and responding to workplace climate surveys; responding to feedback; working in partnership with staff to identify and ameliorate any barriers to high-quality job performance that may exist including workload issues; formal and informal opportunities for discussions related to job satisfaction and performance; and having employee engagement inform professional

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<sup>40</sup> Kleine, A.-K., Rudolph, C. W., & Zacher, H. (2019). Thriving at work: A meta-analysis. *Journal of Organizational Behavior*, 40(9-10), 973-999.; Walumbwa, F. O., Hartnell, C. A., & Oke, A. (2010). Servant leadership, procedural justice climate, service climate, employee attitudes, and organizational citizenship behavior: A cross-level investigation. *Journal of Applied Psychology*, 95, 517-529.

development opportunities for staff. In general, these practices should aim to understand the expectations imposed on staff, identify and address barriers staff are experiencing in being able to fulfill their roles and responsibilities (e.g., filling multiple roles, job-related stressors impacting job performance, unclear roles and responsibilities), and recognize high-quality work.

The final rule also retains a revision from the NPRM in § 1302.92(b), which requires programs to implement a systematic approach to staff training and professional development. We add to this section the phrase “and integrated with employee engagement practices in accordance with § 1302.101(a)(2).” This revision builds on the revised language in § 1302.101(a)(2) and is intended to ensure programs implement an approach to staff training and professional development that is informed by input from staff, identifies barriers to job performance, and includes other employee engagement practices.

*Comment:* ACF received few comments overall on provisions related to employee engagement. Of those who commented, there was general consensus on the necessity of well-defined roles and responsibilities for Head Start staff. Commenters advocated for management systems that recognize the diverse duties of staff and support the complexity of these roles. There was a call for professional development plans that are flexible, crafted with input from staff, and tailored to meet the specific needs of each program.

*Response:* ACF agrees with commenters and retains the revised language from the NPRM.

*Comment:* A few commenters advocated for integrating mental health and anti-bias approaches into the employee engagement provisions.

*Response:* ACF agrees with commenters on the importance of integrating mental health throughout Head Start programs. This final rule includes multiple provisions in § 1302.45 establishing what programs must do to support a culture that promotes mental health, including revised requirements in § 1302.45(a) to include coordination and collaboration between mental health and other relevant program services. Since we do not specify any other content areas (e.g., physical health) for inclusion in the employee engagement provisions in § 1302.92(b) or § 1302.101(a)(2), we do not make further revisions to these sections from the NPRM language. ACF has and will continue to provide TTA on supporting mental health and promoting inclusive environments in Head Start programs.

*Comment:* A few comments highlighted a preference for leadership development strategies that empower rather than prescribe, with a call for ACF to offer guidance instead of stringent requirements. These commenters emphasized the importance of program autonomy in staffing and professional development decisions. A few comments raised concerns about a potential increase in regulatory burdens with these provisions.

*Response:* ACF values commenters' input on leadership development strategies and recognizes the need for strategies that are adaptable to local contexts. The final rule reflects this by providing a framework that supports the development of management systems at the program level, allowing for the leadership of each program to guide the creation and implementation of employee engagement practices. The rule aims to balance the need for clear Federal guidance with flexibility for programs to address their specific challenges and dynamics.

In response to concerns about regulatory burden, ACF has been intentional about ensuring that the final rule provisions on employee engagement do not impose undue constraints on programs. Rather, they support autonomy in developing and executing strategies that are most

effective for each program's staff and organizational health. The changes described in these sections are intended to be scaled to the size of the Head Start organization and are not anticipated to incur a large cost.

#### *Mental Health Services (Subparts D, H, and I)*

The final rule makes updates to mental health services for children, families, and staff and more fully integrates mental health in all aspects of Head Start services while focusing on a preventive and strengths-based approach. Collectively, the final rule provisions promote a Head Start program that recognizes mental health as a part of child development and integrates a promotion and prevention approach that includes addressing the mental health needs of children and the adults that care for them in an ongoing and collaborative way. Mental health services have always been an important part of the Head Start model, and this rule affirms the importance of mental health by explicitly referencing it in the heading of subpart D and the renamed Health and Mental Health Services Advisory Committee (HMHSAC). In addition, the final rule includes clarifying language to reinforce that mental health should be integrated into all aspects of the Head Start program, including developmental screenings, family support services, family engagement, and nutrition.

The final rule includes significant changes from previous standards on mental health to address mental health services as an important component of Head Start and respond to increasing mental health concerns among children, families, and staff in the program. Many of these changes were proposed in the NPRM, with some additional changes made in the final rule in response to public comments. Specifically, the final rule removes the requirement for a multidisciplinary mental health team in the NPRM and replaces it with a requirement for a multidisciplinary approach to emphasize that programs should determine how best to coordinate

and ensure program-wide mental health supports and services with the appropriate staff, which is discussed more in depth below. The new requirements for the multidisciplinary approach to support mental health across the program largely reflect those proposed in the NPRM and include: 1) coordinating supports for adults, including families and staff; 2) new strengths-based language related to mental health services for children that focus on preventive strategies; 3) annual assessment of mental health consultation services to address any needed changes in service delivery; 4) monthly mental health consultation services with an option to augment with other licensed mental health professionals or behavior health support specialists, as needed; 5) screening for social and emotional development and follow-up with parents; 6) coordination across mental health and other service providers in the program; and 7) leveraging community partnerships to provide mental health services, including through the HMHSAC.

The final rule also retains the description of the role of a mental health consultant, whose role is to build the capacity of adults to support the mental health and social and emotional development of children. Research has demonstrated that mental health consultation has positive impacts on young children's social and emotional skills and reductions in behaviors that are challenging to adults.<sup>41</sup> While the NPRM required monthly mental health consultation, the final rule provides additional flexibility in meeting the monthly mental health consultation requirement such that, if mental health consultation is not available on a monthly basis, Head Start programs must use other licensed mental health professionals or behavior health support specialists to ensure the provision of mental health supports on at least a monthly basis. If this flexibility is exercised, the other licensed mental health professionals or behavioral health support specialists must coordinate and consult with the program's mental

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<sup>41</sup> Center of Excellence for Infant and Early Childhood Mental Health Consultation (2023). Status of the Evidence for Infant and Early Childhood Mental Health Consultation (IECMHC). <https://www.iecmhc.org/wp-content/uploads/2020/12/CoE-Evidence-Synthesis.pdf>.



health consultant. This change is responsive to comments received on the NPRM about the lack of mental health consultants available to Head Start programs.

*Part 1302, Subpart D – Health and Mental Health Program Services*

Subpart D outlines the program requirements to support the provision of high-quality health, oral health, mental health, and nutrition services. The final rule modifies the name of this section to include mental health more explicitly.

*Section 1302.40 Purpose.*

Section 1302.40 describes the overarching purpose of health and mental health program services in Head Start. Paragraph (b) describes the previous requirement to establish and maintain a Health Services Advisory Committee, an advisory group usually composed of local health providers who represent a wide variety of local social services agencies. The final rule changes the title of this advisory committee to Health and Mental Health Services Advisory Committee (HMHSAC) to include mental health more explicitly and to emphasize the importance of including professionals with mental health expertise on the committee. While ACF strongly recommends including professionals with mental health experience or expertise (including professionals with background or experience in substance use disorders) on the HMHSAC, the composition of the committee should be designed based on community need and remains at the discretion of the local program. The final rule modifies other requirements referencing the committee to update the language in §§ 1302.42(b)(1)(i), 1302.43(b)(4), and 1302.94(a).

*Comment:* We received some comments on this section, and they generally focused on two themes. First, those who commented on this section noted confusion about how the role of the HMHSAC differs from that of the multidisciplinary team proposed in the NPRM under §

1302.45(a). Second, those who commented requested clarification on whether the change from the Health Services Advisory Committee to the Health and Mental Health Services Advisory Committee is a name change only or if the responsibilities of the committee will also change.

*Response:* ACF accepts the feedback from commenters expressing concern and confusion about the multidisciplinary team and does not retain that proposed requirement in the final rule. Instead, the final rule requires programs to use a multidisciplinary approach to mental health and wellness supports, and programs are encouraged to take a team-based approach to meet this requirement. The final rule changes the title of the advisory committee to elevate the importance of including mental health providers as programs often do not realize that the committee can include mental health expertise in addition to other health expertise. The rule does not change the overarching responsibilities of the committee, but it does state that one function of the HMHSAC is to support the program in building community partnerships in § 1302.45(a)(7).

*Section 1302.41 Collaboration and communication with parents.*

Section 1302.41 requires Head Start programs to collaborate with parents as partners in the health and well-being of their children and to communicate in a timely manner with parents about their children's health needs and development concerns.

The final rule includes mental health more explicitly throughout this section. Specifically, the final rule requires that programs collaborate with parents as partners in the health, mental health, and well-being of their children and communicate with parents about their children's health and mental health needs, including at a minimum, obtaining advance authorization for mental health procedures administered and sharing policies for mental health emergencies.

*Comment:* Those who commented on § 1302.41 were supportive of the inclusion of mental health in advanced authorization.

*Response:* We agree with commenters and maintain the NPRM proposal to further integrate mental health with other health-related services by including authorization from parents for mental health supports as part of the initial consent process.

*Section 1302.42 Child health status and care.*

Section 1302.42 describes the requirements for programs with respect to a child's health status and care, including the timelines by which programs must ensure a child has an ongoing source of continuous, accessible health care; determine if a child is up to date on a schedule of age-appropriate care; and obtain or perform evidence-based vision and hearing screenings.

The final rule includes mental health more explicitly to align with the purpose and intent of the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit. Specifically, the final rule requires that determinations obtained about a child's schedule of age-appropriate preventive and primary care includes mental health care. The final rule also requires that when a program is identifying a child's nutritional health needs, that developmental and mental health concerns should also be considered.

*Comment:* Some commenters requested additional clarification on how to ensure a child is up-to-date on mental health care and expressed concern about program burden to directly facilitate provision of these screenings if health care providers do not routinely perform mental health screening.

*Response:* We retain this requirement in the final rule. Programs can ensure a child is up-to-date on mental health care by obtaining determinations from any social, emotional, or

behavior screening as prescribed by the EPSDT program of the Medicaid agency of that state in which they operate. ACF believes that screening for mental health concerns is an important way to ensure children and families with needs are identified early and can access appropriate interventions. ACF has TTA available to assist programs with screening and assessment efforts.<sup>42</sup>

*Section 1302.45 Supports for mental health and well-being.*

Section 1302.45 establishes the requirements for what programs must do to support a culture that promotes mental health and outlines the responsibilities of mental health consultants. In the previous standards, programmatic requirements related to mental health appeared in several areas. This final rule strengthens, clarifies, and enhances these requirements to provide a comprehensive and integrated approach that elevates mental health across the entire program.

The final rule changes the heading of § 1302.45 and § 1302.45(a) to better reflect that the intent of the additional requirements is to help programs support not only the mental health of children and their families, but also the adults who care for them across the program.

In addition to changes in the titles of these sections, the final rule makes significant changes from previous standards to § 1302.45(a) and (b). Together, the changes to this section from the NPRM take a prevention-focused and strengths-based approach to mental health, promote the integration of mental health and wellness supports for Head Start children, families, and staff, and strengthen best practices in mental health consultation.

In § 1302.45(a), the final rule requires that programs use a multidisciplinary approach to support a program-wide culture that promotes mental health, social and emotional well-

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<sup>42</sup> <https://eclkc.ohs.acf.hhs.gov/child-screening-assessment>.

being, and overall health and safety. Using a multidisciplinary approach in Head Start programs means leveraging knowledge and skills across disciplines, instead of maintaining a siloed approach to mental health. The multidisciplinary approach allows programs to coordinate across Head Start services to ensure greater consistency among staff members and better address the mental health needs of children and families, including those who may have multiple staff members providing services. For example, a multidisciplinary approach would facilitate an eligibility, recruitment, selection, enrollment, and attendance (ERSEA) coordinator and family services provider to communicate about how mental health concerns may impact a family's attendance, and to collaboratively identify a variety of supports, such as helping the family access treatment or parent groups, identifying transportation, or facilitating communication with the teacher. Under § 1302.45(a), we include revised language to describe what activities are expected from the program-wide wellness supports, for a total of seven provisions.

In the first provision, we require coordination of supports for adult mental health and well-being, including for families and program staff. Requiring programs to engage with families in nurturing and responsive relationships and home visiting services ensures that programs take a preventive and holistic approach to mental health. For example, programs can facilitate communication across service areas to ensure that the family is supported in a variety of ways that may impact their mental health and wellness, such as assistance with housing, food insecurity, or issues related to substance use. Parents with substance use disorder (SUD) may experience barriers to care and Head Start programs can work across service areas to help families navigate and overcome these barriers, including by providing information on substance use issues or disorders to staff or parents and providing referrals, as appropriate, for

screening and/or treatment. This assistance is crucial as drug overdose deaths among pregnant and postpartum women and people alone increased by 81 percent between 2017 and 2020.

This first provision also includes promoting staff health and wellness as outlined in § 1302.93. Staff who are happier, healthier, and less stressed are able to engage in higher quality interactions with children. Over the last several years, staff in Head Start programs have experienced heightened stress, burnout, exhaustion, and increased depressive symptoms comparable to other early childhood educators and providers across the board. For example, research has demonstrated that women who work in Head Start have poorer physical and mental health compared to other U.S. women who have similar sociodemographic characteristics.<sup>43</sup> A recent survey of the early childhood workforce found that 66 percent of ECE staff surveyed experienced moderate to high levels of stress.<sup>44</sup> Research indicates that Head Start staff who experience frequent stress or symptoms of depression are more likely to perceive children in their care in a less positive light. This could, in turn, relate to lower quality interactions and care.

In the second provision, we revise the previous requirement related to coordinating supports for children's mental health and well-being in the learning environment to align with a strength-based and inclusive approach. The previous requirement focused on supporting children in classrooms, which could be interpreted to exclude other program options or settings. The previous requirement also focused on managing challenging behaviors, which can contribute to stigma and places an emphasis on responding to—rather than preventing—concerns. The new requirement in this final rule includes all Head Start program options, and

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<sup>43</sup> Whitaker et al. (2012). The Physical and Mental Health of Head Start Staff: The Pennsylvania Head Start Staff Wellness Survey. *Prev Chronic Dis*, Vol 13.

<sup>44</sup> Elharake JA, Shafiq M, Cobanoglu A, Malik AA, Klotz M, Humphries JE, et al. (2022). Prevalence of Chronic Diseases, Depression, and Stress Among US Childcare Professionals During the COVID-19 Pandemic. *Prev Chronic Dis*, Vol 19.

highlights strengths-based language that reinforces the importance of strategies that support the development of all children.

The remaining provisions in this section provide requirements and clarifications to address the increased need for mental health supports and services for children in Head Start programs. Social-emotional difficulties impact up to 20 percent of children under the age of five, and over half of mental health disorders begin before age 14.<sup>45</sup> Additionally, children and families experiencing poverty are more likely to encounter stressors linked to mental health challenges as well as experience barriers to accessing mental health services. Recent events, such as the COVID-19 pandemic, have only increased the need for mental health supports for young children and their families, as research has documented increases in stress-related disorders in young children and programs have reported more difficulties managing children's behaviors in early learning settings.<sup>46</sup>

Although there is an increased need, access to mental health services, including treatment, is severely limited by a shortage of behavioral health providers in the community. As a result, Head Start programs need to enhance integration of mental health supports within the program by leveraging community partnerships, as well as utilizing behavioral health support specialists, TTA resources specifically available to Head Start programs, and creative solutions such as telehealth. While Head Start has a long history of requiring access to mental health consultation services, the new provisions enhance the quality of consultation services in

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<sup>45</sup> National Research Council and Institute of Medicine Committee. Preventing mental, emotional, and behavioral disorders among young people: progress and possibilities. Washington, DC: National Academies Press; 2009.

Brauner, C. B., & Stephens, C. B. (2006). Estimating the prevalence of early childhood serious emotional/behavioral disorders: Challenges and recommendations. *Public health reports*, 121(3), 303-310.

Leventhal, T., & Brooks-Gunn, J. (2003). Moving to Opportunity: an Experimental Study of Neighborhood Effects on Mental Health. *American Journal of Public Health* 93(9). 1576–1582. doi: 10.2105/ajph.93.9.1576.

<sup>46</sup> West, K.D., Ali, M.M., Schreier, A., & Plourde, E. Child and Adolescent Mental Health During COVID-19: Considerations for Schools and Early Childhood Providers (Issue Brief). Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. September 22, 2021.

programs by providing clarity on best practices. Additionally, requiring programs to coordinate other program-wide strategies to prevent or intervene early on children's mental health concerns reduces the need to refer to community providers, who are limited in availability.

The third program-wide wellness support provision maintains the previous expectation for a program to secure mental health consultation services and adds a new requirement that these services be ongoing and the approach to mental health consultation be re-examined annually to determine if the approach is meeting the needs of the program. This new requirement reflects an understanding that the mental health needs of children and adults in the program, available mental health supports in the community, or other factors may change over time, creating a need for continuous quality improvement.

Fourth, we require that mental health consultation be available to the program at a frequency of at least once a month, with the caveat that if the mental health consultant is not available at that frequency, other licensed mental health professionals or behavioral health support specialists certified and trained in their profession must be used in coordination and consultation with the mental health consultant to provide mental health supports on at least a monthly basis. This monthly frequency requirement is intended to set a minimum expectation of mental health consultation services in the program to meet the needs of staff and families in a timely and effective manner.

Fifth, we require that the program's multidisciplinary approach include ensuring children receive adequate screening related to social and emotional milestones that impact mental health and appropriate follow-up in partnership with parents, referencing § 1302.33. Including screening provisions in a program's multidisciplinary approach further ensures



effective integration and coordination of key mental health supports across program service areas, such as supports for children who are waiting for an evaluation or those with identified disabilities.

Sixth, we add another new provision emphasizing the need for multidisciplinary coordination and collaboration between mental health and other relevant program services. Given the increase in children's mental health needs described above, it is especially important to equip Head Start staff across program service areas with opportunities to coordinate and collaborate to address mental health. This requirement further underscores that mental health should be integrated across program services, including education, disability, family engagement, and health services, and provides examples of the most relevant service areas to be included in an effective multidisciplinary approach. This integration is particularly important as early childhood mental health cannot be effectively addressed with a siloed approach. Mental health in young children includes skills such as a child's capacity to express and regulate emotions, form trusting relationships with adults, explore, and learn. These skills are cultivated in interactions with caregivers in a child's life, including parents and Head Start staff across program services. Furthermore, these skills impact other areas of development and are foundational for family well-being, children's learning and overall healthy development, and children's long-term success.

Finally, we require that programs leverage the role of the HMHSAC to meet the existing requirement to build community partnerships that facilitate access to mental health resources and services.

As was proposed in the NPRM, the final rule removes the requirement for parental consent for mental health consultation. The previous requirement for parental consent was

unwarranted since mental health consultants are providing supports to Head Start staff and other adults in a child's life and do not provide treatment to children, and it proved to be a barrier to providing mental health consultation. Additionally, this was an unnecessary administrative burden on programs and families since it was duplicative of other requirements for obtaining advance authorization for mental health procedures and sharing policies for mental health emergencies, as proposed in the NPRM and included in § 1302.41 of the final rule. Programs must still retain parental consent for any mental health services provided directly to children in the form of therapy by an appropriate licensed mental health professional, which would be outside the typical purview of a mental health consultant.

This final rule also makes several revisions to § 1302.45(b) to clarify the role and responsibilities of the mental health consultant and promote best practice recommendations for mental health consultation in Head Start settings. First, we align our description of mental health consultation with the Substance Abuse and Mental Health Services Administration (SAMHSA)-funded Center of Excellence for Infant and Early Childhood Mental Health Consultation, a leader in the advancement and impact of mental health consultation, as well as research and best practice in the field. The final rule description clarifies that mental health consultation services build the capacity of adults to support the mental health and social and emotional development of children. Second, the final rule explains that the mental health consultant can consult with a range of adults in a child's life, including program staff to implement strategies that promote children's mental health and prevent and respond to children's mental health concerns; families to support adult or child mental health such as in the event of a crisis or natural disaster; or program leadership to support specific program policies, such as those related to suspension or mental health needs following a significant

safety incident. The purpose of clarifying and broadening the responsibilities of the mental health consultant is not to create a checklist the mental health consultant must complete. Rather, the goal is to describe the variety of ways that mental health consultation services can be used based on program needs. Programs can determine which of these options best meet their needs and reassess those needs through the annual review.

We received many public comments on the proposed changes in the area of supports for mental health and well-being. Of those who commented on these issues, many reflected a strong desire for enhanced mental health support for everyone involved in Head Start programs, consistent with the intent of the changes. Many commenters noted the increased rates of stress and burnout among staff coupled with a rise in challenging behaviors and developmental delays among children. Although commenters supported the broader goals, many commenters also expressed concerns about implementing the proposed requirements in the NPRM and requested consideration for the unique challenges faced by different communities to ensure that mental health is adequately supported by and integrated into Head Start programming. We discuss these public comments as well as our response and revisions in more detail below.

*Comment:* Many commenters expressed a need for greater clarity and specificity about the role of the multidisciplinary team within the program. Some commenters expressed concern that programs would need to hire additional staff to meet this requirement. Other commenters requested that ACF give programs flexibility to determine how to meet this requirement based on program and community needs, including allowing programs to determine where they assign the responsibilities of the multidisciplinary team. Some

commenters specifically noted confusion about how the role of the multidisciplinary team differs from that of the HMHSAC.

*Response:* The final rule removes the proposed NPRM language requiring that programs have a multidisciplinary team. Instead, programs are required to use a multidisciplinary approach to mental health and wellness supports and are encouraged to take a team-based approach to meet this requirement. The intent of the NPRM was to be clear that mental health and wellness supports should be integrated program-wide, to convey the scope of these services, and to identify specific areas where mental health should be included. With this revision in the final rule, we are emphasizing the multidisciplinary approach to integrating mental health throughout Head Start program services and allowing programs to determine how best to meet that requirement. A program's multidisciplinary approach should certainly include building community partnerships, and the HMHSAC is one way a program can achieve this.

*Comment:* Many of the commenters who submitted comments on this topic expressed concerns about the availability of mental health professionals broadly and specifically in rural areas. These commenters noted the long waitlists for mental health professionals as a barrier to hiring mental health consultants who could provide consultation services to the program on a schedule of at least monthly. Some commenters offered specific suggestions for changing this requirement, including waivers, exemptions, or additional flexibilities if programs could demonstrate a shortage of licensed professionals with experience in early childhood education in their area. Other suggestions included expanding the consultant qualifications further and implementing mental health consultation, including frequency, based on programs' own data and community needs. Some comments requested more clarification on the requirement

related to mental health consultation, including whether the schedule applies at the classroom, program, or agency level.

*Response:* We revise the requirement related to mental health consultation in the final rule. While we retain a monthly frequency for mental health consultation, we expand programs' ability to provide mental health supports on at least a monthly basis, in part, with other licensed mental health professionals or behavioral health support specialists who are credentialed and trained in their field, such as community health workers, behavior specialists, and traditional practitioners, who are especially important in Tribal communities. Head Start programs are still required to have a mental health consultant; programs cannot entirely replace a mental health consultant with these other providers. Rather, programs can have these other providers that work in collaboration and consultation with mental health consultants to meet the "at least once a month" frequency requirement for providing mental health services, which is a requirement that applies at the program level.

ACF believes this approach is responsive to public comments. It balances the objective of integrating more mental health support for programs while acknowledging the challenges of the mental health workforce shortage. It allows programs to leverage other providers of mental health supports they can already access in their program and community. It also retains the critical role of the mental health consultant and their expanded role in not just addressing behaviors in the classroom but working with all adults in a child's life, including families and other staff outside the classroom, and coordinating with any other licensed mental health professionals or behavioral health support specialists who may be supplementing their work. Finally, it incorporates culturally responsive mental health approaches by allowing programs

to leverage traditional practitioners identified by their Tribal governments to offer traditional knowledge and practices.

*Comment:* Many commenters further elaborated on their concerns about the availability of mental health professionals, and particularly individuals trained to work with children, and offered suggestions to address the supply of providers. Specifically, they recommended that ACF support different provider qualifications and allow telehealth consultation.

*Response:* We think the revisions we made in response to public comments will support programs in implementing these requirements. Allowing a broader set of individuals to supplement the work of the mental health consultant balances the need for more mental health support in Head Start programs with the reality that mental health consultants may not be able to support programs at the frequency proposed in the NPRM. Additionally, we retain the NPRM proposal in § 1302.91(e)(8)(ii) that allows programs to secure mental health consultation from professionals who are providing services under the supervision of a licensed mental health professional, rather than needing to be already licensed themselves, such as trainees who may be in the process of obtaining licensure. Lastly, as we noted in the preamble to the NPRM, even if a consultant cannot be on site, teleconsultation services can be used to work with adults in the program.

*Comment:* While commenters agreed with the premise that mental health should be integrated throughout the program and that mental health supports should not be left to the mental health consultant alone, there was concern that the proposed changes were significant in scope and the level of expertise, time, and cost required to carry out these proposed

requirements would be daunting for some programs and would take significant time to implement.

*Response:* We think the revisions we made in the final rule in response to public comments will support programs in implementing these requirements while maintaining our commitment to the overall goal of integrating and elevating mental health and wellness supports across the program. As noted, we specifically remove the proposed NPRM language requiring a multidisciplinary team and revise the requirement related to mental health consultation to allow programs to use other licensed mental health professionals or behavioral health support specialists to supplement the work of the mental health consultant in the event the mental health consultant is not available at least once per month.

*Comment:* Some commenters stated that mental health services should be culturally sensitive and inclusive, taking into consideration the diverse backgrounds of the children and families served by Head Start programs.

*Response:* ACF agrees that mental health services should be culturally sensitive and inclusive, particularly given the diversity of the children and families participating in Head Start programs. The revision to the mental health consultation standard to allow other licensed mental health professionals or behavioral health support specialists to support programs if the mental health consultant cannot provide services on at least a monthly basis is responsive to these comments because it allows programs to look to other professionals who can augment the delivery of culturally sensitive and inclusive mental health services. For example, Tribal or other Native communities could incorporate traditional practices as mental health supports if the mental health consultant is not available at least once per month.

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

Section 1302.46 requires programs to collaborate with families to promote children's health and well-being and describes what that collaboration must include. The final rule modifies requirements throughout this section to incorporate a preventive approach to mental health into family support services by using more strengths-based language in paragraph (b)(1)(iii), and by providing opportunities to engage families in discussions about mental health even when there is not an identified problem in paragraph (b)(1)(iv).

The final rule adds a new requirement in paragraph (b)(2) that programs must provide ongoing support to assist parents' navigation through mental health systems, including providing information about how to access mental health services for young children and their families.

*Comments:* We did not receive many comments on this section. Those who commented expressed concern that the reference to "evidence-based" mental health services created additional confusion and program burden to determine if a mental health service is evidence-based.

*Response:* ACF removes the reference to "evidence-based" services in § 1302.46(b)(2)(iv) in the final rule. ACF strongly encourages programs to work with their HMHSAC or others with relevant expertise to ensure parents receive mental health information and referrals that are developmentally and culturally appropriate, and evidence-informed and rooted in science. However, we do not want to unnecessarily delay access to mental health supports by requiring programs to determine if services are evidence-based. Further, we want programs to identify services and providers that are culturally and linguistically responsive to the communities they serve. We acknowledge that not all interventions have been evaluated with the diverse populations that Head Start programs



serve. Whenever possible, ACF strongly encourages the use of evidence-based services with adaptations to make services appropriate for specific communities.

*Part 1302, Subpart H – Services to Enrolled Pregnant Women*

*Section 1302.81 Prenatal and postnatal information, education, and services.*

Section 1302.81 establishes the requirements for the prenatal and postpartum information, education, and services programs must provide enrolled pregnant women and other pregnant people, fathers, and partners or other relevant family members. Regarding mental health, the final rule retains provisions proposed in the NPRM and broadens the scope of the mental health information and education that may be helpful to provide to expectant families and ensures that social support is part of prenatal and postnatal services for enrolled families.

*Comment:* Many commenters expressed support for the proposed changes that aim to enhance social support and mental health for expectant families. Some commenters indicated that they have already incorporated these practices into their programs while others noted the need for additional support and resources to meet these requirements, including funding for staff training and curriculum development. A few commenters suggested the provision of additional information, including culturally relevant information.

*Response:* We retain the NPRM proposal in the final rule. ACF will support programs that need additional support in meeting these requirements through TTA.

*Part 1302, Subpart I – Human Resources Management*

*Section 1302.91 Staff qualification and competency requirements.*

Section 1302.91 establishes the staff qualifications and competencies for all staff, consultants, and contractors engaged in the delivery of program services. The final rule

clarifies the required qualifications for infant and early childhood mental health consultants to make clear that mental health consultants can include individuals who are working under the supervision of another licensed individual, as initially proposed in the NPRM. This aligns with best practice in the field, expands the pool of available mental health consultants, and provides opportunities to build the mental health workforce in the early care and education field.

*Comment:* Of the commenters who commented on this proposed change, some expressed support for the change to include individuals working under the supervision of another licensed individual. A few comments recommended retaining the term “certified” from the previous standards’ requirement.

*Response:* We retain the proposed NPRM language, which removes “certified” and replaces it with “under the supervision of a licensed” individual, in the final rule. Broadening the pool of mental health consultants in this way is supportive of ACF’s goal to reduce barriers to securing consultants while ensuring those individuals are receiving supervision and support from a licensed individual to facilitate the provision of high-quality services.

#### *Child Health and Safety (§§ 1302.47; 1302.90; 1302.92; 1302.101; 1302.102)*

The final rule makes improvements to protect child health and safety through several strategies, including broadening who needs to adhere to child health and safety to cover contractors and volunteers in addition to staff; clarifying that children should be supervised at all times; requiring annual training on positive social and emotional support and mandated reporter training; and codifying the timeline for reporting health and safety incidents to OHS. The final rule also streamlines and updates the Standards of Conduct and the categories of child maltreatment to align with the Centers for Disease Control and Prevention (CDC). Taken

together, these changes promote a culture of safety for children and adults through both preventative measures and addressing any serious incidents that do arise.

The final rule makes several changes from the NPRM to focus on serious child health and safety incidents while avoiding administrative burdens that could distract from efforts to address child safety. First, the final rule requires incidents to be reported to OHS as soon as possible, but within seven calendar days; this seven-day timeline is the current policy and a change from the NPRM, which proposed three days. The final rule also includes three clarifications in response to concerns raised in public comment that the reporting criteria were overly broad and would result in reporting small incidents or events to OHS. First, the final rule clarifies that programs should report child maltreatment as well as serious injury, harm, or endangerment resulting from lack of preventative maintenance or lack of supervision. Second, the final rule revises the Standards of Conduct to focus on maltreatment and endangering health and safety. Third, the final rule clarifies that reporting closures to OHS does not include reporting scheduled breaks, holidays, or temporary closures for inclement weather.

*Section 1302.47 Safety practices.*

Section 1302.47 establishes expectations for Head Start programs to ensure basic health and safety measures are taken for the protection of all children. As proposed in the NPRM, the final rule includes an additional requirement and several clarifications to strengthen safety practices that protect children in Head Start settings, including by broadening who must follow safety practices, better aligning practices with Federal child abuse and prevention law, being clearer that children must be supervised at all times, and clarifying the connection between safety practices and the Standards of Conduct.

Specifically, the final rule adds a requirement in § 1302.47(b)(5) that contractors and volunteers follow safety requirements, just as staff and consultants were already required to do. This change is intended to clarify that Head Start contractors and volunteers, in addition to staff and consultants, should be aware of and are expected to follow safety practices. ACF believes this is essential since contractors and volunteers need to understand how to safely interact with children in their roles, as well as their responsibilities if they witness unsafe practices in Head Start programs. For contractors, this requirement only applies to 1) contractors, or individuals on a contract, whose activities involve contact with and/or direct services to children and families, and 2) any contractor who could have unsupervised access to children and families.

Next, the final rule provides a definition of child abuse and neglect that is aligned with existing Federal statute, the Federal Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5101 note).<sup>47</sup> CAPTA, originally enacted in 1974, establishes national definitions regarding child abuse and neglect. The definition included in this final rule provides clarity and sets a consistent minimum standard for Head Start programs to follow. Programs must also comply with state, local, and Tribal laws, which may have additional stipulations related to defining child abuse and neglect and other requirements for mandated reporting. If there are discrepancies between Federal and state, local, and Tribal laws, programs should comply with the more stringent regulation.

The final rule clearly states that children must be appropriately supervised at all times in § 1302.47(b)(5)(iii). This change removes language in the previous standards that described settings in which children must be supervised. Requiring that children are appropriately

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<sup>47</sup> 42 U.S.C. 5106g. Available online at <https://www.govinfo.gov/content/pkg/USCODE-2017-title42/html/USCODE-2017-title42-chap67.htm>.

supervised at all times provides Head Start programs with a clear directive that children must never be left unsupervised and addresses one of the clearest health and safety threats for children.

Finally, the final rule clarifies that safety practices include the provision in the Standards of Conduct requiring staff, consultants, volunteers, and contractors to not maltreat or endanger children in § 1302.90(c)(1)(ii). This language in the final rule reduces redundancies from the previous requirement, which duplicated references to supervision and reporting of child abuse and neglect as safety practices.

*Comment:* Some commenters expressed concern that requiring volunteers to follow safety practices could deter community participation and parent engagement, as well as create liability issues. They suggested that volunteers should not be included in the pool of mandated reporters, especially since they are never left alone with children and are always supervised by trained staff. Other commenters expressed that it is important to include volunteers as mandated reporters.

*Response:* We retain the NPRM proposal that volunteers are required to follow safety practices in the Final Rule. ACF is committed to protecting children in Head Start from child abuse and neglect and disagrees with the contention that volunteers should not be mandated reporters, even if they should never be left alone or unsupervised with children. Even under supervision, a volunteer should have a basic understanding of safety practices. In the case of mandated reporting of child abuse and neglect, which appeared to be the primary concern identified in comments, 52 percent of states already require volunteers to report child

maltreatment.<sup>48</sup> Volunteers may directly witness or receive disclosures about child abuse and neglect in their roles and should have basic knowledge about what to do with this information.

*Comment:* Some commenters raised questions about specific circumstances under which a person would be a mandated reporter, such as contractors with no direct contact with children or who are not regularly at the program. Other commenters expressed that it is important to include contractors as mandated reporters.

*Response:* We retain the NPRM proposal that contractors are required to follow safety practices in the Final Rule. ACF agrees with commenters that there are specific types of contractors, such as facilities contractors working during non-operational hours or contractors performing emergency repairs, to whom these requirements are not applicable. For contractors, similar to the requirement for background checks in § 1302.90(b) and ACF's guidance in Program Instruction, ACF-PI-HS-16-05, *Background Checks – Extension of Compliance Date and Questions*, ACF only considers this requirement as applicable to 1) contractors, or individuals on a contract, whose activities involve contact with and/or direct services to children and families, and 2) anyone who could have unsupervised access to children and families.

*Comment:* Many commenters suggested that ACF provide clear guidance on when an individual is obligated to serve as a mandated reporter. Some commenters requested that ACF address how consultants, contractors, and volunteers would be trained to fulfill their responsibilities as mandatory reporters.

*Response:* ACF previously issued Information Memorandum, ACF-IM-HS-15-04, *Mandatory Reporting of Child Abuse and Neglect*, and will consider providing additional

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<sup>48</sup> Lee, J. & Weigensberg, E. (2022). "How Do Laws and Policies for Reporting Child Abuse and Neglect Vary Across States?" OPRE Report #2022-165. Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

guidance on the topic of mandated reporting of child abuse and neglect as needed.<sup>49</sup> Programs may refer to § 1302.47(b)(4) for an overview of Head Start requirements for safety training, including for staff with and without regular child contact. The final rule leaves flexibility for how programs approach training on mandatory reporting because it does not require programs to train contractors, consultants, or volunteers in this area. However, since these individuals are required to report suspected or known child abuse and neglect, we encourage programs to offer them information and training about mandated reporting. Numerous resources with essential information related to mandatory reporting of child abuse and neglect are freely available, such as through Child Welfare Information Gateway, Department of Defense Child Development Virtual Laboratory School, OHS ECLKC, and Caring for Our Children.<sup>50</sup>

*Section 1302.90 Personnel policies.*

Section 1302.90(c)(1) establishes the standards of conduct for all staff, consultants, contractors, and volunteers, which are part of a program's personnel policies. Given how critical child safety is in Head Start programs, the final rule ensures ACF is as clear as possible with requirements that reflect current best practices and guidance. The final rule makes several changes to the previous standards for clarity and alignment with other Federal resources and laws.

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<sup>49</sup>Early Childhood Knowledge and Learning Center (2015). *Mandated Reporting of Child Abuse and Neglect*. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start. Available at <https://eclkc.ohs.acf.hhs.gov/policy/im/acf-im-hs-15-04>.

<sup>50</sup>Child Welfare Information Gateway (2023). *Mandatory reporting of child abuse and neglect*. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. <https://www.childwelfare.gov/resources/mandatory-reporting-child-abuse-and-neglect/>; The Department of Defense Child Development Virtual Lab School (2023). *Protecting Children from Harm in Your Program*. Developed by the Ohio State University for U.S. Department of Defense, Office of Family Policy/Children and Youth and U.S. Department of Agriculture, National Institute of Food & Agriculture. Available at <https://www.virtuallabschool.org/preschool/child-abuse-identification-and-reporting/lesson-6>; Early Childhood Knowledge and Learning Center (last updated 2024). *Child Abuse and Neglect*. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start. Available at <https://eclkc.ohs.acf.hhs.gov/practicas-de-seguridad/articulo/child-abuse-neglect>; Early Childhood Knowledge and Learning Center (last updated 2022). *10 Actions to Create a Culture of Safety*. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start. Available at <https://eclkc.ohs.acf.hhs.gov/publication/10-actions-create-culture-safety>; National Resource Center for Health and Safety in Child Care and Early Education (last updated 2018). *Caring for Our Children: Recognizing and Reporting Suspected Child Abuse, Neglect, and Exploitation*. U.S. Department of Health and Human Services, Administration for Children and Families. <https://nrckids.org/CFOC/Database/3.4.4.1>.

First, the final rule modifies requirements under § 1302.90(c)(1)(ii) to align with categories and definitions of child maltreatment adapted from CDC child maltreatment resources, which were established through extensive consultation with experts to recommend consistent terminology related to potential child maltreatment.<sup>51</sup> The previous requirement included corporal punishment and physical and emotional abuse, but did not include sexual abuse or neglect, which are also types of child maltreatment that are prohibited in Head Start settings. The final rule provides definitions to facilitate clear and equitable understandings of the types or categories of child maltreatment. The categories are (A) corporal punishment or physically abusive behavior defined as the intentional use of physical force that results in, or has the potential to result in, physical injury, (B) sexually abusive behavior defined as any completed or attempted sexual act, sexual contact, or exploitation, (C) emotionally harmful or abusive behavior defined as behaviors that harm a child's self-worth or emotional well-being, and (D) neglectful behavior defined as the failure to meet a child's basic physical and emotional needs including access to food, education, medical care, appropriate supervision by an adequate caregiver, and safe physical and emotional environments.

In addition, the final rule provides examples of each category of child maltreatment and endangerment, which were informed by CDC guidance and research. The previous standards provided a list of what would be considered child maltreatment or endangerment of the health and safety of a child. This list included both broad categories of child maltreatment (such as physical abuse of a child), and specific behaviors that were redundant (such as binding or tying a child to restrict movement). The final rule provides a clearer understanding of what is meant by

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<sup>51</sup> Leeb RT, Paulozzi L, Melanson C, Simon T, Arias I. Child Maltreatment Surveillance: Uniform Definitions for Public Health and Recommended Data Elements, Version 1.0. Atlanta (GA): Centers for Disease Control and Prevention, National Center for Injury Prevention and Control; 2008.; Fortson B, Klevens J, Merrick M, Gilbert L, Alexander S. (2016). Preventing Child Abuse and Neglect: A Technical Package for Policy, Norm, and Programmatic Activities. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. Available online at <https://www.cdc.gov/violenceprevention/childabuseandneglect/fastfact.html>.



child maltreatment and endangerment by outlining broad categories of maltreatment with corresponding definitions and examples. ACF provides examples to offer concrete guideposts to Head Start programs, but these examples are not an exhaustive list.

Second, the final rule adds a requirement in § 1302.90(c)(1)(iii) to ensure staff, consultants, contractors, and volunteers report suspected or known child abuse and neglect, as defined by CAPTA and in compliance with Federal, state, local, and Tribal laws. Consistent with the requirement in § 1302.47(b)(5), this requirement only applies to those contractors, or individuals on a contract 1) whose activities involve contact with and/or direct services to children and families, and 2) who could have unsupervised access to children and families.

The final rule requires staff, consultants, contractors, and volunteers to respect and promote the unique identity of each individual involved in the Head Start program in § 1302.90(c)(1)(iv). The previous requirement only pertained to children and families' unique identities. The final rule is aligned with efforts to promote well-being for everyone in the program and communicate the need to ensure supportive and responsive relationships among staff as part of promoting safety.

Finally, the final rule clarifies that children cannot be left alone or unsupervised in § 1302.90(c)(1)(vi). This change removes language in the previous requirement which could be erroneously interpreted to mean that children could be left solely under the supervision of volunteers. This final rule clarification is consistent with ACF's policy in § 1302.94(b) that children should never be left alone with volunteers.

Overall, the comments on this topic reflected a commitment to child safety and well-being, as well as a recognition of the challenges faced by Head Start programs in navigating

reporting requirements related to staff conduct and ensuring a supportive environment for both children and staff. We discuss specific comments below.

*Comment:* Many commenters expressed concerns about the NPRM proposals in the Standards of Conduct, such as language related to negative impacts on mental health and emotional harm. Specifically, commenters were concerned that overly broad language could lead to overreporting and misinterpretation of staff actions that were intended to protect children or manage classroom behavior. Some commenters shared concerns about how the language could disproportionately impact staff of color. Commenters suggest that ACF should focus on serious incidents that truly impact child safety and allow programs to handle less severe matters internally.

*Response:* We revise the requirements for Standards of Conduct in the final rule. ACF agrees that overly broad language could have unintended consequences and revises the final rule with more targeted language which we believe will better prioritize child safety. ACF agrees that over-reporting could have the unintended consequence of jeopardizing child safety if Federal staff and programs are focused on reporting every incident instead of focusing on serious incidents that involve child endangerment, abuse, or neglect. ACF removes the language proposed in the NPRM that included what many commenters perceived to be an overly broad range of behaviors, and retains the previous requirement that staff, consultants, contractors, and volunteers do not maltreat or endanger the health or safety of children. In the final rule, ACF also modifies the NPRM definition of emotionally harmful or abusive behavior. The language proposed in the NPRM could be interpreted too broadly as capturing any staff conduct that is not considered best practice but would not be classified as maltreatment, as noted by commenters. The proposed language in the NPRM was also redundant with other subparts of the Standards of

Conduct that require implementation of positive strategies to support children’s well-being in § 1302.90(c)(1)(i). The final rule language that defines emotional abuse as behaviors that harm a child’s self-worth or emotional well-being captures staff conduct that is clearly not permissible because it has the potential to maltreat or endanger children.

*Comment:* Many commenters raised concern about the non-exhaustive list of examples or about specific examples of staff conduct, such as “forcibly moving” and “restraining.” Other commenters were supportive of examples such as “restrain” and suggested examples to add, such as “seclusion.”

*Response:* As was proposed in the NPRM and retained in the final rule, ACF includes examples of each category of child maltreatment and retains “restraint” as an example. We revise language from the NPRM to include “seclusion” and replace “forcibly moving” as examples.

ACF acknowledges that it is not possible to create an exhaustive list of examples. However, we believe it is important to provide concrete examples of behaviors that could maltreat or endanger a child, particularly for categories that can be more difficult to identify, such as emotional abuse and neglect.<sup>52</sup> Highlighting examples also facilitates equitable communication with programs and staff regarding ACF’s position on specific behaviors such as the use of restraint in Head Start settings, which is discussed further below. ACF offers existing TTA on ECLKC to facilitate further understanding. Additional examples of child maltreatment can be found in guidance from CDC resources.

Some commenters suggested that restraint should be permissible staff conduct under specific circumstances. While this rule does not address use in other settings, ACF opposes the use of restraint in Head Start settings. Retaining “restraint” as an example in the final rule

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<sup>52</sup>de Braal B. (2010). Understanding emotional abuse. *The journal of family health care*, 20(3), 82–84.; Hildyard, K. L., & Wolfe, D. A. (2002). Child neglect: developmental issues and outcomes. *Child abuse & neglect*, 26(6-7), 679-695.

communicates this position. The broader literature is clear on the risks of performing restraints.<sup>53</sup> Restraints are also used disproportionately on children with disabilities. Therefore, ACF is not making any changes to the final rule.

ACF agrees with suggestions to include the example of “seclusion” due to its disproportionate use on children with disabilities. Seclusion also has many similar adverse impacts as described above for restraint.<sup>54</sup> The final rule replaces isolation with seclusion as an example of emotional abuse.

ACF agrees with comments that “forcibly moving” may be an overly broad example. The final rule replaces this example with “pushing.”

*Section 1302.92 Training and professional development.*

Section 1302.92 establishes requirements for staff training and professional development. Specifically, § 1302.92(b) requires programs to establish and implement systematic approaches to 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.

The final rule adds a new requirement for annual training in positive strategies to support social and emotional development. ACF believes that enhancing the use of positive strategies amongst staff, as appropriate based on the scope of their job responsibilities, will support staff in preventing and responding to child behavior that challenges adults and increase opportunities for peer support as appropriate.

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<sup>53</sup> LeBel, J., Nunno, M. A., Mohr, W. K., & O'Halloran, R. (2012). Restraint and seclusion use in US School settings: Recommendations from allied treatment disciplines. *American journal of orthopsychiatry*, 82(1), 75.; Dunlap, G., Ostry, C., & Fox, L. (2011). Preventing the Use of Restraint and Seclusion with Young Children. *Technical Assistance Center on Social Emotional Intervention for Young Children.*; Office for Civil Rights, U.S. Department of Education. (2016). *Fact Sheet: Restraint and Seclusion of Children with Disabilities*. Available at <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf>.

<sup>54</sup> Ibid.

The final rule modifies the requirement related to mandated reporting of child abuse and neglect to specify that this training should occur on an annual basis. This requirement is intended to support staff in recognizing potential child abuse and neglect and understanding their legal responsibility as a mandated reporter.

*Comment:* Many commenters recognize the importance of staff training broadly and express a need for additional training and supports. Commenters suggest a variety of potential trainings that would benefit Head Start staff, such as training on trauma-informed care, implicit bias in interpreting behaviors, child development, or specific disabilities.

*Response:* ACF revises requirements for training in social and emotional development to be more inclusive of the diverse training needs commenters suggested. The final rule provides flexibility for programs to determine specific topics related to managing children's behavior that meet their staff's needs. ACF considers the impact of trauma on children's social and emotional development, implicit bias in interpreting behaviors, understanding basics of child social and emotional development, individualizing supports for social and emotional development of children with disabilities, or other related topics to be appropriate training topics to satisfy this requirement.

*Comment:* Of those who commented on the proposed changes to training and professional development, several commenters expressed support and a few share that they already implement similar practices. Some commenters raised concerns about associated administrative burdens of fulfilling this requirement, such as time and costs to track, provide, and enforce trainings and the availability of supports in rural communities. For example, a few commenters noted that an ACF requirement for annual mandated reporter training would exceed their State's requirement, which impacts their ability to access state training on a more frequent basis.

*Response:* We retain the proposed language from the NPRM on mandated reporting training in the final rule as it is critical for staff to understand information related to mandated reporting of child abuse and neglect. This is particularly important for Head Start programs, as the risk of experiencing maltreatment is higher for children under the age of four and children who have a diagnosed disability.<sup>55</sup> Furthermore, as Head Start programs primarily serve children from low-income families, it is critical that staff know how to differentiate between child neglect and a family experiencing poverty.<sup>56</sup> ACF has and can continue to support programs in meeting this requirement through TTA, including virtual TTA options to support rural and remote programs in meeting this requirement.

*Comment:* Commenters appreciated the strengths-based approach taken in mental health and noted other regulations that may benefit from this.

*Response:* ACF revises the requirement to use strengths-based language, replacing “challenging behaviors” with “children’s behavior” in this requirement.

#### *Section 1302.101 Management system.*

Section 1302.101 outlines management responsibilities governed by a system that enables the delivery of the high-quality services. Paragraph (a) of § 1302.101 establishes requirements for implementing a management system. The final rule adds a new requirement to implement a management system that ensures that all staff are trained to implement reporting procedures in § 1302.102(d)(1)(ii). This requirement is intended to promote consistent implementation and greater understanding of expectations and procedures related to incident reporting.

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<sup>55</sup> <https://www.cdc.gov/violenceprevention/childabuseandneglect/riskprotectivefactors.html>.

<sup>56</sup> Child Welfare Information Gateway (2023). *Poverty and Neglect*. U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau. Available at <https://www.childwelfare.gov/topics/safety-and-risk/poverty-and-neglect/>.

*Comment:* We received few comments on this section. Of those who commented on this section, commenters were generally neutral or supportive of the general approach to providing programs with an overarching standard as well as autonomy to develop and implement individual strategies and practices.

*Response:* ACF retains this requirement in the final rule.

*Section 1302.102 Achieving program goals.*

Section 1302.102 outlines requirements that programs establish goals and a process for monitoring program performance, including how they use data and report out to the governing body and policy council. Paragraph (d) of § 1302.102 establishes required reports that programs must submit for monitoring and oversight purposes, and § 1302.102(d)(1)(ii) specifically addresses required incident reports. The final rule makes several changes to this section that are intended to build upon recent subregulatory guidance on incident reporting expectations and clarify language where necessary to reduce potential over-reporting, which may keep Federal and program staff from focusing on serious incidents.

First, the final rule codifies the requirement to report incidents to ACF immediately but no later than seven calendar days following the incident. Second, the final rule requires programs to report significant incidents affecting the health or safety of a child when such an incident occurs in a Head Start setting and involves 1) staff, contractors, or volunteers who participate in a setting that receives Head Start funds, regardless of the child's Head Start funding; or 2) a child who participates in a setting that receives Head Start funds. Third, the final rule clarifies the requirement related to reporting classroom or center closures, and we clarify that ACF's definition of closures does not include scheduled holidays, scheduled breaks, or short-term closures for inclement weather. Finally, the final rule codifies several expectations for other

significant health and safety incidents that must be reported to ACF at a minimum. These include incidents involving any suspected or known maltreatment or endangerment of a child by staff, consultants, contractors, and volunteers under paragraph § 1302.90(c)(1)(ii); incidents involving serious harm or injury of a child resulting from preventative maintenance; incidents involving serious harm, injury, or endangerment of a child resulting from lack of supervision; and incidents involving any unauthorized release of a child.

Overall, many commenters who addressed this topic expressed a recognition of the importance of safeguarding children, but also a concern about the potential for over-reporting. Commenters shared a range of unintended and counterproductive consequences of over-reporting, such as negative impacts on workforce retention and unnecessary administrative burden on program staff and ACF. Below we address specific comments and requests for clarification.

*Comment:* Many commenters expressed concern about the short timeframe for reporting proposed in the NPRM. The proposed three-day deadline for reporting incidents was seen as unrealistic and potentially counterproductive. Commenters believed it would not allow sufficient time for a thorough internal investigation and could lead to incomplete or inaccurate reporting. A few commenters gave examples of how organizational structures and partnerships would prevent reporting in this time in some cases. Many commenters suggested extending the reporting period to ensure more accurate and comprehensive reports.

*Response:* ACF revises the requirement from the NPRM for reporting incidents. ACF agrees with commenters that in some cases, the upper limit of three days may be too restrictive. An upper limit of three days may not allow programs to gather accurate information to distinguish serious health and safety incidents from more minor concerns. ACF also recognizes



that grant recipients may be immediately focused on complying with child welfare and law enforcement to facilitate investigative processes and ensure immediate safety needs are met. The final rule requires a reporting timeline of immediately but no later than seven calendar days following the incident. To ensure consistency in operationalizing this requirement, ACF recognizes the day a program learns of an incident as “Day 0”. If a program reports an incident to ACF on or after “Day 8”, the program will not be in compliance with this requirement. The requirement provides an upper limit of seven calendar days.

*Comment:* Several commenters expressed concern about incident reports involving non-Head Start-funded children, citing concerns about being asked to reveal personal identifiable information, protected health information, or issues related to family’s consent.

*Response:* ACF retains the requirement that programs submit a report for a significant incident affecting the health and safety of a child, when such an incident occurs in a Head Start setting and involves staff, contractors, or volunteers who participate in a setting that receives Head Start funds, regardless of the child’s Head Start funding. ACF requires these reports because such incidents can have broader implications for children served in the program, including those funded by Head Start dollars. ACF disagrees with the argument that these reports entail privacy concerns. ACF does not request personal identifiable information or protected health information in incident reports. Programs should not submit personal identifiers that could tie any health information back to a child.

*Comment:* A few commenters requested clarification on whether mandated reports of child abuse and neglect involving parents would be a required incident report under this section.

*Response:* ACF revises the requirement to clarify its intent that programs are not required to submit reports to ACF related to mandated reporting of child abuse and neglect involving

parents. However, if a parent is involved in a reportable incident while participating in a Head Start setting as a volunteer or employee, the program must submit an incident report. ACF identified that the NPRM proposal language requiring programs to submit reports of significant incidents affecting child health and safety in Head Start settings involving “other adults” could be misinterpreted to include parents. We remove this reference to “other adults” in the final rule to clarify ACF’s intent.

*Comment:* Many commenters request greater clarification on the types of incidents that must be reported, such as classroom closures and significant child health & safety incidents. Many commenters shared questions about whether a situation would be a reportable incident, such as a child crying in a classroom, snow days, or a child tripping accidentally.

*Response:* ACF revises requirements in this final rule for the types of incidents that must be reported at minimum to provide greater clarity as appropriate. ACF agrees that broad language can increase the risk of over-reporting which may distract Federal staff and program staff from addressing serious incidents. Several questions or concerns from commenters reflected over-interpretations of ACF’s intent, and ACF revises language in those requirements. We discuss these revisions in more detail below.

First, ACF revises the NPRM proposal describing significant incidents such that the final rule removes the term “mental health” from the description of incidents. The final rule aligns with the previous requirement describing significant incidents affecting the health or safety of children. ACF requires programs to report instances of potential emotional abuse and neglect. However, the reference to mental health caused confusion and over-interpretation in comments. ACF believes the revised requirements to the Standards of Conduct are best designed to keep children safe.

Second, we revise the requirement in the final rule such that programs must report incidents that require classrooms or centers to be closed. ACF's definition of closures does not include scheduled holidays, scheduled breaks, or short-term closures for inclement weather. The final rule removes the NPRM proposal to include specific exemptions to prevent misinterpretation that any other closures are reportable. As proposed in the NPRM and retained in the final rule, this requirement no longer includes the phrase "for any reason" to clarify ACF's intent.

Third, ACF revises the requirement in the final rule to clarify which incidents related to significant health and safety incidents are reportable. The final rule separates the NPRM proposal into two distinct requirements for clarity. Each requirement in the final rule identifies what is considered "significant" in the regulation for clarity and accessibility of information. The final rule requires programs to submit reports related to incidents involving 1) serious harm or injury of a child resulting from lack of preventative maintenance, and 2) serious harm, injury, or endangerment of a child resulting from lack of supervision. ACF believes these clarifications in the final rule will reduce the risk for over-reporting incidents related to lack of preventative maintenance and lack of supervision. ACF includes leaving a child unattended on a bus as an example of neglect in § 1302.90(c). This is a concrete example of an incident involving endangerment of a child resulting from lack of supervision and as such is required to be reported. ACF believes this approach is responsive to general comments expressing concerns about overly broad requirements for ACF reporting, as it narrows the scope of reportable incidents to those ACF believes are most indicative of substantial or systemic concern.

*Comment:* Many commenters expressed concern about expanding the reporting requirement to include violations of the Standards of Conduct. Commenters express that this

requirement in particular could undermine program autonomy to manage minor incidents and negatively impact staff morale. Commenters note how the proposed changes in the NPRM to the Standards of Conduct may lead to confusion and overly punitive approaches (see the discussion in the Standards of Conduct section). Commenters suggest that ACF should focus on serious incidents that truly impact child safety and allow programs to handle less severe matters internally. Commenters suggest a range of approaches to accomplish this, such as aligning reporting requirements with CAPTA, deferring to state licensing and welfare system results unless are extenuating circumstances, and creating a tiered system that differentiates serious violations requiring immediate reporting to ACF.

*Response:* Head Start programs are required to report incidents of abuse and neglect under current policy, and the final rule clarifies that this continues to be the case. ACF makes modifications to this standard and believes that the final rule language more accurately represents conduct that clearly requires a report to ACF under new requirements in § 1302.102(d) and allows programs autonomy in managing staff conduct that does not rise to this severity.

ACF previously released the Information Memorandum, ACF-IM-HS-22-07, *Reporting Child Health and Safety Incidents*,<sup>57</sup> which clarified that OHS considers violations of the Standards of Conduct to be a significant incident affecting the health and safety of children. Based on the comments, ACF agrees that some of the proposed changes in the NPRM to the Standards of Conduct could lead to confusion and overly punitive approaches. The modified requirements in the final rule described in § 1302.90(c) are intended to address these concerns. Specifically, the final rule retains the previous requirement that staff do not maltreat or endanger

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<sup>57</sup> <https://eclkc.ohs.acf.hhs.gov/policy/im/acf-im-hs-22-07>.

children and uses uniform categories and definitions of child maltreatment. With these changes, ACF believes that the final rule is clearer and focuses incident reporting on serious incidents. Several commenters misinterpreted incident reporting requirements to include all sections of the Standards of Conduct. The final rule clarifies that only those standards pertaining to the maltreatment or endangerment of children by staff, consultants, contractors, and volunteers requires an incident report. Programs have discretion over other staff conduct issues. ACF believes this approach addresses most commenter's concerns.

ACF believes that the final rule creates a system that better differentiates violations that warrant incident reports. ACF's role in incident reporting is distinct from the child welfare system. ACF determines whether the program is in compliance with ACF regulations pertaining to the incident, while the child welfare system determines if a report is substantiated based on evidence of child maltreatment. Furthermore, states' definitions of child abuse and neglect vary, and they require different levels of evidence to substantiate reports.<sup>58</sup> Basing ACF policies on variable State approaches could result in inequitable monitoring of programs depending on the state in which the program is located. If permitted and as appropriate, programs may update ACF with relevant information about licensing and child welfare findings. Programs are encouraged to update ACF if a program has already taken action to correct an identified issue.

*Comment:* Many commenters requested that ACF provide clearer guidance on reporting procedures, such as the type of information required, reporting process, and expected response time from ACF.

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<sup>58</sup>Lee, J. & Weigensberg, E. (2022). "How Do Definitions of Child Abuse and Neglect Vary Across States?" OPRE Report #2022-164. Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.; Lee, J. & Weigensberg, E. (2022). "How Do Laws and Policies for Investigating Reports of Child Maltreatment Vary Across States?" OPRE Report #2022-167. Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

*Response:* ACF acknowledges commenters' request for clearer guidance on incident reporting procedures. However, ACF does not believe this is appropriate to include in regulatory requirements for programs. ACF will consider other ways to provide this type of guidance as appropriate.

*Modernizing Head Start's Engagement with Families (§§ 1302.11; 1302.13; 1302.15; 1302.34; 1302.50)*

This final rule adds or updates five standards to improve the family experience, both initially during program recruitment, application, and enrollment, and in ongoing communications once the child is in the program. The final rule makes adjustments from the NRPM to account for different community preferences and the fact that not all families will want to use modern technology. The changes are responsive to commenters that identified diverse preferences and culturally relevant communication styles in their communities.

First, this final rule adds a new paragraph (b)(1)(v) under § 1302.11 that requires programs to identify the communication methods and modalities available to the program to best engage with prospective and enrolled families in accessible ways. This ensures programs use the community needs assessment to identify the preferred communication modalities among its families, whether they be social media platforms, text messaging, enhanced websites, automated or personal phone calls, or dedicated phone lines for program updates. It also ensures programs are meeting the needs of all prospective and enrolled families, including those with various disabilities, schedules, levels of language access, family structures or generational differences, literacy levels, and cultural backgrounds.

Second, § 1302.13 outlines the requirements for recruiting children to a Head Start program. This final rule adds clarifying language to the standard that a program must include modern technology options in two areas: 1) to encourage and assist families in applying for admission to the program, and 2) to reduce the family's administrative and paperwork burden in the application and enrollment process.

Third, this final rule adds a new paragraph (g) to § 1302.15, focused on requiring a user-friendly process for enrolling new families into the Head Start program. Paragraph (g) states a program must regularly examine their enrollment processes and implement any identified improvements to streamline the enrollment experience for families. This new provision requires programs to establish new procedures or update current procedures that are both streamlined and user centric. ACF expects programs to regularly update these procedures to reflect changes in community needs or best practices.

Fourth, this final rule adds a new paragraph (b)(9) to § 1302.34 that requires programs to use accessible communication methods and modalities that meet the needs of the community when engaging with prospective and enrolled families. ACF expects programs to consider both currently enrolled families as well as prospective families. This provision will ensure programs consult and engage with parents and families, incorporating their input into the creation of processes and communication channels.

Lastly, this final rule modifies the purpose statement in § 1302.50(a) by requiring programs address the individual needs of families in how they develop their communications. This change reflects Head Start's multi-generational approach and is intended to convey that programs should accommodate the needs of all family members.

*Comment:* Most of the public comments that addressed modernizing engagement with families were supportive of the new requirements. Commenters highlighted the importance of effective communication with families and the value of adopting modern technology to facilitate this. Even while supporting the sentiment of these changes, some commenters expressed concerns that the term “must use” in § 1302.13 is overly prescriptive. Some commenters shared that in-person interactions and traditional methods of communication may better meet the needs of children and families who most need Head Start programs. Others said modern methods may not meet the needs of Tribal and rural communities with limited access to technology and reliable infrastructure. Overall, the comments reflected a desire for a better balance between modernizing communication and engagement methods and ensuring accessibility and adaptability.

*Response:* ACF recognizes commenters’ concerns that programs need flexibility to use communication strategies that meet community needs. As such, while maintaining the overall sentiment of the changes, ACF adjusts language in the final rule to emphasize the importance of implementing enhancements that align with community needs and enhance the efficiency of service delivery. In § 1302.13, ACF changes the language proposed in the NPRM to require that programs give families the option of using modern technology, rather than requiring the use of modern technology in the application and enrollment process. In § 1302.34, ACF changes the language proposed in the NPRM from requiring the best available communication methods to ensuring the communication methods are accessible to all community members and meet the needs of the community. Finally, in § 1302.50, ACF alters the proposed language from the NPRM from requiring programs to use the most accessible communication methods, to using methods that meet the needs of each individual family. ACF believes these



modifications in the final rule language better clarify a family-centered approach to recruitment, enrollment, and communication that meets evolving community expectations around the use of technology, while also being attuned to digital development in rural and remote communities and deploying more traditional methods as appropriate. ACF acknowledges the benefits of in-person enrollment and recruitment efforts to better access and benefit some families, especially in rural and Tribal areas, and does not intend to discourage those practices. These changes present an opportunity for programs to seek input on the communication methods they currently use and improve their family engagement strategies and procedures.

ACF expects these requirements may look different in practice in each program based on the unique needs of their families and community. For many families, their expectations regarding interactions with service providers have changed due to the availability of modern technology. Programs may find an online, mobile-friendly application portal provides an efficient way both for families to apply and for the program to review applications. Programs may integrate their application process with those of other state or local benefits applications. For some families, in-person application support may be more appropriate. There are many reasons we agree with an approach to family engagement that flexibly includes both technological and in-person options. A family-centered, accessible approach acknowledges parent and family diversity related to language access, literacy levels, and disabilities. Programs may partner with local or online translation agencies to offer translation services for families who speak languages other than English. This can include translating enrollment forms and other documents and materials into languages commonly spoken by the community or providing translation services for meetings and in-person events. Programs can utilize

communication applications that support multiple languages and offer features such as real-time translation, text messaging, and video calling. Closed captioning, subtitles, and speech-to-text tools may also be beneficial. Materials in accessible formats such as braille, large print, or accessible electronic documents should be available as needed for individuals who are blind or have low vision. Programs may also consider offering Telecommunication Relay Services (TRS) to facilitate telephone communication with individuals who are deaf, hard of hearing, or who have speech or language disorders.

*Comment:* A few commenters expressed concerns about a potential added financial and human resource burden to operationalize these changes. A few commenters also noted a potential conflict between the intended purpose of the revision to § 1302.13, which is focused on reducing family burden during the application and enrollment process, and the new provision in § 1302.12(i) allowing programs to adjust a family's income to account for excessive housing costs when determining eligibility.

*Response:* ACF disagrees that there will be a significant financial or human resource burden associated with these changes. ACF believes the cost to programs to make these determinations and implement new technologies will be nominal. Additionally, while ACF acknowledges that there may be some initial burden associated with implementing these changes, we see significant benefits and efficiencies for programs and families over time. Streamlining the enrollment experience for families will result in more user-friendly and efficient processes, ultimately reducing burden and fostering greater trust with families. This in turn supports Head Start programs in delivering services more equitably and effectively. ACF also acknowledges the potential additional burden associated with the changes to the eligibility determination process in § 1302.12(i). However, we deem this burden reasonable

considering the importance of providing additional flexibility for families who are making above or near poverty wages, but face high housing costs, and would be eligible for Head Start programs if those disproportionately high housing costs were taken into account when determining eligibility. The changes to eligibility determination are also optional for programs.

*Community Assessment (§ 1302.11)*

Section 1302.11(b) requires Head Start programs to conduct a community assessment to design a program that meets community needs and builds on community strengths and resources. The HSPPS describe a broad and comprehensive assessment of community needs, strengths, and resources and specify the minimum data Head Start programs must use in this process. Programs must complete a comprehensive community assessment at least once during a five-year grant period with an annual review and update of significant changes. The revisions to this section in the final rule emphasize the importance of this tool, the Communitywide Strategic Planning and Needs Assessment, as an intentional process for Head Start programs to understand the community they serve, plan accordingly, and strategically review and update. This section makes some changes from the NPRM, including adding language emphasizing the importance of collecting information on families experiencing homelessness in response to comments that proposed changes in the NPRM could have the unintended consequence of collecting less information on these families. The final rule also clarifies that programs must annually review and — as needed — update their community needs assessment, but they are not required to complete a comprehensive assessment every year. Finally, this section provides more

information on the type of information that can inform the community needs assessment in response to requests by commenters for additional clarity from the NPRM.

We recognize that many Head Start programs utilize the community assessment effectively to inform the design of their program. However, some Head Start programs and others in the Head Start community have raised concerns about the requirements as previously written. Concerns included lack of clarity on purpose, especially on the purpose and scope of the annual review and update. Some programs may collect unnecessarily complicated data rather than utilizing information they know or have available to them that is relevant to their community. Related concerns include the cost and staff resources needed for complex data collection and analysis. Together these challenges can create costly barriers to some programs using their community assessment to effectively guide programmatic decisions as intended, especially with staff who are newer to the Head Start program and rely on policy to guide their implementation of the community assessment.

The final rule updates this section to promote clarity around the intent of the community assessment, align with best practices, and support the use of the community assessment to inform key aspects of the Head Start program. At the beginning of this section, we have added a description of the purpose, goals, and intended outcomes of the community assessment to strengthen programs' use of this tool. Next, we have added language encouraging programs to be strategic and intentional in what data they collect and use to achieve intended outcomes. We have also included language to encourage programs to access readily available data on their community and to challenge programs to consider data beyond counts of eligible populations and resources in the community. Specifically, we strongly encourage programs to collect information directly from impacted families when possible, including enrolled and prospective

families, as their perspectives on their needs and strengths are critical to program design. ACF will provide TA and information on best practices to support programs in gathering lived experiences. Additionally, ACF has added language in the final rule to ensure transportation needs and resources are part of the data that informs a program's design and service delivery.

ACF has also revised the paragraph on the annual review to the community assessment to better describe the purpose and goals of this endeavor. As clearly described in the purpose paragraph, a comprehensive community assessment is only required once in the five-year grant period and an annual review allows programs to determine if changes in the community may impact how the program serves families and therefore warrant an update to the assessment. In the final rule, we have clarified that the annual review and update is not a comprehensive community assessment but should be approached strategically to guide a program's modification of services. We have also described how the annual review can support and be supported by other required processes, including the annual self-assessment (part 1302, subpart J) and the annual funding application.

In this final rule, we emphasize that the community assessment is not an isolated requirement to be conducted; rather, it is the basis of program design and service delivery. ACF has retained the requirement that programs conduct a comprehensive community assessment once during their five-year grant cycle and annually review the assessment. This annual review is still required as community factors can change rapidly. For example, a large employer could move in or out of the service area, or there could be a rapid increase in the number of families experiencing homelessness. It is essential that programs are aware of significant community changes and incorporate this knowledge into program design and service delivery.

*Comment:* Commenters generally agree that the community assessment process should be streamlined, with many supporting the idea of not requiring annual updates unless significant community changes occur. A few comments suggested this revision reduces burden only slightly as programs must still collect data for their annual funding application, and therefore asked ACF to clarify how these processes work together. Others stated that revisions did not go far enough to reduce burden and, in fact, were more prescriptive than current standards. A few commenters suggested ACF provide more guidance on how to determine what updates are required annually. Other commenters misunderstood the revisions and thought that the NPRM removed the requirement for the annual review and update of the community assessment entirely.

*Response:* ACF believes that the main burden reduction comes from a new emphasis on strategic data collection and use and the emphasis on the purpose of the community assessment. We do not view the revisions as adding burden or as overly prescriptive, as we do not add requirements but rather descriptions of how programs can strategically determine what information is needed. This requires programs to make strategic decisions on what relevant demographic data to collect and how to utilize it to improve program quality.

ACF understands that the language used in the NPRM regarding the annual review and update caused confusion and concern for some commenters. This final rule reiterates the requirement for an annual review but clarifies programs do not need to complete a comprehensive assessment every year. Programs must review their community assessment every year. The results of this annual review will dictate whether service delivery changes are needed. We further understand that streamlining the annual review language inadvertently caused concern regarding families experiencing homelessness. ACF does not intend to minimize our focus on homelessness, and we have restored language in this final rule requiring programs to

look specifically each year at changes to families experiencing homelessness in their communities. We acknowledge the suggestions from commenters on how best to collect data regarding families experiencing homelessness, and we will continue to provide TTA to programs in this area.

*Comment:* A variety of concerns about data were expressed through public comments. Several commenters suggested that using publicly available data as a proxy could reduce the burden of data collection and costs. Some commenters suggested that additional guidance was needed from OHS to help programs understand which data sources could be used as proxies. Others suggested that proxies may not truly capture community characteristics. Specifically, some commenters expressed concern about the impact the proposed changes would have on programs' ability to recruit and serve children and families experiencing homelessness. Many cited the lack of existing data sources to identify children and families experiencing homelessness, such that accurate proxy data would not be available. Commenters also recommended OHS ensure best practices for data collection and use, particularly regarding the promotion of equity, accessibility, and cultural sensitivity. Commenters' recommendations included adding requirements to collect data on families' technology needs, local teacher salary and benefit information, and other information to inform program goals and design.

*Response:* ACF revises the NPRM language to describe expectations around data collection and use in the community assessment process more completely. In lieu of the term "proxy," which we recognize created some confusion for commenters, we clarify that programs should utilize their own knowledge and existing data relevant to their community, and should rely on community partners to fully understand the community they serve. Programs should be strategic and intentional in collecting information relevant to their program and the populations

they serve, rather than collecting information about the entire community. We acknowledge the suggestions made by commenters on data practices and will provide TTA to programs as requested to promote best practices for ensuring culturally appropriate data collection.

*Comment:* Nearly half of the comments on this section highlighted the importance of transportation resources in community assessments, noting that lack of transportation is a significant barrier for many families. While supportive of this addition to the NPRM, several commenters expressed concern that requiring an assessment of transportation resources and needs may lead to a requirement to provide transportation, which is untenable for many programs.

*Response:* Since transportation can be a common barrier for families in poverty attaining needed services, ACF considers it important to include an assessment of available transportation resources in the community. The goal of adding this to the community assessment is to ensure that programs are aware of resources available to support families and develop partnerships. ACF recognizes the often-high cost of transportation due to cost of buses as well as a lack of available drivers and monitors. As such, ACF is not requiring the provision of transportation by Head Start programs but expects programs to prioritize identifying available community partners and resources to mitigate this ongoing challenge.

*Comment:* Commenters provided suggestions on how to strengthen the focus on equity, diversity, and cultural sensitivity in collecting community assessment information. Some also suggested an increased focus on using community assessments to design programs to meet needs of diverse communities. Other commenters recommended revisions to the NPRM language to enhance a strength-based approach to understanding and incorporating the unique needs of all community members.



*Response:* ACF agrees with these comments, and we specifically focus on the inclusion of diversity, equity, inclusion, and accessibility in the final rule. As one example, we modify the enumerated list of demographic data that programs need to collect as part of the community assessment to highlight race and ethnicity as well as children living in poverty.

*Adjustment for Excessive Housing Costs for Eligibility Determination (§ 1302.12)*

Section 1302.12 describes the requirements Head Start programs must follow to determine, verify, and document eligibility of prospective families. In this final rule, we added new paragraphs (i)(1)(i) and (ii) to § 1302.12 to allow a program to adjust a family's income to account for excessive housing costs when determining eligibility. The final rule largely retains the proposed requirements in the NPRM with additional information on implementation process.

Many programs have expressed concern that Head Start eligibility criteria do not account for the high cost of living in some areas across the country. High housing cost burdens have increased for low- and moderate-income renting households since the 1960s. A growing number of families earn just above poverty wages but spend more than 30 percent of their total gross income on housing costs, a threshold that has long been used to define housing affordability and is used by the Federal Department of Housing and Urban Development (HUD) as a rent limit for the HOME Investment Partnerships Program for low-income rental units. Adjusting income for housing expenses is an effective way to provide additional flexibility for families who are making above or near poverty wages, but face high housing

costs, and would be eligible for Head Start if those housing costs were taken into account when determining eligibility.

In this final rule, § 1302.12(i)(1)(ii) introduces the adjustment for housing expenses and states that a program may make an adjustment to a family's gross income calculation for the purposes of determining eligibility in order to account for excessive housing costs. In addition, a new term for “housing costs” is defined in § 1305.2 as the total annual expenses on housing, which may include rent or mortgage payments, homeowner’s or renter’s insurance, utilities, interest, and taxes on the home. Utilities may include electricity, gas, water, sewer, and trash. Programs can use bills and expenses from one month to calculate the average expenses that a family has throughout the year.

ACF recognizes that programs do not need to calculate housing expenses for all families since many will still qualify for Head Start services based on income alone, or due to some other qualifying factor, such as participation in SNAP or Temporary Assistance for Needy Families (TANF). Therefore, the regulatory language in paragraph (i)(1)(ii) indicates that a program “may” use available documents to calculate housing costs. Programs should continue using their current methods of verifying eligibility based on tax forms, pay stubs, or other proof of income. These regulatory changes allow programs to also use bills, lease agreements, mortgage statements, and other documentation that shows housing and utility expenses. By including this income deduction calculation in eligibility determination for Head Start, ACF expects many programs to utilize this deduction calculation for families seeking eligibility. However, programs must adhere to their recruitment and selection criteria to ensure they prioritize the enrollment of families most in need of services as required in § 1302.13.

*Comment:* Comments on the housing adjustment provision revealed overwhelming support for the intent behind these changes, with many commenters agreeing that this approach would better reflect the reality of many families who, despite earning above the poverty line, are burdened by housing costs and could benefit from Head Start services. However, some comments expressed concerns about the administrative burden this change could impose on both families and program staff. Commenters worried that the requirement for additional documentation to prove housing expenses could be burdensome, potentially leading to errors and inconsistencies in eligibility determination. Additionally, there were concerns that the process could become too complicated and time-consuming, which might deter families from applying and slow down the enrollment process. A few commenters noted that the additional documentation burden is at odds with the final rule changes in §§ 1302.13 and 1302.15 to reduce families' burden and streamline their experience in the application and enrollment process.

*Response:* We retain the provision allowing programs to adjust a family's income to account for excessive housing costs when determining eligibility. We recognize that collecting and reviewing families' housing documentation may add some burden. The use of the housing adjustment is optional, and it is not necessary to apply this adjustment to families who are already income-eligible or are eligible through other eligibility categories. Additionally, in this final rule, we revise language from the NPRM to provide further clarity and instruction on what documentation is required and how to calculate the adjustment. ACF believes this provision affords programs the flexibility to incorporate families' excessive housing costs into their existing eligibility determination processes while managing administrative burden. Furthermore, ACF will provide TTA as needed to grant recipients on how to calculate the

housing adjustment in order to help minimize administrative burden and facilitate consistent application of the policy.

*Comment:* Several commenters suggested that instead of requiring programs to document individualized housing expenses, OHS should consider using a standardized measure such as HUD's Fair Market Rent data as a proxy for housing costs to simplify the process and reduce the potential for error and administrative burden. If the use of a proxy is not allowed, several comments requested clear guidance on what types of documentation would be acceptable and how to calculate the deductions for housing expenses. Commenters expressed a desire for the documentation review process to be as easy as possible for families and programs, with a few suggesting the use of signed family declarations when documentation is not available or allowing families who receive housing assistance to be categorically eligible for the program.

*Response:* We acknowledge commenters' suggestions to consider HUD's Fair Market Rent (FMR) data as an alternative to reviewing individual families' housing documentation, but do not incorporate that approach into this final rule. ACF will provide forthcoming guidance on how a housing adjustment tool can be used to help determine income eligibility. We also acknowledge the suggestion to allow for categorical eligibility for families in receipt of housing assistance; however, as eligibility categories are largely determined by Head Start statute, we do not incorporate this suggestion in the final rule.

#### *Tribal Eligibility and Selection Process (§§ 1302.12, 1302.14)*

This final rule revises eligibility requirements for Tribal programs to conform with congressional action in March 2024. The Head Start Act previously allowed up to 49 percent of

AIAN program enrollment to be comprised of enrollees who did not meet income eligibility criteria if certain conditions were met, while the remaining 51 percent of the AIAN program participants had to meet an income eligibility criterion specified at § 1302.12(c)(1) (e.g., family income at or below the poverty line, eligible for public assistance, experiencing homelessness or in foster care). With the passage of the Further Consolidated Appropriations Act, 2024 (Pub. L. 118-47), Tribal programs now have the discretion to consider eligibility regardless of income. In this final rule, we revise the requirement at § 1302.12(e)(1) to reflect that change in statutory language. Public Law 118-47 also emphasizes that Tribal programs may, at their discretion, use their selection criteria to prioritize children in families in which a child, family member, or member of the household is a member of an Indian Tribe. We revise the requirement in the final rule accordingly in § 1302.14, which is a separate section of the HSPPS where selection criteria requirements are outlined.

*Comment:* As noted in section V, *General Comments and Cross-Cutting Issues*, many NPRM commenters from Tribal communities requested categorical eligibility for AIAN children. These commenters emphasized the importance of ensuring AIAN children in their communities receive comprehensive and culturally relevant services through Tribal Head Start programs. They requested revisions to the standards to allow them to reach more children in their communities and remain sustainable programs into the future.

*Response:* We agree with commenters and understand from our engagement with Tribal leaders that categorical eligibility for AIAN children has been a priority for Tribal programs. This change in eligibility requirements was included in President Biden's FY 25 Budget Request to Congress, and it has now been enacted into law through the passage of Public Law 118-47. We believe this change in eligibility better positions Tribes to determine which children would

most benefit from Head Start services in their communities. In this final rule, ACF revises the eligibility requirements for Tribal programs to be in alignment with congressional action. Publishing the final rule with requirements in the previous HSPPS that have already been superseded by Public Law-118-47 would be confusing for Tribal programs at a time when they are implementing this new law and are looking for clear guidance from ACF. ACF engaged and consulted with Tribes on the eligibility changes in a variety of ways prior to the release of this final rule, including at the in-person ACF Early Childhood Tribal Consultation in July of 2024, providing multiple opportunities to provide feedback on important implementation considerations.

*Migrant and Seasonal Eligibility and Selection Process (§§ 1302.12, 1302.14)*

*Sections 1302.12(f) Eligibility and 1302.14(a) Selection Process*

This final rule revises eligibility requirements for Migrant or Seasonal Head Start (MSHS) programs to conform with congressional action in March 2024. Under the previous program standards, to be eligible for MSHS, a family was required to demonstrate that their income came primarily from agricultural labor, which was interpreted and implemented to mean a family's income must have been more than 50 percent from agricultural work. As changes in agricultural work have made it increasingly less common for the primary source of a family's income to be from agricultural work, many migrant or seasonal farmworker families have not met the criteria to enroll in MSHS. To remove this barrier to enrollment, ACF proposed in the NPRM to revise language in § 1302.12(f) regarding income eligibility for MSHS.

In March 2024, after the November 2023 publication of the NPRM, Congress enacted changes to eligibility requirements for MSHS in the Consolidated Appropriations Act, 2024 (Pub. L. 118-47). In the final rule, we revise § 1302.12(f) to ensure alignment to the change in

eligibility in Public Law 118-47. We revise § 1302.12(f) to allow MSHS programs to serve any child who has one family member whose income comes primarily from agricultural employment as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802), even if they do not meet other income eligibility requirements. The summary of comments focuses on the public's response to the NPRM proposal, even though Public Law 118-47 also removed the requirement that MSHS families meet other income eligibility requirements. Additionally, Public Law 118-47 reinforces an existing requirement that MSHS programs use their selection criteria to give priority to children of migrant farmworker families. We revise the requirement in the final rule accordingly in § 1302.14, which is a separate section of the HSPPS where selection criteria requirements are outlined.

*Comment:* Most commenters who discussed these changes supported the revision to consider income of one family member being primarily from agricultural work rather than the entire family's income being primarily from agricultural work. They appreciated ACF's efforts to address financial and operational challenges faced by migrant and seasonal farmworkers. Specifically, commenters applauded that the provision maintains the requirement for agricultural work while also recognizing challenges such as income from agriculture not always being the primary source due to its instability, and the need to find work in other industries as a result. Further, commenters stated that the revised eligibility requirements will offer more flexibility to families to pursue additional economic opportunities without fear of losing MSHS eligibility due to not meeting the family income threshold of at least 51% coming from agricultural work. Some commenters stated that if adopted, the provision would balance the requirement to work in agriculture to qualify for MSHS with the need for Migrant Seasonal Head Start services due to the unique demands and seasonality of agricultural work. Several comments highlighted the

importance of this revision to allow access to families who would benefit from the critical early learning opportunities MSHS provides, especially in rural and farming communities.

*Response:* ACF agrees with commenters who expressed that this revision to current standards would better reflect the nature of agricultural work and allow those in the agricultural industry to benefit from MSHS programs. The language on income from agricultural work for MSHS eligibility remains the same as it was in the NPRM and, as described above, we further revise § 1302.12(f) to conform to Public Law 118-47 that removed the requirement that MSHS families meet other income eligibility requirements.

*Comment:* While supporting the change in the threshold of agricultural employment required, several commenters offered suggestions to amend this provision. One commenter suggested that OHS provide MSHS programs additional flexibility (such as a lower threshold than 51%) on agricultural work since the Head Start Act requires a family to be “primarily engaged in agricultural work,” without specifying a threshold. Another comment suggested adding a requirement that MSHS program selection criteria prioritize families with two parents working in agriculture for enrollment over families with only one family member working in agriculture. An edit was recommended by one commenter to change Migrant or Seasonal to Migrant and Seasonal and to specify that MSHS programs decide whether a family meets the agricultural work threshold. One commenter expressed concern that the revision did not reduce eligibility paperwork, stating it was still complicated to document income and other eligibility criteria such as age. A few commenters asked for clarification on operationalizing this change and how the definition of family relates to this provision.

*Response:* ACF acknowledges suggestions made by commenters to amend the provision; however, we maintain this language in this final rule and further revise this requirement to align



with Public Law 118-47. We believe the revisions to the income threshold provide increased access to families who would benefit from MSHS. The changes to this requirement also address concerns about the burden to the extent that families no longer need to meet other income eligibility requirements, aside from one member of the family's income coming primarily from agricultural work. Further, Migrant or Seasonal is the title of the program, and the final rule does not change that, and programs are responsible for determining whether a family meets the agricultural work threshold in accordance with regulations on documenting eligibility. Programs set their own selection criteria, which is not part of this section, but is in section § 1302.14.

#### *Section 1302.12(j) Eligibility Duration*

ACF also adds a new provision to clarify the duration of eligibility for infants and toddlers served in MSHS programs. Specifically, § 1302.12(j) outlines the requirements related to the period of time a child remains eligible for Head Start and when program staff must verify the family's eligibility again before continuing services. Current standards do not specify how long eligibility lasts for the youngest children in MSHS, even though nearly half of enrollment in MSHS programs is comprised of children under the age of three. ACF adds a new paragraph (j)(5) which states that MSHS programs can serve infants and toddlers until the age of three without re-verifying eligibility, consistent with the requirement in § 1302.12(j)(2) that children participating in EHS are eligible for the duration of the program. We believe this new language will provide equity among programs while promoting continuity of care for infants and toddlers in MSHS programs. The language in the final rule is the same as the language proposed in the NPRM.

*Comment:* There was consensus among commenters who spoke on this topic, with strong support for the revisions that align MSHS eligibility redetermination requirements with those of

EHS to ensure continuity of care. Most of these commenters supported the new provision at § 1302.12(j)(5) which aligns duration of MSHS eligibility with the existing duration for children in EHS at § 1302.12(j)(2). No opposition to this new provision nor concerns about this provision were expressed in public comments. One comment celebrated this revision as “a very welcome and overdue adjustment to the standards.”

*Response:* We agree with commenters and maintain the language on MSHS eligibility duration proposed in the NPRM.

#### *Transportation & Other Barriers to Enrollment and Attendance (§§ 1302.14; 1302.16)*

Section 1302.14 outlines the requirements for programs when establishing their selection process. Specifically, it requires programs to establish section criteria that prioritizes participants based on community need and other factors, such as family income, whether a child is homeless or in foster care, among others. The final rule includes a requirement in § 1302.14(d), *Understanding barriers to enrollment*, that programs use their community assessment to identify the population of eligible children and families and potential barriers to enrollment and attendance, including access to transportation for the highest need families. Programs must also use this data to inform ongoing program improvement efforts as described in § 1302.102(c) to promote enrolling the children most in need of program services.

Section 1302.16 specifies program requirements related to attendance, specifically in the areas of promoting regular attendance, managing systematic program attendance issues, and supporting attendance for children who are homeless. The final rule includes the requirement that programs examine barriers to regular attendance, such as access to reliable transportation, and where possible, provide or facilitates transportation if needed.

Below we discuss the public comments we received and our responses on §§ 1302.14(d) and 1302.16(a)(2)(v).

*Comment:* Some respondents strongly expressed that the NPRM requirement in § 1302.14(d) to survey and analyze data for families who were selected but did not enroll was a significant administrative burden.

*Response:* ACF agrees and changes this requirement in the final rule to state that programs must, as part of the existing community assessment process, identify the population of age- and income-eligible children and identify whether lack of safe and reliable transportation, especially for the highest need children and families, poses a barrier to enrollment and attendance. We revise the final rule to eliminate the requirement for additional information collection from families who were selected but who did not enroll or attend. ACF retains the NPRM-proposed change in § 1302.16(a)(2)(v), which requires that programs examine barriers to regular attendance, such as access to reliable transportation, and where possible, provide or facilitates transportation if needed.

*Comment:* Some commenters interpreted this section to mean that programs must provide transportation services if transportation is a barrier to attendance.

*Response:* Neither the NPRM nor the final rule requires that programs provide direct Head Start transportation services. In the final rule, we maintain the NPRM proposal to require that programs identify whether lack of transportation is a barrier to attendance and, if it is, make every effort to provide or facilitate transportation. When Head Start is paying for transportation services, such services must meet Head Start requirements. This can be challenging but programs are encouraged to work with community partners, such as school districts, school transportation contractors, and transit providers to identify solutions. When

lack of safe and reliable transportation is a barrier to Head Start program attendance, programs may need to consider changes in program design to ensure that children and families high on the eligibility list can access the program.

*Comment:* The majority of comments, including both from programs that currently provide transportation and those that do not, indicated that providing transportation services is expensive.

*Response:* ACF understands both that transportation is expensive to operate and that many of the children and families with the most significant needs lack access to safe and reliable transportation. As noted, the final rule does not require that Head Start programs necessarily provide direct transportation services. Rather, the rule requires that programs analyze whether the lack of transportation is keeping children otherwise high on the selection criteria list from access the program. If the program finds that lack of safe and reliable transportation is a barrier, it must develop and implement plans that address program needs that may include such actions as budgeting to provide transportation services directly or through contractual arrangement or partnering with school districts to expand services to include Head Start transportation services for children and families high on the eligibility list who cannot otherwise enroll.

*Comment:* Many commenters stated that there is a shortage of drivers with the required Commercial Drivers License (CDL). Some also stated that CDL drivers are able to earn higher salaries in other industries. One commenter asked that ACF approve a different type of vehicle that would not require a CDL to operate.

*Response:* While ACF agrees that CDL drivers have continued to be in demand and that this contributes to the overall cost of transportation services, we do not change this

requirement in the final rule. A CDL is required by most states for drivers providing student transportation. In some areas, programs recruit parents and community members as bus monitors or in other positions and help them acquire the knowledge, training, and experience needed to acquire a CDL. Such programs assist people by providing employment while ensuring a pool of drivers for the Head Start program. Other programs have recruited retired truck drivers who can get a passenger endorsement on their CDL and for whom Head Start employment benefits may be a draw.

*Comment:* Several commenters indicated that lack of transportation does not pose a barrier because they only enroll children whose families can provide transportation.

*Response:* The Act and the HSPPS require programs to develop selection criteria based on community need and offer enrollment to children from families with the highest level of need. While ACF acknowledges that Head Start transportation services are expensive, ACF is concerned that only enrolling children whose families can provide transportation is not a correct use of selection criteria. Programs must work to ensure lack of transportation is not a barrier to participating in the program. This may require long term planning and difficult program decisions.

*Comment:* A number of commenters, including both programs that currently provide transportation services and several organizations, applauded this provision of the NPRM. These comments emphasized that Head Start transportation services allow many children and families to enroll and attend who would otherwise be unable to access the program. Head Start program respondents stated that they would not be able to provide the services they do absent program-provided transportation.

*Response:* ACF agrees that Head Start transportation services are critical for many children and families, while also understanding the financial impact. This rule requires that programs assess their local needs and develop quality improvement plans that will improve access for the children and families who most need Head Start program services.

*Serving Children with Disabilities (§ 1302.14)*

Section 1302.14 outlines the requirements for selecting eligible children for participation in the Head Start program. Paragraph (b) of the section requires a program to ensure at least 10 percent of its total funded enrollment is filled by children eligible for services under the Individuals with Disabilities Education Act (IDEA) unless the responsible HHS official grants a waiver.

Though the previous standard § 1302.14(b) read “funded enrollment,” section 640(d)(1) in the Act states the percentage of children with disabilities (eligible under IDEA) is based on “the number of children actually enrolled,” rather than the funded enrollment. ACF has received feedback from various interested groups that this error has caused confusion among programs because the Act and the previous HSPPS stated different requirements. To address this inconsistency, the final rule changes “funded” to “actual” in § 1304.14(b)(1) so the HSPPS are consistent with the Act. This change clarifies the requirement and addresses the confusion caused by the discrepancy.

*Comment:* Most commenters expressed support for the proposed language change.

*Response:* As was proposed in the NPRM, we replace “funded” with “actual” in § 1304.14(b)(1) so the HSPPS are consistent with the Act.

*Comment:* A few commenters opposed the change and encouraged OHS to retain the previous HSPPS language to count “funded enrollment” rather than “actual enrollment” to ensure that children with disabilities have equal access to learning opportunities.

*Response:* We encourage all Head Start programs to recruit and enroll as many children who are eligible for IDEA services as possible. The 10 percent requirement is meant to be a floor rather than a ceiling for serving children who would benefit from the program. ACF strongly encourages Head Start programs to maximize services to children with disabilities who will benefit from the program’s strong focus on inclusive early childhood settings.

*Suspension and Expulsion (§§ 1302.17; 1305.2)*

Section 1302.17 describes ACF’s policies that severely limit suspension and prohibit expulsion due to a child’s behavior. This final rule clarifies which disciplinary practices are captured under suspension by adding a definition for suspension in § 1305.2. It also describes that the intended purpose of a temporary suspension is when a serious safety threat has not been reduced or eliminated by providing interventions and supports recommended by the mental health consultant, and the program needs more time to put additional appropriate services in place. The changes further clarify and strengthen previous standards regarding what a program must do to bring the child back to the program as expediently as possible. The intent of these changes is to provide sufficient clarity on the purpose of a temporary suspension and how to return a child quickly and safely to program services with the correct supports in place.

*Comment:* Many commenters generally support OHS’s efforts to limit suspensions and prohibit expulsions, recognizing the negative long-term impacts of such disciplinary actions,

especially on populations such as children of color and those with disabilities. However, the comments reflect a concern that current resources and staff training are insufficient to manage the severity and frequency of unsafe behaviors, leading to staff burnout, turnover, and a compromised learning environment and safety concerns for other children and staff.

*Response:* We acknowledge commenters' recognition of the importance of ensuring that the use of disciplinary practices does not perpetuate disproportionalities across different groups of children, including young boys of color, children with disabilities, and children who are dual language learners. ACF also agrees that these policies must be accompanied by adult capacity-building to equip staff to understand and respond to behaviors associated with suspension/expulsion early and effectively. The final rule revises the definition of suspension in § 1305.2 to clarify what ACF considers a suspension. Momentarily removing a child from the learning setting due to an immediate threat to child or adult safety, or due to established plans in a child's individualized family service plan (IFSP) or individualized education program (IEP), is not included in this definition of suspension. The final rule includes other requirements intended to support staff to manage and prevent unsafe behaviors, including training and professional development to use positive strategies to support social and emotional development in § 1302.92 as well as effective implementation of mental health consultation and a multidisciplinary approach to mental health, as outlined in § 1302.45.

*Comment:* Some commenters ask for more flexibility in handling suspensions, with some suggesting that "temporary suspensions" should be an option when staff and children's safety is at risk. Some commenters suggest changing the term "temporary suspension" to another name as the intent of this process is to provide better supports for the child, not temporarily remove them from the program without any supports or services.



*Response:* Section 1302.17(a) outlines the limitations on suspension and the steps that must be followed if a program proceeds with a temporary suspension, including providing continued support to facilitate the child's reentry into the program. As specified in § 1302.17(a)(2), a temporary suspension must be used only as a last resort in extraordinary circumstances when there is a serious safety threat. The language does not specify who is impacted by the serious safety threat, in acknowledgment that it could be either staff or children. The previous performance standards specified that temporary suspension could occur if the safety threat "cannot be reduced or eliminated," and the final rule maintains the NPRM proposal to change the language to be "has not been reduced or eliminated" to emphasize that the program should take active steps to attempt to reduce or eliminate the concern and demonstrate that the steps have not worked.

Although we retain the language of "temporary suspension," the requirement is clear that temporary suspension does not mean removing a child from a program without any supports or services. On the contrary, programs are required to continue engaging with the parents, mental health consultant, and other appropriate staff, and continue to use appropriate community resources; to provide additional program supports and services, including home visits; and to determine whether a referral to a local agency responsible for implementing IDEA is appropriate, or if the child has an IFSP or IEP, to consult with the responsible agency to ensure the child receives the needed support services.

*Comment:* Several comments request clarifying the role of the multidisciplinary team and mental health consultant, including in determining if a temporary suspension is needed.

*Response:* We remove the requirement that programs have a multidisciplinary team. Rather, programs must use a multidisciplinary approach to integrate mental health throughout

Head Start program services. Given the removal of the requirement to have a multidisciplinary team from this final rule, the specific role of that team in temporary suspensions is no longer relevant. The mental health consultant is an important partner in these decisions, as noted in the list of responsibilities of the mental health consultant in § 1302.45(b), and, specifically, in the implementation of the policies related to suspension and expulsion. Ultimately, the program is responsible for determining whether a suspension is necessary and for supporting children prior to, during, and after a suspension.

*Comment:* The comments also address the challenges of implementing some of the proposed changes to expulsion in § 1302.17(b) of the NPRM, such as the requirement for immediate placement in alternative programs. Many commenters note the scarcity of alternative placements with immediate availability or any alternative placements within the community, which could make compliance with these requirements difficult. A few comments request clarity about expectations for Head Start programs before a child is transitioned to an alternative placement, such as interim modified services.

*Response:* ACF does not believe further regulation is necessary on this issue at this time. ACF does not retain in this final rule the NPRM language stating that the placement can immediately enroll and provide services to the child. However, the existing program standards, which remain in effect at § 1302.17(b), already prohibit expulsion due to child behavior and outline expectations for when children exhibit persistent and serious challenging behaviors. This includes the requirement that a program work with appropriate entities to directly facilitate the transition of a child to a more appropriate placement in § 1302.17(b)(3). Directly facilitating a child to a more appropriate placement is intended to convey that a child's services should not lapse, and that the child should not be unenrolled from Head Start program services until the new

receiving placement enrolls the family and is ready to begin services. HHS, in collaboration with the U.S. Department of Education, previously released a policy statement that elaborates on ACF's position and expectations related to expulsion.<sup>59</sup> This includes the expectation that as part of direct facilitation, the program collaborates with the family, teacher, service providers, and receiving placement to develop and implement a seamless transition plan. In identifying a receiving placement, the program additionally ensures the new placement is inclusive and offers the child opportunities to optimize learning and develop skills alongside their peers. ACF is interested in understanding the extent to which programs are using the steps outlined in § 1302.17(b)(3) to determine a more appropriate placement and will consider regulating at some point in the future.

*Comment:* Several commenters express frustration with the lack of support from parents when trying to address challenging behaviors. Some comments suggest empowering families by providing a description of suspension and expulsion policies to families upon enrollment so they know their rights and so they understand their role in collaborating with programs to address child behavior and mental health.

*Response:* Section 1302.41 of the previous program standards requires Head Start programs to collaborate closely with parents as partners in their children's health, well-being, and overall development. ACF adds "mental health" throughout this paragraph in the final rule to clarify that mental health is an integral part of health that should be incorporated into conversations with parents early and often. ACF has and will continue to provide training and technical assistance on creating authentic partnerships with families, including strategies on ways to collaborate with families that foster children's healthy development. ACF encourages

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<sup>59</sup> <https://eclkc.ohs.acf.hhs.gov/publication/policy-statement-expulsion-suspension-policies-early-childhood-settings>.

programs to leverage resources to meet their needs, including providing descriptions of policies to families upon enrollment.

*Ratios in Center-Based Early Head Start Programs (§ 1302.21)*

Section 1302.21(b) sets requirements for ratios and group size within the center-based option. According to § 1302.21(b)(2), a 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. The NPRM proposed revising § 1302.21(b)(2) to encourage programs to use a lower teacher-child ratio of no more than three children to every teacher for their youngest children (infants under 12 months old), provided it does not interfere with continuity of care.

*Comment:* Overall, commenters supported the concept of smaller group sizes and lower staff-to-child ratios to promote individualized attention, especially for children with severe behavioral issues or identified special needs. A couple of commenters suggested that ACF require, rather than encourage, lower group size and ratios. However, many commenters noted challenges in implementing the proposed provision, including the difficulty of finding and hiring qualified infant/toddler teachers. Without additional funding, programs expressed that they cannot hire or effectively train more staff, and that they cannot provide additional physical space for smaller group sizes while still serving all their funded slots.

*Response:* ACF does not retain in this final rule the NPRM provision that encourages programs to use a 1:3 ratio for children under the age of 12 months. Section 1302.21(b)(2) remains as it was written in the previous standard. ACF reminds programs that they have the

flexibility to implement policies that are more stringent than the requirements within the HSPPS. This flexibility allows programs to adapt their services based on the immediate needs of children and families. This includes reducing group sizes and ratios in infant, toddler, and preschool classrooms.

*Comment:* Many commenters wanted flexibility to lower group sizes and ratios in preschool classrooms.

*Response:* We do not revise the standard to address these comments, as current standards already address flexibilities for programs to reduce group sizes and ratios in all age groups. Section 1302.21(b)(1) requires programs to determine teacher-child ratios and group sizes within infant, toddler, and preschool center-based settings based on the ages and needs of the children present. This allows programs to lower group sizes and ratios in infant, toddler, and preschool classrooms to best meet the immediate needs of enrolled children and families. Additionally, programs that need to reduce their overall enrollment levels in order to accommodate lower ratios may submit a change in scope application, and ACF will consider these applications.

*Comment:* Commenters recommended that ACF include specific strategies in regulation to support continuity of care (e.g., keeping children with a familiar adult as children move through classrooms/ages and mixed age group settings).

*Response:* We do not revise the standard to include specific strategies related to continuity of care. ACF encourages programs to access TTA resources provided by OHS to enhance their strategies to effectively support continuity of care.

*Comment:* Commenters asked ACF to specify how the age of a child should be determined for ratio purposes as well as to clarify the recommended ratio of typically developing children to children with disabilities in Early Head Start classrooms.

*Response:* We do not revise the standard to address these comments. Section 1302.21(b)(1) requires that programs determine the age of the majority of children in a class for ratio purposes at the start of the year, and they may adjust this determination during the program year, if necessary. Additionally, programs should follow local and State requirements to help them determine children's ages for ratio purposes. Programs can also access TTA resources provided by OHS to enhance their practices to effectively support the learning of children who are typically developing, children with identified disabilities, and children with suspected delays.

*Comment:* Many commenters noted the desire to temporarily reduce enrollment and lower ratios in classrooms with significant needs without worrying about the impact on their grant funding and inclusion in the Full Enrollment Initiative (FEI). A commenter also suggested that there should be waivers from the FEI so programs can meet the needs of enrolled children without penalties.

*Response:* We do not revise the standard to address these comments. ACF reminds programs that they must provide services to the number of children and pregnant women noted within their funding award. If programs need to adjust their number of funded slots, they should contact their regional office to submit a change request.

*Center-Based Service Duration for Early Head Start (§ 1302.21)*

Section 1302.21(c)(1) outlines requirements for service duration in Early Head Start center-based programs. This final rule removes outdated language from § 1302.21(c)(1)(i) but otherwise maintains the requirement that EHS center-based programs must provide 1,380 annual hours of planned class operations for all enrolled children.

*Comment:* Of those who commented on this issue, many were not supportive of requiring a 46-week minimum for EHS center-based services. Commenters suggested that 46 weeks is excessive, could lead to burnout for staff, and may negatively impact the mental health of staff and children. Some commenters expressed concern that the proposed changes would limit opportunities for professional development and staff wellness activities, emphasizing the need for breaks, planning, and time off for staff. Commenters also indicated that a 46-week minimum would reduce the time available for staff planning, trainings, and breaks.

*Response:* In response to the public comments on this issue, we do not maintain in the final rule the proposed change to require EHS center-based services occur across at least 46 weeks per year. While it has been and continues to be a long-standing expectation of ACF that EHS programs provide continuous, year-round services for enrolled children, ACF is committed to prioritizing the flexibility of local programs to determine the program schedule that best meets their community needs, while still achieving the required 1,380 annual hours of services for children.

*Comment:* Many commenters expressed concern that the 46-week minimum would increase the difficulty in recruiting and retaining qualified staff. Some commenters raised concerns that requiring teachers to work across 46 weeks and give up their summer breaks

could drive current employees to seek positions with more favorable work-life balance and result in increased turnover. Several commenters caution that the 46-week minimum would further the gap in days per year between and Head Start and Early Head Start programs, potentially impacting staff morale. Others noted the increased cost associated with a 46-week requirement.

*Response:* Our intent in this final rule is to support the Head Start workforce and promote consistent quality programming. We understand programs continue to experience staffing challenges and know that programs must be able to recruit and retain qualified staff to provide high-quality services to children. While our expectation remains that EHS programs provide continuous services, the proposed 46-week minimum is not adopted in the final rule.

*Comment:* Several commenters suggested that the proposed changes could lead to a decrease in program quality, and several argued that not all children benefit from longer hours in a classroom setting.

*Response:* We disagree with the idea that a 46-week minimum would lead to a decrease in program quality. Research on full-day and full-year programs suggests children in poverty benefit from longer exposure to high-quality early learning programs than what is provided by part-day and/or part-year programs.

*Comment:* Some commenters advocated for special provisions to adjust EHS service duration to align with local school district schedules. Others recommended adopting a structure like Head Start Preschool (HSP) service duration, aligning with the HSP center-based service duration requirement (1,020 hours across 8 months), or requiring 1,380 hours over 10-11 months or 34-46 weeks.



*Response:* While we remove the proposed 46-week minimum, the final rule maintains the current requirement that EHS center-based programs provide 1,380 annual hours of planned class operations for all enrolled children. Research suggests that continuity of care for infant and toddlers is key to healthy growth, development, and learning outcomes. Although we expect programs to provide continuous services, this final rule affords programs the flexibility to develop their program schedules in a manner that best meets community needs.

*Comment:* Some commenters stressed the importance of local autonomy and being able to tailor programs to meet community needs, with commenters requesting that ACF allow for waivers and exemptions under certain conditions. Several commenters cautioned that adding additional weeks to programs that are already at or above 1,380 hours would substantially increase total service hours or force programs to shorten days to extend the year which would negatively impact parent's ability to work. Some commenters noted that some parents do not want their child attending EHS for long hours or 5 days per week. Some noted that a 46-week requirement would interfere with cultural activities in the summer, such as those observed by Tribes.

*Response:* We retain flexibility for programs to decide which program schedules best meet the diverse needs of families and communities. Therefore, the proposed 46-week minimum is not adopted in the final rule.

*Comment:* A few commenters supported the proposed change, appreciating the clarification provided by the 46-week minimum and reiterating the importance of providing year-round, continuous services to infants and toddlers. However, a few in support of the changes cautioned that this would come at an increased cost to programs.

*Response:* We agree with the commenters about the importance of providing year-round, continuous services to infants and toddlers and recognize that many programs are already providing these services across 46 weeks or more. However, given the number of possible unintended consequences raised, we remove the proposed 46-week minimum in the final rule.

*Center-Based Service Duration for Head Start Preschool (§§ 1302.21; 1302.24)*

Section 1302.21(c)(2) outlines requirements for service duration for Head Start preschool center-based programs. This final rule does not change the service duration policies for these programs, but rather, makes six technical corrections to remove outdated regulatory text and improve readability of these standards, including the removal of outdated standards related to Secretarial determinations to lower preschool service duration requirements that previously appeared at § 1302.21(c)(3) and (4). Relatedly, the standards previously at § 1302.21(c)(5) and (6) have been renumbered and are now § 1302.21(c)(3) and (4) in the final rule.

*Comment:* We did not receive any public comments relevant to the proposed technical changes to the standards for Head Start Preschool duration. The only comments we received on this topic were not germane to this final rule. For instance, a few commenters recommended a reduction in Head Start Preschool service duration; a few advocated for a four-day service week to allow staff time for planning and paperwork; and a few advocated for flexibility for AIAN programs to better align with the traditions, culture, and values of their communities.

*Response:* We do not make any changes in the final rule in response to these comments, as they are not germane to the rule.

*Ratios in Family Child Care Settings (§ 1302.23)*

Section 1302.23 of this final rule adds clarifying language to the previous standard on child ratio and group size requirements for programs that operate a family child care option with enrolled Head Start children. These language changes do not alter the substance of the previous regulation but provide much needed clarity to Head Start programs with a family child care option while acknowledging the importance of maintaining ratios and group sizes that facilitate high-quality interactions and support children's safety and development.

Section 1302.23(b)(2) clarifies maximum group size requirements for family child care programs with one provider based on the ages of the children in the group. To add clarity to this section, the final rule adds two headers, "Mixed Age with Preschoolers" and "Infants and Toddlers Only." Under the header "Mixed Age with Preschoolers" the final rule clarifies that when a mixed age group with one provider includes preschoolers (e.g., children over the age of 36 months), the maximum group size is six children. In addition, no more than two of these six children can be under 24 months of age. Under the heading, "Infants and Toddlers Only" the final rule clarifies that when there is a mixed-age group where all the children are under 36 months of age and there is one family child care provider, the maximum group size is four children.

In making these clarifying revisions, we note that the previous standard in § 1302.23(b)(2) allowed for an increased group size when both a family child care provider and an assistant provider were present. However, the role of "family child care assistant provider"

was not defined and was not addressed in the staff qualifications and competency requirements outlined in § 1302.91(e)(5) for child and family services staff. To address this, the final rule now refers to two providers and removes a reference to “assistant provider” from the final sentence of § 1302.23(b)(4). In making these changes, the final rule clarifies the expectation that all staff who may have primary responsibility for children have the necessary training and experience to ensure quality services are not interrupted.

*Comment:* Many commenters suggested that the second provider in a family child care setting should be allowed to be in the process of obtaining their CDA credential, rather than having it from the start. They cited increased costs and potential difficulty recruiting qualified providers as the primary reason for this suggestion.

*Response:* We agree with the commenters and note that programs already have this flexibility under § 1302.91(e)(4)(i), which allows them to hire family child care providers who are in the process of achieving a Family Child Care CDA or state equivalent and plan to earn one of these credentials. Once hired and providing services, these family child care providers have 18 months (after they begin to provide services) to earn the credential.

*Comment:* Some commenters expressed a concern that the proposed changes will negatively impact partnerships with family child care providers, particularly in rural areas, and could lead to a reduction in the number of children and families served by Head Start programs.

*Response:* As previously noted, the final rule removes all previous references to “assistant providers” in the standards, thereby emphasizing that programs operating a family child care option must ensure all staff who may have primary responsibility for children have the necessary training and experience to ensure quality services. ACF believes the HSPPS

provide ample hiring flexibility for Head Start programs with a family child care option so as to minimize recruitment and/or retention issues that could impact partnerships with community programs. Specifically, under § 1302.91(e)(4)(i), programs may hire family child care providers who are enrolled in a Family Child Care CDA program or state equivalent prior to beginning service provision, and who acquire the credential within eighteen months of beginning to provide services.

While some commenters noted that they do not directly employ family child care providers and therefore lack the authority to require such changes in their community partners, we believe that partnerships offer the opportunity to support programs to meet this standard without causing undue burden. For example, programs operating the family child care option through partnerships can use Head Start professional development funds to support their community partners to hire and retain individuals who are on a path to attaining the required qualification. This access to professional and career development opportunities, provided through the Head Start program, can act as an additional incentive for family child care programs to enter into and sustain partnerships. Ultimately, providing support to family child care partners to help them meet the required qualifications has the added benefit of increasing the supply of high-quality family child care programs and providers in the community.

#### *Preventing and Addressing Lead Exposure (§ 1302.47)*

The prior HSPPS include a requirement at § 1302.47(b)(1)(iii) for all facilities where Head Start children are served to be free from pollutants, hazards, and toxins that are accessible to children. The final rule includes a requirement that Head Start programs take steps to protect

children from lead exposure and address any lead detected, but leaves the specific approach to program discretion rather than the more prescribed approach that was proposed in the NPRM.

The NPRM included a new section, § 1302.48, with several specific proposed requirements for programs to prevent and address lead exposure in the water and paint of facilities that serve Head Start children. In the requirements for water, ACF proposed that programs must sample fixtures used for human consumption for lead hazards on an annual basis, and take remediation actions to reduce lead in water to below 5 parts per billion (ppb). In the requirements for paint, ACF proposed that programs inspect for and address lead-based paint hazards with a certified risk assessor and take steps to restrict access to hazards and conduct abatement actions with a certified contractor.

While commenters agreed that children should not be exposed to lead in water or paint, they also emphasized that the proposed regulations were too prescriptive, costly, and would result in administrative burden. ACF also recognizes that there is not uniformity in lead action levels for water, and that related state and Federal requirements for these prescribed levels may change over time. Therefore, in this final rule, ACF does not retain the proposed § 1302.48. Instead, ACF includes a new simpler, more streamlined standard at § 1302.47(b)(10) that addresses the critical need to keep young children safe from exposure to lead, while being responsive to commenters' concerns about the potential cost, burden, and prescriptiveness of the proposed rule.

The final rule requires Head Start programs to develop a plan to prevent children from being exposed to lead in the water or paint of Head Start facilities. In Head Start facilities where lead may exist, programs must implement ongoing practices to protect children from lead exposure including testing and inspection at least every two years, with support from trained

professionals. HHS is not requiring that the testing and inspection regarding lead in paint include a lead risk assessment for all programs. If a risk assessment is done of a pre-1978 child-occupied facility, the person must be a certified risk assessor and the firm for which the risk assessor works must be a certified risk assessment firm.<sup>60</sup> This revision ensures that programs establish an appropriate schedule for testing for lead in water and paint based on the age and other physical characteristics of the facility, since for example, older facilities may have lead service lines, plumbing, fixtures, or lead-based paint. This revised requirement also recognizes that, for instance, in some newer facilities or in facilities where water pipes have been fully replaced and a program can document the water is free of lead contaminants, regular testing of water may not be required at the same frequency as for an older facility. If lead hazards are identified in either water or paint, programs must implement appropriate remediation or abatement actions. ACF believes the changes in this final rule balance the need to protect children from exposure to lead while maintaining program flexibility.

*Comment:* Commenters were supportive of the intent of the proposed requirements to address lead in water and paint. However, the majority of commenters emphasized that the proposed requirements would be costly to implement without financial support, were too prescriptive, and would create significant administrative burden for programs. Commenters noted that implementation would be more expensive in rural and remote communities, with higher costs due to travel for certified testers, and further noted confusion due to the different action level requirements across states and the Federal Government. A few commenters also

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<sup>60</sup> Independent of this rulemaking, HUD's regulations require re-evaluations for HUD-assisted properties to be performed by a certified risk assessor (24 CFR 35.1355(3)) and EPA's regulations require certification of individuals and firms conducting lead-based paint activities in pre-1978 child-occupied facilities (40 CFR part 745, especially subpart L (Lead-Based Paint Activities)).

asked for a longer implementation window so they could budget for testing and remediation costs.

*Response:* In response to the significant concerns raised regarding cost, burden, and different thresholds at the state and Federal level, ACF does not include the proposed § 1302.48 in the final rule. Given that the lead level in water requiring remediation action varies across states, ACF is mindful of not creating a specific requirement in this space that may conflict with state or Federal requirements. Instead, in this final rule, we add paragraph (b)(10) to § 1302.47, Safety practices, which outlines more streamlined requirements for lead in water and paint prevention practices. The final rule provides more flexibility for programs to budget and to establish a plan and practices tailored to the age and condition of their facilities to prevent children from being exposed to lead in water and paint of Head Start facilities. The final rule also provides facilities that can demonstrate children will not be exposed to lead hazards, such as those that have replaced or were constructed without lead-based plumbing or paint, or those using alternative water sources, such as water bottles or coolers, the ability to tailor their testing approaches and schedule appropriately, thereby mitigating costs for testing, inspection, and remediation or abatement to prevent lead exposure.

*Comment:* Commenters expressed mixed reactions regarding the frequency of testing for lead proposed in the NPRM. Several commenters supported and welcomed the flexibility proposed in the NPRM to test a rotating proportion of water fixtures annually such that all fixtures are tested at least once every five years. However, some noted that some states have their own standards for testing for lead in water and paint in child care facilities and schools. Other commenters emphasized that requiring annual testing for lead in water as well as reassessment every two years for lead-based paint hazards would be labor intensive and create administrative



burden for programs. Still other commenters suggested that the testing frequency proposed for lead in paint was too lenient.

*Response:* As noted previously, ACF does not include the proposed § 1302.48 in this final rule, and instead we add a new paragraph (b)(10) to § 1302.47. In facilities where lead may exist, this new standard requires testing and inspection of lead in water and paint at least every two years.

If a lead hazard is identified, remediation or abatement must be conducted. For lead in water, programs are only required to test water fixtures that are accessible or used by children enrolled in Head Start, thus, providing allowances for programs to minimize their testing frequency on a subset of fixtures at least every two years. This standard provides flexibility for programs to develop a plan to prevent children's exposure to lead in water or paint that better aligns with the possible risks for lead exposure in their facilities. The revised rule also provides allowances for programs that have confirmed they do not have existing lead hazards in their facilities – or that are taking alternative actions, such as the use of alternative water sources – to minimize continued testing, inspection, remediation, and abatement activities. This two year interval is aligned with the two year re-evaluation interval for HUD-assisted properties, such as child care facilities in common areas of multi-family housing, in the Lead Safe Housing Rule at 24 CFR 35.1355(b)(4).

*Comment:* Several commenters noted that there are currently considerable differences between state and Federal requirements for identifying and taking action on lead in water, particularly that the proposed requirements in the NPRM to take remediation action if lead levels in water were above 5 ppb differed from the Environmental Protection Agency's (EPA) lead action level of 15 ppb, and that it could be difficult to conduct remediation efforts for water

fixtures to achieve a lead level below 5 ppb, as water from faucets generally meet the EPA's standard of 15 ppb. It was also noted that the proposed requirements lacked specificity on the application of Dust-Lead hazard Standards (DLHS) and Dust Lead Clearance Levels (DLCL) for lead in paint.

*Response:* As described previously, ACF modifies the requirement in the final rule to be less prescriptive including the removal of the 5 ppb lead action level in water, understanding that there are currently differences in state and Federal requirements. Programs should determine lead action levels in water for their facilities informed by Federal and state requirements, guidance from state or local health departments or community water systems, and TTA or guidance from ACF. The final rule requires programs to work with trained professionals to abate lead-based paint hazards as needed. These professionals are equipped to enact EPA standards for DLHS and DLCL and subject to applicable EPA and HUD requirements and regulations.

*Comment:* Several commenters recommended TTA for addressing and preventing lead in water and paint. Specifically, commenters requested assistance in creating partnerships for remediation efforts and developing lead paint management plans. Commenters also noted there should be training for staff to become certified testers. It was also recommended that supports for finding certified testers and abatement contractors especially in rural or more remote communities are necessary.

*Response:* ACF will provide TTA and sub-regulatory guidance related to implementation of the new standard following the publication of the final rule. ACF will support programs as they develop a plan and, as needed, implement practices to address identified lead in paint and water of Head Start facilities.

*Comment:* A few commenters expressed concerns with continuing program operations if lead in water or paint hazards are identified in their facilities. Commenters identified that supports are needed for minimizing interruptions of service if remediation or abatement is required, and to define what restricting access entails.

*Response:* ACF will provide TTA and sub-regulatory guidance for programs to minimize disruptions in program operations or interruptions of service if a lead in water or paint hazard is identified in Head Start facilities that requires remediation or abatement.

*Comment:* A few commenters expressed concerns that implementing the proposed requirements for center-based programs located in schools will be difficult to enforce due to specific school system policies, variations in school facility size, and because some programs rent their classroom space from the schools.

*Response:* ACF revises the final rule so that programs must develop a plan to prevent children's exposure to lead in water and paint, implement appropriate testing and inspection protocols, and, as needed, remediate or abate identified hazards if they are accessible to Head Start children. Programs are only required to test fixtures that are used by the Head Start program. For example, if a Head Start program operates in a school, the program must test fixtures in Head Start classrooms as well as common areas used for the Head Start program. However, the program is not required to test those classrooms that serve older school-age children who are not enrolled in Head Start.

*Comment:* Some commenters asked for the use of bottled water as an option for remediation and expressed that programs should be required to test children following the identification of exposure to lead in water or paint.

*Response:* The requirements in the final rule allow programs the flexibility to develop a plan for preventing exposure to lead hazards in water and paint, including any necessary remediation or abatement efforts. A program could choose to permanently restrict access to fixtures impacted by lead and implement the use of an alternative water source, such as bottled water, if that is determined by the program to best meet program needs. We do not include a new specific requirement for programs to test children following exposure to lead in water or paint. However, the existing standard at § 1302.42(d) already requires programs to facilitate testing, evaluation, treatment, and follow-up as appropriate for children that may have a health problem, including higher lead levels.

Section 1302.47(b)(10) is added to the final rule, requiring programs to develop a plan to prevent children from being exposed to lead in the water or paint of Head Start facilities. If lead may exist, it also requires that programs implement ongoing practices of testing and inspection, at least every two years with support from trained professionals and, as needed, implement remediation or abatement to prevent lead exposure.

*Family Partnership Family Assignments (§ 1302.52)*

Section 1302.52 outlines the requirements for family partnership services, the foundational and central process by which Head Start staff engage with each family of enrolled children. In this final rule, we include new standards in § 1302.52(d) for assigning staff to work with families. This change is consistent with section 648A(c)(2) of the Act, which explicitly provides ACF with the authority to review and if necessary, revise, requirements related to family assignments, and as suggested by research and best practice, will improve the quality and effectiveness of staff providing services to families. Based on the research on human services case management, PIR data, feedback we received from programs, as well as support from

public comments on this proposed change in the NPRM, ACF believes there is a strong need for clearer standards for management of family assignments.

This final rule retains the proposed requirement in the NPRM and includes a maximum family assignment ratio of 40:1, with some exceptions, to address the long-standing problem of excessive family assignments for many staff who work with families. Family wellbeing is the greatest predictor of school readiness, yet Head Start has been without workload standards that promote quality services for parents and families. This new rule establishes more manageable workloads and sets staff up to better address family wellbeing, which includes family health and mental health, finances, educational advancement, employment, housing and food assistance, and other support services.

Specifically, we have retained the exception proposed in the NPRM, with some modifications, to allow programs to demonstrate that they have an alternative approach that affords high-quality with reasonable workloads that exceed 40:1; and made that exception and the process for getting that exception clearer by clarifying it is a waiver for programs that can demonstrate they are meeting staff competency and program outcomes requirements with a higher but reasonable staff workload. We also added an exception in the final rule that allows a program to temporarily exceed the 40:1 ratio to address operational needs during periods of staff absence and attrition, changes in daily operations related to start up or transitional activities, and circumstances of emergency response and recovery. We are establishing this new requirement to ensure more consistent, reasonable family assignments for staff who work directly with families and believe this change will improve staff wellness and the quality of services families receive, while also allowing flexibility for programs to implement assignments in ways that can work best for their families and program design.

*Comment:* The majority of commenters who submitted comments on this topic supported the idea of reducing family assignments to ensure high-quality services and to allow for more focused and individualized attention with families. Many agreed that a maximum family assignment ratio of 40 families per staff is a positive step towards managing healthy and realistic workloads, which are better for staff and can lead to better outcomes for families and children. A few commenters suggested that 40 is too high while others suggest that their programs are already at or below the proposed limit of 40.

*Response:* We agree that lower family assignment ratios are ideal for quality services and best for children, families, and staff. As was proposed in the NPRM, we maintain the maximum family assignment number at 40. We know from PIR data that more than half of Head Start programs nationally are already at or below a family assignment ratio of 40 families per staff person. Comments were consistent with this data.

This final rule provides exceptions to meeting the 40:1 ratio, and we made modifications to the NPRM language on these exceptions to improve clarity and enhance program flexibility. First, we added a waiver for programs that can demonstrate they are meeting staff competency and program outcomes requirements with a higher but reasonable staff workload. We also added a provision that allows programs to temporarily exceed the 40:1 ratio to address certain operational changes caused by, for example, emergencies and staffing changes.

*Comment:* Some commenters sought clarification about how to interpret and implement the family assignment ratio. A few comments sought additional clarification on how it applies to part-time staff. Some comments pointed to the need for a clearer definition of family services staff and responsibilities in the proposal. For example, some commenters reported that they use different terminology for staff roles or define staff responsibilities differently, and as a result,

they were unsure about the meaning of “family services” in the NPRM. A few comments raised questions about how OHS would monitor both the family assignment maximum and the exception clause for programs that could demonstrate how they meet quality and staff wellness requirements using a different approach. A few comments suggested that the regulation should instead establish a desired outcome and let the program determine the approach.

*Response:* To alleviate confusion about to whom the 40:1 standard applies, we remove the term “family services” from the NPRM and refer more generally to “family partnership services” in the final rule. We also clarify that this requirement refers to family, health, and community engagement staff who work on family goal setting, adding health staff since many staff who conduct the family partnership process support health services as well. We recognize the challenges caused by the pandemic, the operational challenges of running Head Start programs, and the variation of program staffing structures, but believe the goal of the multi-generation Head Start model requires reasonable assignments for family partnership services staff to be able to focus on family support services.

Some commenters asked how programs would demonstrate that they have an alternative approach that affords high-quality while maintaining reasonable workloads. We are including a waiver option to ensure programs can work toward outcomes using innovative and alternative approaches that work best for their staff, families, and communities.

ACF will issue additional guidance to grant recipients on the waiver process. In addition, to ensure programs understand what we mean by high quality family and community engagement services in the NPRM, the final rule includes references to two existing performance standards that contribute to quality and that programs can use to demonstrate the effectiveness of their alternative approaches. The requirement for systemic staff training and professional

development for child and family services staff, when fully implemented, builds staff competencies to improve child and family outcomes (§ 1302.92(b)(4)). Additionally, programs demonstrate quality when they use the Parent, Family and Community Engagement Framework outcomes to assess and provide services related to family strengths, interests, and needs (§ 1302.52).

*Comment:* Commenters raised the most concerns about the financial implications of implementing a lower family assignment ratio which, they report, would necessitate additional staff and supervisory hires. Some of these comments suggested that without additional funding, programs may have to reduce the number of slots available to children and families, and this is an unfavorable option.

*Response:* We acknowledge cost implication concerns from those programs who have family assignment ratios above 40:1. We maintain the long view that we need to move toward more consistent service quality for families across all Head Start programs. However, as noted, in the final rule we add a waiver for programs that can demonstrate manageable workloads for staff along with staff competence and quality service provision. We also add an exception whereby a program can temporarily exceed the 40:1 ratio to address operational needs during periods of staff absence and attrition, changes in daily operations related to start up or transitional activities, and circumstances of emergency response and recovery. In addition, we maintain, with modifications, the NPRM-proposed flexibility through which programs can demonstrate alternative approaches to quality. Further, we retain the three-year time frame from the publish date of the final rule to give programs time for planning and implementation.

*Comment:* A majority of comments highlighted a need for more flexibility in determining and implementing family assignment ratios for reasons that relate to program design, daily



operations, staff attrition, geography, and family and community needs. A few commenters suggested that there are variations in responsibilities of staff beyond case management and that some staff duties also include recruitment, eligibility, enrollment, health-related tracking, classroom breaks for teacher classroom substitutions, supervision of children, and behavioral support in the classroom.

*Response:* We understand commenters' concerns and questions about implementing this regulation and agree that programs need flexibility in implementing and maintaining their family assignment processes and procedures. As noted previously, we add a temporary exception in the final rule to address operational needs during periods of staff absence and attrition, changes in daily operations related to start up or transitional activities, and circumstances of emergency response and recovery. We also add the option of a waiver in the final rule, maintaining that it allows flexibility for programs with other than a 40:1 approach to continue to be responsive to staff wellness and family strengths and needs.

*Comment:* Some commenters identified a preference for a family assignment range, with recommendations averaging somewhere between 40-60. Some comments suggested that this would help with staff attrition and hiring, workload considerations related to home visit travel time, and models that include smaller caseloads for some staff assigned to do more intensive work.

*Response:* We disagree with a 40-60 family assignment range and believe that a maximum of 60 families for any one staff member does not meet the goal of supporting staff wellness and high-quality family engagement and family support services. Instead, we maintain the 40:1 family assignment ratio and both add and clarify exceptions that support program flexibility in implementing this regulation. We believe that these exceptions may address

concerns related to attrition, family assignment triage models, and workload factors, including those related to rural and remote programming.

*Participation in Quality Rating and Improvement Systems (§ 1302.53)*

This final rule clarifies language on Head Start program participation in State quality rating and improvement systems (QRIS). Section 1302.53 establishes the conditions under which Head Start programs should participate in State quality rating and improvement systems. In the previous standard, with the exception of American Indian and Alaska Native programs, each Head Start program must participate in its State QRIS if three conditions are met: 1) its State or local QRIS accepts Head Start monitoring data to document quality indicators included in the State's tiered system; 2) participation would not impact a program's ability to comply with the HSPPS; and 3) the program has not provided ACF with a compelling reason not to comply with this requirement.

This final rule reinforces the importance of quality improvements and encourages Head Start programs to continue their participation efforts, while clarifying that Head Start programs should participate in QRIS to the extent practicable if the State system has strategies in place to support their participation. The change also removes the three qualifying conditions for non-participation in the State QRIS described in the above paragraph, eliminating the documentation burden on programs that cannot reasonably participate in the QRIS. By eliminating these specific conditions and substituting language that emphasizes the State strategies for Head Start participation in general, we believe Head Start grant recipients, along with Head Start Collaboration Offices and OHS regional staff, can collectively encourage the evolution of State systems like QRIS to better receive Head Start programs. These changes are intended to reduce duplication of effort and reduce burden on programs and allow Head Start

programs to focus their resources on activities that are most likely to support quality services for children and families.

*Comment:* The public comments on the proposed change to QRIS participation requirements indicate consensus that the proposed changes are positive and alleviate unnecessary burden on Head Start programs. Commenters appreciate the shift from mandatory to recommended participation in QRIS, noting that the HSPPS often exceed State QRIS requirements and that in some instances, efforts to participate in QRIS can be duplicative and burdensome. They argued that the previous requirement to participate in QRIS was redundant, sometimes stressful, and created extra work for staff, without significantly benefiting Head Start programs.

*Response:* As was proposed in the NPRM and retained in the final rule in paragraph (b)(2), we remove the requirement that programs participate in their State or local QRIS and instead clarify that they should to the extent practicable. We eliminate the three conditions for participation in the State QRIS as written in the current standards at § 1302.53(b)(2)(i) through (iii), and add "to the extent practicable, if a State or local QRIS has a strategy to support Head Start participation without requiring programs to duplicate existing documentation from Office of Head Start oversight."

*Comment:* Some commenters noted participation in QRIS can better integrate Head Start programs into the State's overall early care and education system. They suggest the Head Start program, as a national model for high-quality early learning, could leverage participation in QRIS, along with other state systems collaboration efforts, to influence state QRIS indicators to better address the needs of all children, especially historically marginalized children and families. Overall, the comments support the proposed changes to QRIS

participation, advocating for programs to participate in QRIS when appropriate and with greater flexibility and reduced burden.

*Response:* We agree with commenters who support the changes, which still encourage participation but allow for a more flexible approach that recognizes the high standards of Head Start programs and reduces the duplication of efforts.

*Comment:* Some commenters questioned the value of State QRIS in general, arguing they include lower quality standards than Head Start and that they are inconsistent across states. A few commenters also noted that QRIS perpetuate racial inequities. Some of these commenters also noted that Head Start programs may be in a position to positively influence the State QRIS systems through their participation.

*Response:* OHS believes that where practicable, it benefits Head Start Programs to participate in QRIS in order to more fully participate in State early care and education systems and, in some instances, to participate in larger state-led quality improvement efforts.

#### *Services to Enrolled Pregnant Women (§§ 1302.80; 1302.82)*

##### *Section 1302.80 Enrolled pregnant women.*

This section specifies standards for services to enrolled pregnant women and other pregnant people. We revise this section in the final rule to clarify what topics program staff must discuss with parents at the two-week newborn visit, to reinforce accountability in documenting and tracking services enrolled pregnant women and other pregnant people receive, and to require data be used to design services that are culturally responsive and intended to prevent pregnancy-related deaths and address disparities across racial and ethnic groups. Early Head Start programs are critical in mitigating maternal-health related challenges as they are positioned to provide

postpartum support by ensuring the required newborn visit provides intentional opportunities for collaboration, intervention, and support.

*Comment:* Several commenters expressed concern about the feasibility of conducting newborn visits within two weeks of birth and requested flexibility in scheduling and conducting those visits. Commenters suggested allowing either a medical visit by a physician, a telephone call, or a virtual visit within the first two weeks after birth to be counted as a two-week newborn visit if parents are not yet ready to receive staff for visits.

*Response:* To clarify, the requirement in paragraph (d) is that a program schedule the newborn visit within two weeks after the infant's birth; the standard proposed in the NPRM and retained in the final rule does not require the program to conduct that visit within the first two weeks. We do not propose any changes to this requirement. While we understand the recommendation to allow a medical visit by a physician to count as this newborn visit, we maintain the NPRM proposal to require Head Start programs to conduct the visit and to cover specific topics during this visit; allowing a different provider to conduct the visit would mean a Head Start program has no control over the content of that visit, and would not position the Head Start program to provide follow-up supports.

*Comment:* Some commenters suggested we add "safe sleep" to the list of topics we proposed to add to paragraph (d) to clarify what program staff are required to discuss with parents at the two-week newborn visit.

*Response:* We agree with commenters' suggestion. We add "safe sleep" to the list of topics staff should discuss, at a minimum, during the newborn visit.

*Comment:* Many commenters agreed with requirements to enhance pregnancy services and to reduce the impact systemic racism has on maternal health outcomes for the Black and

AIAN women and other individuals and families that Head Start programs serve. A few commenters were concerned about costs associated with requiring programs to collect data on enrolled pregnant women and other pregnant people. A few commenters asked for more clarity on how to collect and use data to inform services and address disparities across racial and ethnic groups.

*Response:* We agree with commenters regarding the importance of reducing the impacts of systemic racism on outcomes for Black, AIAN, and other pregnant women and other pregnant people programs serve. We maintain this requirement in the final rule and require programs to do their part to reduce disparities in maternal outcomes across racial and ethnic groups.

We encourage programs to refer to Information Memorandum ACF-IM-HS-22-02, “Documenting Services to Enrolled Pregnant Women”, where we clarify how programs can improve their data collection efforts and use the data they collect on enrolled pregnant women and other pregnant people to inform services, leveraging existing resources to limit additional administrative costs. We also encourage programs to continue to work with their regional offices if they require additional support in meeting this standard.

*Section 1302.82 Family partnership services for enrolled pregnant women.*

This section requires programs to engage in the family partnership services process described in § 1302.52 for enrolled pregnant women and other pregnant people with a specific focus on their prenatal and postpartum needs. In the previous program standards, programs were not required to use any specific curriculum when engaging with pregnant women and other pregnant people in the family partnership services, nor were there requirements for the type of curriculum if one was used. We revise paragraph (a) in this section by adding language to clarify

that if a program chooses to use a curriculum with pregnant women and other pregnant people, they should select a curriculum that focuses on maternal and child health.

*Comment:* Some commenters recommended that programs serving pregnant women and other pregnant people use evidence-informed curricula, with a focus on maternal and infant health. A few other commenters suggested curricula that consider the unique cultural needs of diverse ethnic and racial groups.

*Response:* We acknowledge commenters' suggestions, however, in the final rule, we maintain the changes to paragraph (a) as proposed in the NPRM and decline to make further changes to this paragraph. We believe the revisions to paragraph (a) as proposed in the NPRM (described above) allow programs that use a curriculum in the provision of services to pregnant women the autonomy to decide which maternal health curriculum is right for the families they serve. We encourage programs that provide services to pregnant women and other pregnant people to use a maternal health curriculum that is culturally relevant and based on the best available research to help guide maternity care decisions.

*Comment:* Several commenters expressed concerns about the costs associated with developing curricula.

*Response:* ACF reminds programs that using a curriculum with pregnant women and other pregnant people is optional. The intent of the revision to this standard is to clarify that if a program does choose to use a curriculum, that it should be one that is appropriate for this service population. The Early Childhood Learning and Knowledge Center (ECLKC) provides some information on curricula, including some that are appropriate for use during the prenatal period. Following publication of the final rule, ACF will provide TA as needed to programs on the selection of appropriate curricula for this population.

*Facilities (§§ 1303.42; 1303.43; 1303.44; 1303.45)*

Part 1303, subpart E (Facilities), implements the statutory requirements related to facilities in section 644(c), (f), and (g) of the Act. It organizes requirements for grant recipients when they apply to use Head Start funds to purchase, construct or make major renovations to facilities, as well as outlines all relevant information and requirements for protecting the Federal interest under a broad variety of circumstances and aligns all provisions with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. In the final rule, ACF makes clarifying changes to several requirements related to facilities, including to the definitions of *major renovation*, *Federal interest*, and *purchase*, which are discussed in a later section. Additionally, in response to comments that the part 1303 process is burdensome for grant recipients, ACF makes other clarifying changes to facility regulation and processes in addition to what was proposed in the NPRM to be responsive to those comments and to reduce burden.

In general, most commenters agreed with the facilities proposals included in the NPRM, noting that they help to improve understanding of confusing areas. Overall, while there was support for the clarifications and revisions to the definition of the terms *major renovation*, *Federal interest*, and *purchase*, and to facilities valuation, under § 1303.44(a)(7), there was a desire for further guidance to ensure that Head Start programs can continue to provide safe and supportive environments for children without undue financial or administrative burdens. We discuss comments and our responses to changes to subpart E in more detail below.

*Comment:* One commenter asked ACF to consider the different types of facility-use agreements programs may be using – whether the recipient owns their facility, rents their facility,



shares their space with another program, or receives in-kind space within a school building, among others – and how this might impact the application of the major renovation definition.

*Response:* ACF acknowledges this request for clarification and would like to point to existing relevant regulations on how to navigate variations in facility-use agreements. Per § 1303.44(a)(2), recipients are required to provide the deed or other document showing legal ownership of real property, a legal description of facility site, and an explanation of why the location is appropriate for the service area. And per § 1303.45(a)(2)(i) through (iv), recipients are required to identify who owns the property, develop a cost comparison relevant to the particular facility-use agreement to list all costs, identify costs over the structure's useful life, and demonstrate how the proposed purchase is consistent with goals, community needs, enrollment, and program options, and how it will support quality services to children and families. For leased properties, recipients are required to provide a copy of existing or proposed lease agreement, and the landlord or lessor's consent (§ 1303.44(b)(1)). For a modular unit to be sited on leased property or on property not owned by a recipient, recipients are required to provide a copy of the proposed lease or other occupancy agreement giving grantee access to modular unit for at least 15 years (§ 1303.44(b)(2)).

*Comment:* Some commenters raised concerns and requested clarification with respect to the Davis-Bacon and Related Acts (DBRA) and its application to Head Start facility projects. Specifically, commenters are concerned that the provisions in the DBRA are a barrier for programs when it pertains to 1) locating qualified vendors to perform repairs and routine maintenance, due to the high labor cost that may be associated with DBRA compliance, and 2) the reporting and paperwork requirements imposed by the DBRA, which are seen as deterrents to timely and cost-effective repairs, especially in rural and suburban areas. These commenters argue

that an exemption from the DBRA would provide recipients with large cost savings which could be used to support their staff. Some commenters request that OHS align its guidance with the Head Start Act and exempt DBRA compliance for minor renovations and repairs necessitated by normal wear and tear. They argue that the DBRA should only apply to construction and major renovations, which they believe is consistent with other funding sources, such as the Department of Housing and Urban Development (HUD). A few comments specifically request that OHS address potential conflicting guidance on the application of the DBRA including in the Facilities Guidance Attachment A to ACF-IM-HS-17-01.

*Response:* ACF understands the concerns and clarification requested with respect to the DBRA. The application of the DBRA on Head Start facilities is statutory and ACF cannot make exemptions from its coverage through the rulemaking process. In addition, routine maintenance is generally not subject to DBRA requirements. *See, e.g.,* 29 CFR 5.2 (“The term “building or work” generally includes construction activities of all types, as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work.”).

*Comment:* A few commenters shared concerns that the part 1303 facility grant process is slow and burdensome, with calls for streamlining approval processes and increasing flexibility. These comments share frustration in a long application and approval process that can cost programs time, effort, stress, and large expense. In sum, these commenters feel the proposed changes, or lack thereof, to the part 1303 application process, fall short in addressing the market realities and barriers facing recipients pursuing facility applications.

*Response:* ACF agrees with commenters’ concerns regarding a part 1303 facility application process. As such, ACF makes changes throughout subpart E in this final rule to improve the facility application development and approval process:

- In § 1303.42, ACF strikes § 1303.42(b) so that recipients are no longer required to have a written statement from an independent real estate professional to satisfy the requirement under § 1303.42(a)(1)(iii). This will give recipients the flexibility to demonstrate the lack of suitable facilities in the grantee’s service area in a way that is less time-intensive and/or resource-intensive.
- In § 1303.43, we clarify the requirement related to the use of grant funds to pay fees for the application to determine preliminary eligibility. In the prior performance standards, grant recipients could submit a written request to the responsible HHS official for reasonable fees and costs to determine preliminary eligibility, *and if that request was approved*, the grant recipient could use Federal funds to pay those fees and costs. However, there was a lack of clarity about whether the funds used for the application to determine preliminary eligibility could be disallowed if the application was ultimately disapproved. The final rule makes clear that if recipients seek to use Federal funds for reasonable fees and costs associated with preliminary eligibility and the application to purchase, construct, and renovate a facility, they must receive approval from the HHS official. Once approval is granted to use Federal funds for these purposes, the funds are allowable regardless of the outcome of the application under § 1303.42 or § 1303.44.
- In § 1303.44(a)(3), we clarify that when referencing parking in the plans and specifications for the facility, it is *whether there is space available* for parking, *if applicable*, understanding that parking may not be relevant in all cases.
- In § 1303.44, we remove in paragraph (a)(7) the phrase “cost” as a description of “value” (“cost value”). In the previous performance standards, a licensed independent certified appraiser must estimate the facility’s “fair market value” when the purchase and

associated repairs, construction, and renovation is completed. In the NPRM, we proposed to remove “fair market.” In this final rule, we remove “cost” and “fair market” in recognition that there are multiple types of values and using “cost” could still lead to confusion. We also clarify in paragraph (a)(7) that the estimate from the appraiser can be done either on-site or virtually. ACF understands from recipients that finding an appraiser to come in-person can be challenging, particularly in rural areas. This clarification helps to ensure that all recipients know they have the flexibility to identify an appraiser and provide any necessary plans, specifications, or proposals via email.

- In § 1303.44(a)(14), we revise the requirement to establish clearer parameters around the additional information the responsible HHS official could request as part of the part 1303 process. The previous program standards state that it could be anything the HHS official may require; the final rule stipulates that it must be what the official “needs to determine compliance with regulations.”
- In § 1303.45(a)(2)(iii), we strike “balloon” in reference to mortgage payments because this is outdated language. ACF no longer considers balloon mortgages given the level of risk associated with them.

*Comment:* A few commenters raised that investing in facilities is needed to ensure safe and supportive environments for children to thrive and learn. These commenters express that some facilities are inadequate and emphasize the need for additional funding to modernize and safely maintain Head Start buildings, classrooms, and outdoor spaces. These commenters request OHS to provide extra financial support for facility projects.

*Response:* ACF agrees with commenters that investing in facilities is critically important to ensure high-quality environments for children, families, and staff. ACF reminds commenters

that the Head Start program does not receive a separate appropriation for facilities and increasing funding for facilities is not within our authority. ACF reminds recipients that they can request one-time funding to address facility needs.

*Comment:* A few commenters express the importance of the physical learning environment and the role it plays in the development and health of children and the mental health of staff. In sum, these commenters made recommendations for additional facility requirements, such as ones to address the adverse impact of indoor pollutants, providing ample natural light and maximizing air flow, to enhance accessibility for all children, families, and staff, and ensure that every Head Start child will learn and thrive in a safe and developmentally appropriate learning environment.

*Response:* ACF acknowledges these recommendations but is not adding these requirements at this time.

#### *Definition of Income (§ 1305.2)*

The definition for “income” in the prior HSPPS listed several types of income sources that could be included in the calculation of gross income and referenced additional possible sources in a lengthy document from the Census Bureau published in 1992. This definition has caused confusion regarding what should be included in income calculations for Head Start eligibility determination purposes. In this final rule, we update the definition of income and make it clearer and less burdensome to implement. We maintain the changes for this definition as proposed in the NPRM, with additional changes for further clarity. These changes are intended to ensure programs can more easily identify and calculate an applicant’s income.

To that end, in this final rule, we revise the definition of income as gross income that only includes wages, business income, unemployment compensation, pension or annuity payments, gifts that exceed the threshold for taxable income, and military income (excluding special pay for a member subject to hostile fire or imminent danger under 37 U.S.C. 310 or any basic allowance for housing under 37 U.S.C. 403 including housing acquired under the alternative authority under 10 U.S.C. 169 or any related provision of law). This revised definition includes the following changes from the prior standards' definition of income: removes "cash" from "gross cash income"; replaces "earned income" with the more specific terms "wages" and "business income"; adds "gifts that exceed the threshold for taxable income" as a possible source of income; and clarifies that income does not include refundable tax credits or any forms of public assistance.

As a further change from the NPRM proposal, the definition of gross income in the final rule no longer includes Social Security benefits, veterans' benefits, or alimony. The rationale for these additional changes is described further below.

*Comment:* The comments we received on the revised definition of income were generally supportive, but there were requests for changes and clarification. Several commenters appreciated the clearer definition of income, including the provision of a finite list of sources of income for income verification purposes, the exclusion of public assistance and tax credits as a source of income, and the removal of the citation to the external document which has caused confusion.

*Response:* We agree with commenters that this streamlined definition of income provides more clarity for programs. We therefore maintain this definition in the final rule with a few additional changes, as previously summarized.

*Comment:* Several commenters requested that specific forms of income, specifically alimony, veterans' benefits, and Social Security benefits, be excluded from the definition of income. These commenters also expressed concern that many low-income parents do not receive their alimony payments; veterans are already facing other adverse challenges, including disabilities; and inclusion of Social Security would negatively impact grandparents who are raising grandchildren.

*Response:* ACF acknowledges and agrees with the concerns shared by commenters on the inclusion of these specific sources in the calculation of gross income. More specifically, ACF recognizes that alimony payments may be inconsistent among low-income families, and therefore not a reliable source of income. ACF also recognizes that veterans' benefits typically refer to disability payments for veterans who are unable to work. Finally, ACF agrees that consideration of Social Security benefits as part of income for Head Start eligibility determinations could adversely impact the eligibility of grandchildren being raised by their grandparents, and who otherwise are living just above poverty. Therefore, in this final rule, the definition of gross income is revised so that Social Security benefits, veteran's benefits, and alimony are no longer part of this definition for eligibility determination purposes.

*Comment:* A few commenters made suggestions or requests for clarity on the inclusion of other sources of income such as child support payments, stipends, and tuition reimbursement.

*Response:* ACF acknowledges the request for clarity on the inclusion of other sources of income such as child support payments, stipends, and tuition reimbursement. Child support payments are not included in the revised definition of income in this final rule. Further, payments made to directly cover tuition or related school fees are not considered income because the student does not receive the payment. However, stipends would be considered earned income.

*Comment:* Although not related to the proposed policy on income definition, several commenters requested categorical eligibility for certain groups, including AIAN families and those receiving the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and Medicaid.

*Response:* Regarding categorical eligibility for AIAN children and families, ACF revises language in the final rule to conform to language in the Further Consolidated Appropriations Act, 2024 (Pub. L. 118-47), which includes a provision that allows Tribes to consider all children in a Tribal Head Start program's service area to be eligible for services regardless of income. The provision emphasizes that Tribes have the discretion to determine and use selection criteria to enroll those children who would benefit from the program, including children and families for which a child, a family member, or a member of the same household, is a member of an Indian Tribe. We acknowledge commenters' requests for categorical eligibility for other groups; however, as eligibility categories are largely determined by Head Start statute, we do not incorporate these additional suggestions in the final rule.

#### *Definitions of Major Renovation, Federal Interest, and Purchase (§ 1305.2)*

##### *Major Renovation*

The final rule makes changes to the definition of *major renovation* from the previous performance standards. In addition to correcting a typo, the definition in the final rule clarifies aspects of the definition that have led to confusion and inconsistencies since the 2016 revision of the HSPPS. We maintain aspects of the NPRM proposal regarding this definition as well as make further modifications. We discuss these changes in more detail, as well as the comments and our responses below.



*Comment:* The majority of comments on the proposed changes regarding the definition of *major renovation* conveyed support for the revisions and clarifications provided. Commenters appreciated the efforts to improve understanding of what constitutes a major renovation and the technical fixes that align with existing practices. Many commenters believed the changes directly address confusion regarding the definitions of minor renovations and repairs by clearly excluding such activities from the definition, except when the activities are included in a purchase application. Commenters also shared that the changes add the level of detail needed to assure that facility projects are not broken up into arbitrary components to avoid a part 1303 application, while also clarifying that unrelated minor repairs, that exceed the major renovations cost threshold, can be submitted into the same application, and will not trigger the need for a part 1303 application.

*Response:* We acknowledge commenters' reactions that the changes to the definition of *major renovation* address confusion and provide the necessary detail to support the part 1303 process. In the final rule, we maintain key aspects of the definition proposed in the NPRM as well as make modifications designed to further clarify. In addition to correcting a typo, these changes clarify what a "collective group of renovations" means, increases the threshold for a major renovation from \$250,000 to \$350,000, and allows Tribes that jointly apply to use both Tribal Child Care and Development Fund (CCDF) and Head Start funds toward major renovations to comply with the CCDF threshold for major renovation if it is higher.

*Comment:* Some commenters highlighted ambiguity around the term "consecutively," with respect to "collective renovation activities," and requested that OHS define a clear timeframe in between renovation activities that would trigger a major renovation definition. These commenters raised the fact that some Head Start programs are in old buildings in need of

many repairs that may require multiple renovation projects over time due to the extent of need, cost limitations, and the administrative burden facility projects can impose.

*Response:* While ACF recognizes that the updated definition of major renovations does not define an explicit time frame for “collective renovation activities,” ACF is opting not to prescribe a timeframe with respect to this type of major renovation. ACF clarifies for commenters that for collective renovation activities to equate to a major renovation, the project activities must be intended to occur concurrently or consecutively, or altogether address a specific part or feature of a facility, at the onset of the application development.

*Comment:* A few commenters suggested raising the threshold for what constitutes a major renovation to reflect the true costs and to facilitate timely and efficient facility repairs.

*Response:* As noted, ACF agrees with commenters and raises the threshold to \$350,000 to better reflect considerations for increased costs of major renovation facility projects. Additionally, to maintain alignment with the National Defense Authorization Act (NDAA), the major renovation threshold will increase if there are increases made to the simplified acquisition threshold beyond \$350,000. In other words, if the NDAA increases the simplified acquisition threshold above \$350,000 in a given year, the threshold for a major renovation will increase to remain aligned with that increase to the simplified acquisition threshold. Lastly, for Tribes applying jointly to use both CCDF funds and Head Start funds toward a major renovation, they can comply with the CCDF threshold for major renovation if it is higher.

#### *Federal Interest*

The final rule retains the definition of *Federal interest*, as proposed in the NPRM. The revised definition provides technical fixes to address confusion with respect to the type of facility activities that result in Federal interest and what satisfies the non-Federal matching requirement. Specifically, the proposed additional language, in tandem with the proposed definition for *major*

*renovation*, clarifies the distinction between repairs and minor renovations versus purchase, construction and major renovations under part 1303, the latter of which do result in a Federal interest. This proposed definition also clarifies that the non-Federal match, which is separate from the base grant non-Federal match, is only intended to include the non-Federal match associated with the facility activity funded under subpart E. In sum, these changes are not substantive changes to the definition itself but rather provide clarification on how Federal interest works.

The majority of public comments supported the proposed changes to the definition of *Federal interest*, and believed they promote consistent interpretations and clarify that the Federal share, and resulting Federal interest, relate only to the percentage of OHS's participation in the cost of a facility. We retain the NPRM proposal but address some comments related to this topic below.

*Comment:* A few comments call for more clarity on the expiration of the Federal interest.

*Response:* ACF clarifies for commenters that Federal interest does not expire, rather, Federal interest *can only be released by the Federal Awarding Agency* and in written permission by the responsible Federal official (in this case, HHS). Federal interest cannot be subordinated, diminished, or nullified through the encumbrance of the property, transfer of the property to another party, or any other such action taken by the recipient. A Federal interest cannot be defeated by a recipient's failure to file a required notice of Federal interest (§ 1303.46(a)) and 45 CFR 75.318(c).

*Comment:* One commenter believed the definition of *Federal interest* exceeds statutory authority and is inconsistent with the Uniform Guidance. This comment also raised concern that this change could potentially result in improper augmentation of ACF's appropriation, and

ultimately, recommended deleting the definition of *Federal interest* in the HSPPS and deferring to the definition in the Uniform Guidance.

*Response:* ACF disagrees with the commenter. While the definition of *Federal interest* differs from the Uniform Guidance, that difference is related to the non-Federal match, which Congress requires of grant recipients in the Act. The definition of Federal interest is not adding anything new to the regulations since § 1303.44(c) states that “any non-federal match associated with facilities activities becomes part of the federal share of the facility.” Lastly, we do not think the non-Federal match is an improper augmentation of appropriations since Congress required it.

*Comment:* Additionally, one commenter suggested striking the section of the definition regarding a match requirement, citing concerns that if an agency is successful in raising private funding for building or renovating a facility, and then wishes to utilize a significant private investment for a matching requirement, it seems unreasonable and unwise to require Federal interest in the building, as it may become a disincentive for partnership and investment.

*Response:* Protection of Federal interest is required by 45 CFR 75.323. The Federal interest includes total project costs paid with Federal funds, those amounts awarded directly from the OHS grant, and amounts claimed by the recipient as cost sharing or matching for the project. ACF does not have the authority to strike this requirement.

#### *Purchase*

In this final rule, ACF retains the technical fix to the definition of *purchase*, as proposed in the NPRM. A “capital lease agreement” is updated to a “finance lease agreement,” in alignment with the Financial Accounting Standards Board (FASB), Accounting Standards Update No. 2016-2, Lease topic 842. The term is updated so that the definition aligns with the standard accounting standard. ACF did not receive any comments on this proposal.

### *Definition of the Poverty Line (§ 1305.2)*

This final rule establishes a definition for the term *poverty line* in regulation, which codifies the working definition for poverty line in alignment with the Head Start Act and reflective of the way it has been used by the Office of Head Start. This final rule does not change the definition of *poverty line* as it applies to Head Start eligibility.

*Comment:* Many of the public comments we received on the definition of the poverty line were in relation to the concern that the current Federal poverty guidelines are too low, making it difficult for families to qualify for the program. Commenters suggested that the guidelines have not kept pace with the cost of living, particularly in states with higher minimum wages or high costs of living, such as California and Colorado. This discrepancy is seen as a barrier to enrollment and a hindrance to the program's ability to serve children and families in need.

Many commenters advocated for increasing the poverty guidelines, such as to 130 or 200% of the Federal poverty level to align with other social service programs and to reflect the true cost of living. They argued that this would simplify the eligibility determination process, reduce administrative burdens, and allow more families to access Head Start services. A few commenters suggested that the program should consider using a percentage of the local median household income instead of the Federal poverty level to determine eligibility.

*Response:* The inclusion of a definition for *poverty line* in this final rule is only intended to codify the working definition for poverty line used by the Office of Head Start, including the existing practice that the HHS poverty guidelines set for the contiguous-states-and-DC also apply to Puerto Rico and U.S. Territories. The HHS poverty guidelines are used to determine Head Start income eligibility and align with requirements and existing definition of the poverty line in

the Head Start Act set by Congress. Changes to the poverty line as requested cannot be considered and, therefore, no changes are made in response to these public comments.

#### *Removal of Outdated Sections*

The previous HSPPS contained regulatory language associated with the last overhaul of the standards, published through a final rule in 2016. We removed two sections of the standards that referred to the implementation timeline of those changes, which has since passed and therefore these sections are no longer relevant. The first section we removed is § 1302.103, *Implementation of program performance standards*. The second is the term *transition period*, which is defined under § 1305.2. These changes do not represent substantive policy changes.

#### *Compliance with Section 641A(a)(2) of the Act*

We sought extensive input in the process of developing this final rule. We collaborated and consulted with many policy and programmatic expert staff in OHS, ACF's Office of Child Care, and ACF's Office of Early Childhood Development. Several staff, particularly in OHS, are former Head Start program directors, family service workers, teachers, home visitors, etc. and have extensive on-the-ground knowledge of Head Start program operations. We also consulted extensively with OHS regional staff who directly oversee and support Head Start grants and program operations as their primary job responsibility. We held multiple listening and input sessions with these regional office staff to identify the most challenging aspects of Head Start policy and programmatic requirements for grant recipients. We also sought their feedback on policies we were considering both for the development of the NPRM and the final rule. We intentionally consulted with OHS staff who oversee MSHS and AIAN Head Start programs, to

learn about specific challenges and considerations for these programs. Similarly, we met with members of the OHS Diversity, Equity, Inclusion, and Accessibility Commission to discuss possible equity implications of the proposed changes.

In addition, in consultation with our OHS TTA experts, we considered the types of technical assistance requested by and provided to Head Start agencies and programs. We also reviewed findings from monitoring reports to glean more insights into where grant recipients struggle the most with implementing Head Start requirements. We consulted with experts in early childhood development including staff in ACF's Office of Planning, Research and Evaluation. These staff hold research expertise in a wide range of early childhood issues relevant to Head Start. Additionally, we reviewed many research reports on a variety of topics, including National Academy of Science reports on the workforce. Taken together, our consultation with all these groups and sources provided us with relevant data points and advice on how to promote quality across all Head Start settings.

Furthermore, since the last revision of the HSPPS in 2016, OHS has held many webinars for grant recipients on a variety of policy and programmatic topics, including the workforce, eligibility, mental health, child health and safety, and more. OHS has also given multiple presentations on key policy and program issues at Head Start-relevant conferences, including those organized by the National Head Start Association. During these webinars and conference presentations, grant recipient participants often ask questions and provide input regarding challenges with implementing various aspects of program requirements, including for different types of child and family populations and in different types of geographic settings. We also regularly hear from Tribal leaders at OHS's annual Tribal consultations. These touchpoints allow OHS the opportunity to gain critical on-the-ground understanding of areas where the standards

are confusing and could be made clearer. We also fielded a survey of grant recipients in November 2022 which provided real time information on workforce challenges programs were experiencing.

Lastly, ACF asserts that the revisions to the HSPPS promulgated through this final rule will not result in the elimination of or any reduction in quality, scope, or types of health, educational, parental involvement, nutritional, social, or other services required to be provided under the standards that were in effect when the Head Start Act was last reauthorized in 2007.

## **VII. Regulatory Process Matters**

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 13132, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Executive Orders 12866 and 13563 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, 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 \$200 million or more, or adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities; (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 legal or policy issues for which



centralized review would meaningfully further the President's priorities or the principles set forth in Executive Order 12866, as specifically authorized in a timely manner by the Administrator of the Office of Information and Regulatory Affairs (OIRA) in each case. This final rule is a significant rule and the Regulatory Impact Analysis for this final rule identifies economic impacts that exceed the threshold for significance under section 3(f)(1) of Executive Order 12866.

#### *Congressional Review Act*

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act), OIRA in the Office of Management and Budget (OMB) has determined that this action meets the criteria set forth in 5 U.S.C. 804(2).

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule will result in increased expenditures by Head Start programs that exceed HHS's default threshold, we have determined that the final rule will have a significant economic impact on a substantial number of small entities. We have aimed to minimize this impact to some small entities by providing additional flexibility for the new wages and benefits policies for Head Start agencies with 200 or fewer funded slots. Specifically, small agencies with 200 or fewer funded slots must have a wage or salary scale and must demonstrate measurable progress over time in improving wages, but they are not required to meet other wage and benefit requirements that apply to larger programs.

### *Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$183 million, using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. This final rule will not likely result in unfunded mandates that meet or exceed this amount. Head Start grant recipients receive over \$12 billion annually in Federal funding to implement the requirements of the program, including policy changes as a result of this final rule.

### *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 final 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.

### *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. ACF believes it is not necessary to prepare a family policymaking assessment, see Public Law 105-277, because the action it takes in this final rule will not have any impact on the autonomy or integrity of the family as an institution.

### *Paperwork Reduction Act of 1995*

The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 *et seq.*, minimizes government-imposed burden on the public. In keeping with the notion that government information is a valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed.

The PRA requires that agencies obtain OMB approval, which includes issuing an OMB number and expiration date, before requesting most types of information from the public. Regulations at 5 CFR part 1320 implemented the provisions of the PRA and § 1320.3 defines a “collection of information,” “information,” and “burden.” PRA defines “information” 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 (5 CFR 1320.3(h)). This includes requests for information to be sent to the Government, such as forms, written reports and surveys, recordkeeping requirements, and third-party or public disclosures (5 CFR 1320.3(c)). “Burden” means the total time, effort, or financial resources expended by persons to collect, maintain, or disclose information.

This final rule establishes new recordkeeping requirements under the PRA. Under this final rule, Head Start grant recipients will be required to keep and maintain records related to salary wage scales and staff benefits, improvements to community assessment, documentation related to lead exposure, among several other requirements. In addition, changes to policies included in the final rule may result in changes to existing information collections approved under the PRA, including the information collection for the existing Head Start Program Performance Standards (HSPPS), the Program Information Report (PIR), applicable collections in the Head Start Enterprise Systems (HSES), and other information collections.

The HSPPS are covered already by an existing OMB control number 0970-0148. This OMB control number already covers burden associated with updating personnel policies and documenting eligibility. The below table outlines the burden of complying with the standards in this final rule. These estimated burden hours represent the additional burden to be added to this existing information collection. We estimate the burden at the appropriate level depending on the given information collection, specified in the table below (grant, program, family, or enrollee level). In 2023, there were about 1,900 grants providing Head Start services across 2,900 Head Start, Early Head Start, AIAN, and MSHS programs.

<b>Information Collection</b>	<b>Number of respondents</b>	<b>Average burden hours per response</b>	<b>Annual burden hours</b>
Update and maintain written personnel policies and procedures to reflect changes in staff salary scales, incorporate pay parity, and approach to benefits and staff breaks (program level)	2,900	2	5,800
Waivers for family services family assignments (grant level)	190	1	190
Documenting eligibility with application of revised income definition (family level)	260,000	.167	43,420
Reporting child incidents (enrollee level)	131	.083	11

Maintenance of plan to prevent exposure to lead in water and paint (grant level)	1,900	.5	950
Documenting services to enrolled pregnant women (enrollee level)	13,000	.5	6,500
Tracking wages for Head Start staff and staff in local school districts	2,900	5	14,500
<b>TOTAL BURDEN HOURS</b>			71,371

**VIII. Regulatory Impact Analysis**

*Comment and Response*

Here we summarize and respond to comments we received on the Regulatory Impact Analysis in the NPRM. Subsequent sections provide a revised Regulatory Impact Analysis for this final rule.

*Comment:* Comments indicated that the Regulatory Impact Analysis of the NPRM underestimated the fiscal implications, economic realities, and staff shortages faced by programs and communities.

*Response:* The Regulatory Impact Analysis in the NPRM used the most recent internal and public data, including the PIR, funded and actual Head Start enrollment, Head Start program budgets, the Consumer Price Index, and the Bureau of Labor Statistics to provide the best estimates for existing Head Start wages and benefits, wage targets, inflation, and projected costs and appropriations. We acknowledge the uncertainty in future costs and economic situations and the assumptions made, including the rate of inflation and increases in appropriations, all of which are necessary to project future impacts. We recognize that our estimates represent national level estimations, while some programs or some communities may be more or less affected by the implementation of the policies in the final rule based on numerous factors including population, the labor market, the availability of early care and education programs, and other considerations.

We use the same approach in the final rule's Regulatory Impact Analysis as we did in the NPRM, with updated figures to reflect the most recent information and new timeline.

*Comment:* Commenters noted that ACF assumed a 2.3% annual increase to Head Start appropriations over time in the Regulatory Impact Analysis, yet inflation has been much higher in recent years.

*Response:* For purposes of this Regulatory Impact Analysis, and as used in the preliminary analysis performed for the proposed rule, ACF adopts 2.3% for the annual rate of inflation for each year in the time horizon, matching an economic assumption in the President's Budget for Fiscal Year 2024. We also assume an annual increase to Head Start appropriations to fully keep pace with inflation, which is therefore assumed to be 2.3% in our estimates. However, this should not be understood to suggest that the actual increase in annual appropriations will be 2.3%. The actual COLA needed to keep pace with inflation (and thus to yield the results in the Regulatory Impact Analysis for this final rule) will depend on actual rates of inflation in a given year. In response to public comments, the Regulatory Impact Analysis uses a higher appropriations growth rate for Fiscal Years 2024 and 2025 than in later years in the time horizon. For FY 2025, we have used the economic assumptions used in the FY2025 President's Budget to estimate inflation, as well as assumed increase in appropriations to keep pace with inflation. We continue to use the standard economic assumption of 2.3% for inflation and the assumed increase in annual appropriations, for all fiscal years beyond 2025.

*Comment:* Commenters highlighted a discrepancy within the NPRM as to whether or not the proposed rule would mandate aggregate expenditures of more than \$177 million by State, local, and Tribal governments.

Response: This was a typographic error in the NPRM. The final rule clarifies that the revised policies do not mandate aggregate expenditures of more than \$177 million by State, local, and Tribal governments. The expenditures required under the rule are a condition of accepting Federal funds and do not constitute a mandated expenditure for State, local, and Tribal governments.

*Comment:* Commenters indicated that our NPRM cost estimates underestimated true costs because we included projected slot enrollments and did not account for any population growth adjustment to the number of program slots and staff needed to maintain the relative status quo, and that we assumed the number of funded slots would remain the same through 2030.

*Response:* Congressional investment designated for expansion would be required for additional Head Start slots to be made available in order to maintain the relative status quo in cases of population growth as described by commentors. For the purposes of this Regulatory Impact Analysis, we do not assume any additional congressional appropriations beyond those to keep pace with inflation in our estimates. ACF notes in the Discussion of Uncertainty section of the Regulatory Impact Analysis that the cost estimates presented in this final rule would be underestimated if Congress were to appropriate additional funds for expansion.

## *Introduction and Summary*

### *A. Introduction*

This analysis identifies economic impacts that exceed the threshold for significance under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. We conducted an initial Regulatory Impact Analysis in the NPRM to estimate and describe the expected costs, transfers, and benefits resulting from the proposed rule. This included evaluating policies in the major areas of policy change: staff wages and benefits; staff breaks; family partnership family

assignments; mental health benefits; and lead testing. Based on feedback received during the public comment period, and resulting changes to the policies in this final rule, we have further refined these estimates for the final rule.

### *B. Summary of Benefits, Costs, and Transfers*

The most likely impacts of these provisions depend, in large part, on funds available to Head Start programs; for example, the standards to increase remuneration per teacher will have bigger aggregate effects to the extent that Head Start entities employ more teachers. Historically, Congress has funded Head Start at levels that exceed inflation. During the ten-year period between 2010 and 2020, Head Start appropriations grew by 25 percent, after accounting for inflation.<sup>61</sup> Some of the past increase in appropriations were in response to new initiatives in Head Start, such as the creation of Early Head Start-Child Care Partnerships and other quality initiatives. It is possible that this trend continues and Head Start appropriations will increase in response to the quality improvements under the final rule. In such a case, the regulation's effects manifest themselves as expenditures by taxpayers.<sup>62</sup> By contrast, if a comparison of the hypothetical futures with and without the rule is not characterized by a difference in Head Start appropriations or by such a difference that is *not* prompted by this rule, then rule-induced spending will instead be shifted within Head Start.

One form that such shifting could take relates to enrollment, so it is important to distinguish between the various benchmarks for enrollment that were used for this analysis. Head Start programs receive funding for a specific number of slots (i.e., funded enrollment).

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<sup>61</sup> If future Head Start appropriations designated for expansion grow at similar rates—for reasons that are independent of this rule—then estimates reflecting growth at or below the rate of inflation (such as what appears in this regulatory impact analysis) would have a tendency toward understating effects.

<sup>62</sup> Some of the expenditures would, from a society-wide perspective, be categorized as costs and others would be transfers to Head Start entities and participants.



Historically there has been little difference between funded enrollment and actual enrollment,<sup>63</sup> which represents the number of children who are actually enrolled in Head Start programs. However, in recent years, Head Start programs have experienced significant and persistent under-enrollment where the number of children actually served is far less than the number of funded slots, due in large part to widespread staffing shortages. As Head Start programs work to improve their actual enrollment levels, many are also requesting reductions in their funded enrollment. Head Start programs are trying to right-size their funded enrollment to match their community needs, staffing realities, and fiscal constraints. It is difficult, if not impossible, to predict the net impacts of these ongoing efforts in years to come.

As such, assessing whether the rule's effects will manifest themselves as enrollment reductions is especially challenging. Historically, Congress has invested in Head Start, especially to improve access to quality program services and the final rule includes a seven-year phase in period for wage increases to allow for increases in appropriations. In theory Head Start programs could attempt to stretch their existing budgets to provide the same number of funded enrollment slots while also complying with the new requirements by choosing to not spend funding on optional activities. However, ACF believes, and research supports,<sup>64</sup> that programs have long stretched their funding as far as is possible and are unlikely to have many optional activities available to drop.<sup>65</sup> Moreover, the difference between funded and actual enrollment also generates uncertainty regarding the magnitude of regulatory effects; for example, if Head Start entities reallocate funding for teacher bonuses, the estimates, below, of rule-induced effects on

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<sup>63</sup> Here we use the term actual enrollment to represent the average number of children enrolled in Head Start programs while programs were in session throughout the year.

<sup>64</sup> Workman (2018). Where does your child care dollar go? Center for American Progress. <https://www.americanprogress.org/article/child-care-dollar-go/> Neelan, T. S., and Caronongan, P. (2022). Measuring costs to support quality in early care and education centers. OPRE Early Childhood Research Brief 2022-20. [ichq-measuring-costs-jan-2022.pdf](https://www.hhs.gov/ichq-measuring-costs-jan-2022.pdf) (hhs.gov).

<sup>65</sup> Even if this were the case, ACF asserts that this is unlikely to meaningfully impact the quality of services provided to children, as the necessary components of high-quality services are required under the HSPPS, and could not be dropped from program offerings.

teacher remuneration would have some tendency toward overstatement (even as the *form* of the remuneration is changing from bonuses to rule-required salaries or fringe benefits, or changes in working conditions).

Similar to the approach taken in the NPRM but updated to reflect newly available data, ACF estimates all effects based on the projected FY2024 funded enrollment of 750,000, which is the estimated highest enrollment level, funded or actual, possible absent additional appropriations specifically designated for expansion. This is slightly less than the projected funded enrollment for FY2023 used in the NPRM of 755,074, which reflects programs' changes in scope and slot reductions over the prior year.

Using the current funded enrollment as a starting point, this analysis shows that the expenditures associated with the final rule, when fully phased in after 7 years, can be mostly paid for by aligning funded enrollment levels to the FY2024 actual enrollment, leading to a funded enrollment level decline from 750,000 to approximately 645,500. Importantly, approximately 650,000 of the 750,000 slots are occupied by enrolled children at this time.

As compared to the current enrollment level of about 650,000, the enrollment level of approximately 645,500 represents about a 1 percent reduction from the current number of children served. In other words, implementation of these regulatory changes will be a de minimis impact on actual enrollment. With additional appropriations—in excess of COLA to keep pace with inflation—Head Start could avoid reducing funded enrollment below current actual enrollment. This analysis includes estimates of the necessary appropriations needed under the policy to serve 650,000 children, which reflects the estimated FY2024 actual enrollment. Sometimes the narrative description of this (same) analysis is framed as estimating the increases

in expenditures that enable full implementation of this rule without reducing funded enrollment below projected FY2024 funded enrollment levels.

The largest elements of the final rule relate to staff wages and benefits for the Head Start workforce. To fully implement the staff wage provisions, including the wage-parity targets, minimum pay requirement, and impacts associated with wage compression, for all agencies to which all wage and benefits requirements apply (with more than 200 slots), expenditures on wages<sup>66</sup> will need to increase by about \$1.2 billion (reported in nominal dollars) in 2031 and then be maintained annually through a COLA. In that same year, the expenditures on staff benefits, which include the policy to increase fringe benefits, will require about an additional \$877 million. We identify the annual expenditures to fully implement the following provisions: staff breaks about \$75 million; family partnership family assignments, \$147 million; and mental health supports, \$75 million. We also quantify expenditures associated with preventing and addressing lead exposure and expenditures associated with program administration.

We estimate that in 2031 (when all policies are in effect) and if we maintain a funded enrollment of 750,000, this final rule will require an increase in expenditures of about \$2.3 billion. These expenditures include full implementation of all the policies described in this final rule, including the wage and benefit policies, mental health supports, and other quality improvements. This expenditure level assumes no reductions in the projected funded enrollment level of 750,000.

Over a 10-year time horizon, which covers the timeline that the policies will take effect, we estimate annualized expenditures of about \$1.4 billion under a 2% discount rate. In addition to calculating the expenditures necessary to fully implement the rule, this analysis also considers

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<sup>66</sup> The additional benefits expenditures associated with increased wages under the wage policy at the baseline fringe rate of 24% are included in the estimated benefits expenditures.

a scenario of no additional funding above baseline funding levels (i.e., funding increasing over time, to account for inflation but not in response to this regulation). Under this scenario, we estimate that Head Start programs will need to reduce the total number of funded slots available by about 13% compared to projected FY2024 funded enrollment, or 1% from estimated FY2024 actual enrollment in 2031, to fully implement the final rule. Table 1 reports the summary of expenditures of the final rule, reported in constant 2024 dollars and nominal dollars.

**Table 1. Summary of Economic Data for the Final Rule, Constant and Nominal Dollars<sup>67</sup>**

Category		Primary Estimate	Units		
			Year Dollars	Discount Rate	Period Covered
Costs	Federal Annualized Monetized (\$m/year)	\$82	2024	7%	2025-2034
		\$86	2024	3%	2025-2034
		\$87	2024	2%	2025-2034
Costs	Federal Annualized Monetized (\$m/year)	\$95	Nominal	7%	2025-2034
		\$99	Nominal	3%	2025-2034
		\$101	Nominal	2%	2025-2034
Transfers	Federal Annualized Monetized (\$m/year)	\$1,153	2024	7%	2025-2034
		\$1,228	2024	3%	2025-2034
		\$1,247	2024	2%	2025-2034
Transfers	Federal Annualized	\$1,758	Nominal	7%	2025-2034

<sup>67</sup> The transfers illustrated in this table represent transfers from some combination of the Federal Government and would-be Head Start participants to Head Start program staff.

	Monetized (\$m/year)	\$1,447	Nominal	3%	2025-2034
		\$1,472	Nominal	2%	2025-2034

These estimates are somewhat lower than those in the NPRM. This is because of policy changes such as exempting small agencies (defined as those with 200 or fewer funded slots) from most of the wage and benefits requirements, removing paid family leave as a required employer-provided benefit, and increasing flexibility in how programs provide mental health supports and how programs prevent and address lead exposure. These new cost estimates reflect updated information regarding Head Start funded and actual enrollment and appropriations, as described below.

*Final Economic Analysis of Impacts*

*A. Analytic Approach*

In conducting this analysis, we adopted much of the same approach used in the NPRM. We began by identifying the most consequential impacts that will likely occur under the final rule. We identify expenditures associated with increases in staff wages and staff benefits for the Head Start workforce as the largest potential impact and devote significant attention to those effects. We also identify and monetize expenditures associated with staff breaks, expenditures associated with hiring additional staff to provide family partnership services, expenditures associated with the increased workload required to provide mental health supports, expenditures associated with preventing and addressing lead exposure, and expenditures associated with administrative implementation costs. We qualitatively discuss other impacts of the final rule.

For the purposes of this analysis, we assume that the final rule will begin to take effect before the 2024-2025 program year. To simplify the narrative, we describe effects occurring in

that program year as occurring in “2025.” We shift the ten-year time horizon in the NPRM by one year, now covering the period 2025 through 2034.

This analysis adopts a baseline forecast that assumes Federal appropriations grow at a constant rate of inflation in fiscal years 2026 through 2033, with greater growth during fiscal years 2024 and 2025 as projected by the September month year-over-year estimates by the Presidential Budget Economic Assumptions based on the Consumer Price Index for All Urban Consumers (CPI-U) issued by the Bureau of Labor Statistics (BLS).<sup>68</sup> These are only projections and are subject to change with updated CPI-U estimates from the BLS. We note that because we assume Federal appropriations will grow at least at the pace of inflation annually, we do not provide quantitative estimates that account for the Secretary’s waiver authority or any other possible funding level.<sup>69</sup>

All analyses provided here were completed using national level estimations. National estimates are used in lieu of providing estimates that account for individual program variation due to the fluid nature of Head Start enrollment figures that vary throughout the year as well as substantial variation in the behavior of programs, grants, and agencies. Head Start grants are awarded to a variety of entities that vary in size, scope, and available resources. A model that accounts for every characteristic that may predict variation in slot loss would require HHS to make significant assumptions for which we lack a strong empirical or data driven foundation.

Head Start enrollment fluctuates regularly. For instance, enrollment is usually lower in the first month or two of the program year and grows over the course of the year. In the last year, an unprecedented number of Change in Scope applications, which allow programs to reduce their

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<sup>68</sup> [https://www.whitehouse.gov/wp-content/uploads/2024/03/ap\\_2\\_assumptions\\_fy2025.pdf](https://www.whitehouse.gov/wp-content/uploads/2024/03/ap_2_assumptions_fy2025.pdf).

<sup>69</sup> For a discussion of the estimated impact of the Secretary’s waiver authority, see section K. (Importantly, the funding level required for the Secretary’s waiver or a similarly low level of appropriations would have substantial, negative effects on Head Start’s ability to enroll and provide high-quality services to families.)

funded enrollment and reallocate their budget to meet other needs, such as wages or shifting slots from Head Start to Early Head Start, or to be more responsive to changing community needs by adjusting the operating schedule. Enrollment also fluctuates when new grants are awarded as a result of the Designation Renewal System, grant relinquishments, or other grant transitions. At the end of 2023, approximately 18% of all Head Start agencies (which represents 10.7% of all Head Start slots) had more than 200 funded slots – and would therefore not be considered for the small program exemption – *and* were considered fully enrolled at 97% or greater. ACF anticipates that these grant recipients will benefit from additional support to use the period between the final rule going into effect and wage requirements to explore additional resources (i.e., Head Start funds made available through increases in appropriations or recaptured funds, state, local, or private funding) or program restructuring. We reiterate that enrollment fluctuates due to a variety of factors and the estimates used in this analysis should not be assumed to be static over time.

In our main analysis, we estimate the increases in Federal appropriations needed to fulfill the goals of the rule while also maintaining the size of the Head Start workforce consistent with the projected FY2024 funded enrollment level of 750,000 slots. We also present a sensitivity analysis that explores how the rule’s effects are expected to manifest themselves if there are no increases in Federal appropriations above baseline (or such increases occur but not in response to this regulation and/or the increased appropriations could not be used to support the policies in the final rule). For this scenario, we report the likely reductions in funded enrollment, and associated reductions in the size of the Head Start workforce, under the final rule. We also report the likely reductions in funded enrollment in the absence of additional appropriations compared to the estimated FY2024 actual enrollment under the final rule.

In general, we have rounded total cost estimates but have not rounded itemized cost estimates for transparency and reproducibility of the estimation process. These unrounded itemized cost estimates should not be interpreted as representing a particular degree of precision.

*B. Baseline: Budget, Staffing, and Slots*

**Baseline Budget Scenario**

We measure the impacts of the rule against a common budget baseline forecast that assumes Federal appropriations grow at a constant rate of inflation in fiscal years 2026 through 2034. We adopt 2.3% for the rate of inflation for each year in the time horizon after 2025, matching an economic assumption in the President’s Budget for Fiscal Year 2025.<sup>70</sup> Across all years, we assume that the COLA for Head Start staff will match the rate of inflation. Based on 2023 PIR data, we assume 8.6% of Head Start staff work at agencies with 200 or fewer slots.

In FY2024, Head Start appropriations totaled \$12,271,820,000.<sup>71</sup> About 97% of these appropriations, \$11.9 billion, is awarded to grant recipients for base program operations; and from these amounts, about 76%<sup>72</sup> go towards personnel costs, or about \$9.1 billion. Compared to FY2024, we assume that FY2025 appropriations will increase with a cost-of-living adjustment amount to fully account for inflation. Thus, we anticipate that total appropriations will increase by 2.61% in FY2025, and 2.3% in all future years. Table B1 reports the appropriations and funding breakdowns in nominal dollars over the time horizon of our analysis.

**Table B1. Baseline Head Start Budget Scenario. Nominal Dollars (in thousands)**

<b>Year</b>	<b>Total Funding</b>	<b>Total Base Operations Awards</b>	<b>Base Operations: Personnel Costs</b>	<b>Base Operations: Other Costs</b>	<b>Other Head Start Costs</b>
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<sup>70</sup> Office of Management and Budget. “Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2025.” Economic Assumptions. [https://www.whitehouse.gov/wp-content/uploads/2023/03/spec\\_fy2024.pdf](https://www.whitehouse.gov/wp-content/uploads/2023/03/spec_fy2024.pdf) President’s Budget | OMB | The White House

<sup>71</sup> <https://www.congress.gov/bill/118th-congress/house-bill/2882?q=%7B%22search%22%3A%22Consolidated+Appropriations+Act%2C+2024%22%7D&r=2&s=1>.

<sup>72</sup> Budget data submitted to the Office of Head Start for FY2022 showed that about 74% of operations awards were allocated to personnel costs. In this analysis, we assume a majority share of the savings from the projected reduction in funded enrollment from FY2023 to FY2024 go towards personnel costs, and will therefore increase the overall share of operations awards allocated to personnel costs to about 76%.



<b>2023</b>	\$11,996,820	\$11,589,715	\$8,518,441	\$3,071,275	\$407,105
<b>2024</b>	\$12,271,820	\$11,864,715	\$9,070,575	\$2,823,802	\$407,105
<b>2025</b>	\$12,592,115	\$12,174,384	\$9,307,317	\$2,897,503	\$417,730
<b>2026</b>	\$12,881,733	\$12,454,395	\$9,521,385	\$2,964,146	\$427,338
<b>2027</b>	\$13,178,013	\$12,740,846	\$9,740,377	\$3,032,321	\$437,167
<b>2028</b>	\$13,481,107	\$13,033,886	\$9,964,406	\$3,102,065	\$447,222
<b>2029</b>	\$13,791,173	\$13,333,665	\$10,193,587	\$3,173,412	\$457,508
<b>2030</b>	\$14,108,370	\$13,640,339	\$10,428,039	\$3,246,401	\$468,030
<b>2031</b>	\$14,432,862	\$13,954,067	\$10,667,884	\$3,321,068	\$478,795
<b>2032</b>	\$14,764,818	\$14,275,011	\$10,913,246	\$3,397,453	\$489,807
<b>2033</b>	\$15,104,409	\$14,603,336	\$11,164,250	\$3,475,594	\$501,073
<b>2034</b>	\$15,451,810	\$14,939,213	\$11,421,028	\$3,555,533	\$512,598

### Baseline Scenario for Staffing, Wages, and Enrollment

This analysis adopts one scenario covering projections of staffing, wages, and enrollment at Head Start programs. This baseline scenario assumes long-run staffing, wages, and enrollment that are consistent with those projected for FY 2024, based on patterns observed in FY2023.

This analysis assumes that all programs are fully enrolled, and that actual enrollment is consistent with funded enrollment. Therefore, the analysis does not distinguish between funded slots that are actually filled with enrolled families and funded slots that are vacant. These assumptions introduce uncertainty into the analysis, creating some tendency toward overestimation of effects (a tendency that would partially be mitigated by a number of decisions, for example if Head Start entities use current funds, in the baseline, for teacher bonuses).<sup>73</sup>

We again note that this estimation does not account for the under-enrollment that Head Start programs are currently facing. In 2024, Head Start programs are projected to be funded to serve 750,000 children; however, ACF estimates only about 650,000 children and families are actually being served. Many Head Start programs are requesting reductions to their funded

<sup>73</sup> For completeness, we also note that Head Start funding increases at greater than the rate of inflation (for reasons independent of this regulation) would lead to effects being underestimated in this analysis, if that funding is designated for expansion. For exploration not of overall magnitude of effects but instead related to the form they take, please see the sensitivity analysis below.

enrollment, even while they continue to work to improve their enrollment. As this situation is unprecedented, it is nearly impossible to accurately predict both funded and actual enrollment levels in future years.

As such, ACF first estimates costs by using the FY2024 funded enrollment of 750,000 which represents the funding needed to implement the final rule and maintain current funded enrollment, or the maximum appropriations needed to fully implement the final rule. Using the cost per slot determined by this estimate, we also describe the necessary appropriations needed to maintain funded slots to serve 650,000 children, which reflects the FY2024 actual enrollment estimate. Relatedly, we also provide estimates of the reduction in the total number of funded slots in a scenario where no additional funding is provided (or funding increases occur but not in response to this rule), compared to both projected FY2024 funded enrollment and to estimated FY2024 actual enrollment.

Our baseline scenario is informed by staffing levels, credentials, wage rates, and enrollment figures from PIR data covering 2023,<sup>74</sup> with a few adjustments. The PIR contains program-level counts of teachers, assistant teachers, home visitors, and family child care providers, each disaggregated by type of credential. For teachers and assistant teachers, we observe the following credential categories: advanced degree, bachelor's degree (BA), associate degree (AA), Child Development Associate (CDA) credential, and no credential. For home visitors and family child care providers, we observe whether staff holds a credential, but not the type of credential. We make the following adjustments to the raw 2023 PIR data:

- 1) We adjust the counts of each role-credential combination to account for a small share of staff without any credential information, which is less than 0.2% of total staff. For

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<sup>74</sup> <https://eclkc.ohs.acf.hhs.gov/data-ongoing-monitoring/article/program-information-report-pir>.

simplicity, we assume that the credentials of staff without this information are distributed in proportion with the observed credentials of other staff in the same role.

- 2) We augment the 2023 PIR data with 2019 PIR data, which contained information on the specific credential type for home visitors and family child care providers. We assume that, conditional on reporting any credential in 2023, the credentials of staff with each credential type are distributed in proportion with observed credentials of other credentialed staff in the same role in 2019.

With these adjustments, we report 34,904 Head Start teachers, 32,770 Early Head Start teachers, 36,946 Head Start assistant teachers, 6,245 home visitors, and 2,129 family child care providers. Table B2 reports these counts by credential type.

**Table B2. Head Start Staff Counts by Role and Credential, 2023**

<b>Degree</b>	<b>HS Teacher</b>	<b>EHS Teacher</b>	<b>Asst. Teacher</b>	<b>Home Visitor</b>	<b>Family Child Care Provider</b>
<b>Advanced</b>	4,317	772	380	402	39
<b>BA</b>	19,500	6,106	3,238	2,775	225
<b>AA</b>	8,641	7,014	7,211	1,351	251
<b>CDA</b>	1,421	13,323	14,722	1,056	1,287
<b>No Credential</b>	1,024	5,555	11,394	661	326
<b>Total</b>	34,904	32,770	36,946	6,245	2,129

In 2023, Head Start programs were funded to serve 778,420 slots<sup>75</sup> and reported 112,994 education staff. At the time this analysis was prepared, ACF did not have comparable information from the PIR for 2024, which is ongoing; however, we anticipate significant changes to staffing levels, wage rates, and slots compared to those observed in 2023 for reasons described above, largely driven by Head Start programs requesting to reduce their funding enrollment levels to increase wages. Our funded enrollment data, as described above, are based on the end

<sup>75</sup> This represents funded enrollment at the end of FY 2023.

of the FY 2023 which ended in October 2023, and our Head Start salary figures are from the 2023 PIR data and are reported about the 2022-2023 program year that ended in May 2023 for most programs. This gap in data leaves a period from May to October 2023 during which many programs continued to pursue reductions to their funded enrollment and likely also took other efforts to improve staff compensation that is not reflected in the 2023 PIR salary data, as many programs were likely to make salary adjustments at the start of the 2023-2024 program year. As such, using the raw compensation data from the 2023 PIR likely underestimates Head Start salaries for FY 2024 which would in turn overestimate the impacts of this rule.

To account for this, we draw from data showing that Head Start salaries grew 7% from program year 2021-2022 to 2022-2023. We estimate a slightly higher growth rate from program year 2022-2023 to 2023-2024 because of substantial COLA and an increased rate of change in scope request that both occurred in the latter part of FY2023. We estimate that one third, 2.5%, of this projected annual growth rate for program year 2023-2024 took place in the four months between May to October 2023. Therefore, we have adjusted for this misalignment in reporting timeframes by adjusting for the projected annual growth that took place between May to October 2023 in our baseline wage estimates by increasing them by 2.5%.

We also anticipate additional enrollment reductions, primarily through requests from programs proposing to reduce their funded enrollment to maintain quality of program services.<sup>76</sup> We currently project 750,000 funded slots, or a 3.7% reduction in funded enrollment in 2024 compared to 2023, and adopt a corresponding reduction in education staff by the same percentage. This is less than the 9% reduction in enrollment observed from 2022 to 2023. Compared to a scenario of no reduction in slots or education staff, we anticipate that this will

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<sup>76</sup> <https://eclkc.ohs.acf.hhs.gov/policy/im/acf-im-hs-22-09>.

lead to increases in total compensation for education staff. Again, this does not reflect the difference between funded enrollment and actual enrollment of families in the program. ACF anticipates that funded enrollment will continue to decline; however, for the reasons described above, we model projections based on funded enrollment in 2024 at 750,000 for the purposes of this analysis.

**Table B3. 2024 Enrollment Scenarios**

<b>Year</b>	<b>2023</b>	<b>2024</b>
<b>Scenario</b>	<b>N/A</b>	<b>Baseline</b>
<b>Operations Award Amounts</b>	\$11,589,715,163	\$11,864,715,163
<b>Personnel Costs, Share</b>	74%	76%
<b>Personnel Staff Costs, \$</b>	\$8,518,440,645	\$9,070,574,742
<b>Other Costs, Share</b>	27%	24%
<b>Other Costs</b>	\$3,071,274,518	\$2,794,140,421
<b>Education Staff</b>	112,994	108,869
<b>Education Staff Costs</b>	\$5,345,943,115	\$5,692,447,552
<b>Wage Compensation</b>	\$4,062,916,767	\$4,326,260,139
<b>Non-Wage Compensation</b>	\$1,283,026,348	\$1,366,187,412
<b>Cost per Education Staff</b>	\$47,312	\$52,287
<b>Total Slots</b>	778,420	750,000
<b>Cost per Slot</b>	\$14,889	\$15,820

**Connecting Baseline Uncertainty with Differing Estimates of Regulatory Effects**

Head Start programs must be in a position to serve their full funded enrollment at all times, regardless of their actual enrollment levels. When programs are under-enrolled, they must continue their operations in a way that is sufficient to serve their funded enrollment. As Head Start funds are allocated to a variety of fixed cost categories (e.g., facilities, certain personnel, supplies, and transportation), only some of these costs are saved when a funded slot is empty. If a slot is empty, a program must still pay for a facility with classrooms, along with utilities and maintenance. Programs must also attempt to hire (or, spend the associated funds recruiting) staff and routinely train and onboard staff when there is turnover. Where there is a difference between

actual and funded enrollment, much of the difference in allocated funding is used in this manner, thus doing little to improve the Head Start experience for remaining students.

Therefore, to the extent that under-enrolled Head Start programs will, over the analytic time horizon of this regulatory impact assessment, be approved to reduce their funded enrollment *without* those slots being shifted to other Head Start entities, the estimates that use actual enrollment as a key input or comparison—for example, the rightmost columns of Table J1—are informative and meaningful. By contrast, if reductions of funded enrollment at entities that are under-enrolled in the baseline were accompanied (also in the baseline) by shifting of those slots to other Head Start entities, the estimates that use *funded* enrollment as a key comparison are more informative. Similarly, if under-enrollment were to ease in the future (perhaps to due further stabilization in the labor market as the biggest disruptions of the COVID-19 pandemic recede into the past), the latter set of estimates should receive the analytic focus.

### *C. Workforce Supports: Staff Wages and Staff Benefits*

The final rule outlines four areas of requirements for wages for Head Start staff: (1) that education staff working directly with children as part of their daily job responsibilities must receive a salary comparable to preschool teachers (or 90% of kindergarten teachers) in public school settings in the program's local school district, adjusted for qualifications, experience, job responsibilities, and schedule or hours worked; (2) to establish or enhance a salary scale, wage ladder, or other pay structure that applies to all staff in the program and takes into account job responsibilities, schedule or hours worked, and qualifications and experience relevant to the position; (3) that all staff must receive a salary that is sufficient to cover basic costs of living in their geographic area, including those at the lowest end of the pay structure; and (4) to affirm and

emphasize that the requirements for pay parity should also promote comparability of wages across Head Start Preschool and Early Head Start staff positions.

The final rule also outlines requirements for grant recipients to provide benefits to staff, discussing health care coverage, paid leave, access to short-term free or low-cost mental health services, and other considerations. As described above, these benefits-related requirements have been modified to be more flexible and less prescriptive in response to comments on the NPRM. In this section, we describe baseline wages for Head Start education staff and their corresponding wage-parity targets. We also describe baseline staff benefits and the enhanced-benefit policy.

### Wage-Parity Targets

The final rule will result in Head Start staff receiving an annual salary commensurate with preschool teachers (or 90% of kindergarten teachers) in local public school settings, adjusted for qualifications, experience, job responsibilities, and schedule or hours worked. The target comparison of preschool teachers in public school settings is intended to represent substantial progress towards parity with kindergarten to third grade elementary teachers. We intend the benchmark of preschool teacher annual salaries in public school settings to represent about 90% of kindergarten teacher annual salaries, for those with comparable qualifications, and provide programs the option to use either benchmark.<sup>77</sup> While wage rates would be determined locally, we present estimates of the likely impact measured at the national level.

For the purposes of this analysis, we adopt an estimate of the target salary in 2023 of \$56,060, which corresponds to the most recent annual wage for preschool teachers in elementary

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<sup>77</sup> This analysis uses BLS average annual salaries from May 2023, inflation adjusted to February 2024 dollars, as wage targets. However, since the BLS national average for kindergarten teacher salaries (\$67,790 in May 2023) includes all kindergarten teachers, of which approximately half have a master's degree or higher, adjust this annual salary to reflect the target salary for a teacher with a bachelor's degree (\$61,011) guided by salary differences observed in National Center for Education Statistics data (<https://nces.ed.gov/surveys/ntps/>). The BLS reported annual salary for preschool teacher in school settings (\$56,060) is therefore approximately 90% of the annual salary for kindergarten teachers with a bachelor's degree (\$61,011).

and school-based settings as reported by the Bureau of Labor Statistics for occupation code 25-2011, Preschool Teachers, Except Special Education for May 2023.<sup>78</sup> This estimate is intended to be consistent with the requirement that annual salaries be comparable to that of preschool teachers in public school settings or to 90% of kindergarten teacher salaries in public school settings. We assume that a typical preschool teacher works 1,680 hours per year, so this annual salary corresponded to a \$33.37 hourly wage in 2023, or a \$34.05 hourly wage in 2024 under an assumption that preschool and kindergarten teacher salaries will grow approximately in relation to inflation.<sup>79</sup>

We adopt this estimate as the hourly wage target for teachers, home visitors, and family child care providers with a bachelor’s degree, which serves as the base wage rate for other credentials. Following the methodology used in the NPRM, for staff in these roles with an advanced degree (i.e., master’s degree or higher), we adopt an hourly wage target 10% above the base wage rate; for AA degrees, 20% below the base wage rate; for CDA, 30% below the base wage rate; and for no credential, 40% below the base wage rate. For assistant teachers, who often have fewer responsibilities than lead teachers, we adopt hourly wage targets that are about 17% less than other roles. For example, the wage rate target for assistant teachers with a bachelor’s degree is \$28.26 per hour. Table C1 reports the hourly wage targets for each staff role by credential under the final rule and the baseline scenario.

**Table C1. Hourly Wage Targets by Credential Under Wage-Parity Targets (Constant 2024 dollars)**

<b>Degree</b>	<b>HS Teacher</b>	<b>EHS Teacher</b>	<b>Asst. Teacher</b>	<b>Home Visitor</b>	<b>Family Child Care Provider</b>
<b>Advanced</b>	\$37.45	\$37.45	\$31.09	\$37.45	\$37.45

<sup>78</sup> U.S. Bureau of Labor Statistics. Occupational Employment and Wages. May 2023. 25-2011 Preschool Teachers, Except Special Education. <https://www.bls.gov/oes/current/oes252011.htm>.

<sup>79</sup> Multiplied by a ratio of February 2024 (310.326) to May 2023 (304.127) CPI. U.S. Bureau of Labor Statistics. CPI for all Urban Consumers (CPI-U), Not Seasonally Adjusted, <https://data.bls.gov/timeseries/CUUR0000SA0>. Accessed April 9, 2024.



<b>BA</b>	\$34.05	\$34.05	\$28.26	\$34.05	\$34.05
<b>AA</b>	\$27.24	\$27.24	\$22.61	\$27.24	\$27.24
<b>CDA</b>	\$23.83	\$23.83	\$19.78	\$23.83	\$23.83
<b>No Credential</b>	\$20.43	\$20.43	\$16.96	\$20.43	\$20.43
<b>Weighted Average</b>	\$31.97	\$26.21	\$20.32	\$29.63	\$25.05

To estimate the likely impact of the wage-parity policy on expenditures, we calculate the expenditures under the baseline scenario, then calculate the expenditures needed to fund the wage increases. Table C2 reports these impacts under the baseline scenario. Note that these are reported in constant 2024 dollars. We take into account the exemption of small agencies from the wage policies with associated costs by reducing costs by 8.6% to take into account that 8.6% of Head Start staff work at agencies with 200 or fewer slots, according to 2023 PIR data. Data from December 2023 show that about 120 agencies (i.e., 7% of all agencies) are funded between 200-250 slots and a subset of these programs may reduce their slots below the 200 slot threshold as a result of an approved Change in Scope application, which allows Head Start agencies to reduce the funded enrollment level or convert slots from Head Start Preschool to Early Head Start based on community needs. These agencies are not included in the 8.6% adjustment to our analyses since we do not know how many of these agencies will reduce their funded slots below the 200 slot threshold. Expenditure estimates in this analysis may be overestimated if many or all of those programs are eligible for and take advantage of the small agency exemption.

**Table C2. Expenditure on Wages to Fund Wage Parity, Constant 2024 Dollars**

	<b>HS Teacher</b>	<b>EHS Teacher</b>	<b>Asst. Teacher</b>	<b>Home Visitor</b>	<b>Family Child Care Provider</b>
<b>Baseline Wage (\$)</b>	\$28.03	\$18.92	\$18.57	\$22.46	\$22.46
<b>Hours Per Staff</b>	1,680	2,080	1,680	2,080	2,080
<b>Staff Count</b>	33,630	31,574	35,597	6,017	2,051

<b>Baseline Expenditure (\$M)</b>	\$1,583	\$1,242	\$1,110	\$281	\$96
<b>Parity Expenditures</b>	\$1,651	\$1,573	\$1,111	\$339	\$98
<b>Expenditure Increase</b>	\$67	\$330	53	\$58	\$1.8

### Disaggregation of Wage-Parity Policy Implementation Costs

While estimates in this analysis are performed at the national level, the cost of implementing the wage policies will likely not be borne equally by each program. Programmatic data suggests Head Start programs vary in their current compensation practices and therefore will likely have varying costs associated with implementing the wage parity policy. Head Start data shows that wages and enrollment are not distributed evenly across various program types. Furthermore, some programs across the country are experiencing a workforce shortage and are in varying stages of implementing changes to address issues related to lack of qualified and available staff to fill classrooms and associated under-enrollment.

Data from the 2019 PIR shows that programs located in school systems pay classroom teachers at the highest rate, on average. Grant recipients in school districts also have more programs that are fully enrolled compared to other agencies. Meanwhile, grant recipients that are Community Action Agencies are, on average, the lowest paying agency type and pay more than \$10,000 less annually to classroom teachers, on average, compared to school systems. Finally, ACF published sub-regulatory guidance to encourage Head Start programs to increase staff and teacher wages. Some Head Start programs have responded to this guidance by requesting to reduce their funded enrollment in order to increase staff wages, but those programs are in varying stages of implementing these changes.

Given this information, we expect that the cost of implementing these policies will vary depending on a variety of factors, such as agency type. For instance, programs in school systems

that already compensate at a higher level will likely incur lower costs when implementing the wage policies in this rule compared to programs in Community Action Agencies that, on average, tend to provide lower compensation. The costs of implementing these policies will likely further vary based on the local wage targets used for each program, the distribution of qualifications for existing staff, and the degree to which each program has already made efforts to improve compensation. ACF responds to this concern by providing small agencies (defined as those with 200 or fewer funded slots) an exemption from implementing most of the wage and benefits requirements in this final rule. However, small Head Start agencies are still required develop or update a pay scale and make improvements in wages and benefits for staff over time to reduce disparities between wages and benefits in Head Start and preschool teachers in public schools.

The national estimates provided in this analysis cannot necessarily be applied at the individual program level. For instance, the hourly wage targets described in the previous section (Table C2) represent national averages and targets for individual programs will vary based on salaries for preschool teachers in their community. Program-level wage targets will vary based on factors such as local compensation rates and cost of living. Depending on the existing compensation structure in each program, some programs will have to increase their hourly wages substantially, and others may only need to make small increases. Program-level costs for implementing this policy are expected to be impacted by a variety of factors such as local pay compensation rates, education/credential levels of program staff, and the degree to which programs have already attempted to increase wages.

ACF acknowledges that a limitation of using national level estimates is that these program-level nuances are not specifically illustrated in the analysis. However, in lieu of

determining individual program-level variation in the cost of this rule, we use national averages to estimate costs at the national level.

### Impact of the Minimum Pay Requirement

This final rule requires that all staff receive, at minimum, a salary that is sufficient to cover basic costs of living in their geographic area, including those at the lowest end of the pay structure. We anticipate that Head Start programs in low-income areas would spend additional resources to fulfill the basic cost-of-living requirement. We assume that the incremental impact of this provision is approximately \$62 million per year, which accounts for \$48 million through hourly wage increases, and \$13 million in corresponding increases in non-wage benefits. This estimate is consistent with about 15% of all Head Start staff, about 35,000 staff members in the baseline, each working an average of 30 hours per week for 42 weeks, receiving an additional \$2.00<sup>80</sup> per hour in wages to meet the goal of establishing a minimum hourly wage of \$15.00, or a total average increase in hourly compensation of \$1.40. While the regulation does not establish a dollar amount associated with establishing a minimum hourly wage, as this level will vary geographically, we use \$15.00 for estimation purposes.

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<sup>80</sup> In the absence of data from Head Start programs that reports the wages paid to the lowest paid staff, this estimate assumes that all of the 35,000 staff earned minimum wage in their State in 2023, which is consistent with an average hourly wage of \$11.33. The estimate of average minimum wage was calculated using the minimum wage for each State ([https://www.dol.gov/agencies/whd/mw-consolidatedState Minimum Wages](https://www.dol.gov/agencies/whd/mw-consolidatedState%20Minimum%20Wages) (ncls.org)) and which states would have minimum wages at or above \$15 per hour by 2031 based on enacted (but, in some cases, not presently effective) minimum wages, and the number of Head Start staff in each State according to administrative data from the Office of Head Start in 2023. For those staff where minimum wage data were not available due to lack of data for the U.S. Territory or data entry error, the Federal minimum wage of \$7.25 was used. In the baseline analysis, we assume that all staff receive a pay increase, to \$13.00 per hour, due to the projected reductions in funded enrollment from FY2023 to FY2024, and the associated reduction in staff and increased share of personnel funds. These staff would therefore need an additional \$2.00 per hour to meet the \$15 per hour minimum pay policy goal.

## Impact on Expenditures Through Wage Compression

In addition to the direct impacts on teachers, assistant teachers, home visitors, and family child care providers, we anticipate that the final rule will result in increased compensation for staff providing family partnership services as well as other non-education staff positions to address wage compression and wage equity issues that would arise. For example, the required wage increases for lead teachers may exceed what a similarly credentialed family service staff makes in a program and those programs would need to plan for compensation increases for such staff to avoid a significant wage gap between those positions. As another example, with rising wages for education staff, other staff in supervisory or mid-management roles would likely receive wage increases as well (e.g., coaches, education managers, etc.). To account for this impact, we assume that the total impacts on expenditures associated with wages would be 10% higher than the sum of the impacts associated with wage targets and the minimum pay requirement.

## Overall Impacts of Wage Parity on Expenditures, Holding Benefits Constant

Next, we report the total expenditures, including the impacts of the wage targets, minimum pay requirement, and impacts associated with wage compression. Table C3 reports the net impacts on expenditures, holding benefits constant. The “wage targets” row is equal to the totals of the “expenditure increase” rows contained in Tables C1 and C2. When pay parity is fully implemented, the wages policies would result in about \$571 million in additional annual expenditures on wages.<sup>81</sup> Note that these estimates are reported in constant 2024 dollars.

### **Table C3. Total Expenditures on Wages to Fund Wage Policies (Millions of Constant 2024 Dollars)**

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<sup>81</sup> The additional annual expenditures on fringe associated with the wage policies (i.e., the fringe associated with the increased wages in the wage policies at the baseline fringe rate of 24%), are included in the estimates reported in Table C6 in the benefits section.

<b>Scenario</b>	<b>Baseline</b>
<b>Wage Targets</b>	\$458
<b>Minimum Pay</b>	\$62
<b>Subtotal</b>	\$520
<b>Wage Compression</b>	\$52
<b>Total</b>	\$571

The estimates in Table C3 reflect the expenditures (in constant 2024 dollars) needed to fully implement pay parity, which would occur in 2031 under the final rule. Table C4 reports the expenditures by year under the implementation schedule, reported in constant 2024 dollars and also nominal dollars.

**Table C4. Total Additional Expenditures on Wages by Year to Fund Wage Policies, Millions of Dollars**

<b>Year</b>	<b>Policy Phase-In</b>	<b>Constant 2024 Dollars</b>	<b>Nominal Dollars</b>
2024	0%	\$0	\$0
2025	5%	\$29	\$29
2026	10%	\$57	\$60
2027	25%	\$143	\$153
2028	40%	\$229	\$250
2029	60%	\$343	\$384
2030	80%	\$457	\$524
2031	100%	\$571	\$670
2032	100%	\$571	\$685
2033	100%	\$571	\$701
2034	100%	\$571	\$717

#### Expenditures Associated with Fringe Benefits

As discussed above, based on an analysis of current Head Start programs, about 24% of total personnel costs go towards fringe benefits, rather than wage compensation. Table B1 reports personnel costs of about \$9.1 billion in 2024. Of this figure, 76% goes to wage compensation, or about \$6.9 billion, and 24% goes to fringe benefits, or about \$2.2 billion. We

assume that this ratio will remain constant over time, absent the staff benefits provisions of the final rule.

This final rule outlines requirements for grant recipients to provide benefits to staff, discussing health care coverage, paid leave, short-term mental health services, and other considerations. For the purposes of this analysis, we assume that these enhancements would increase the share of total personnel costs that go towards fringe benefits from 24% to 27.2%, holding wages compensation constant. Absent all other provisions in this final rule, adopting the benefits policy at baseline wages would increase fringe benefits in constant 2024 dollars from \$2.2 billion to about \$2.57 billion, and total compensation from about \$9.0 billion to \$9.48 billion, for an increase of about \$397 million.

Table C5 reports the impacts of the benefits policies over time, accounting for the yearly impact of the wage policies reported in Table C4, reported in constant and nominal dollars. These tables report the changes to benefits, some of which—as presented in more detail in Table C6—are driven by wage increases of the wage policies.

**Table C5. Total Additional Expenditures by Year on Benefits, Millions of Dollars**

<b>Year</b>	<b>Policy Phase-In</b>	<b>Constant 2024 Dollars</b>	<b>Nominal Dollars</b>
2024	24.0%	\$0	\$0
2025	24.0%	\$17	\$17
2026	24.0%	\$34	\$36
2027	24.0%	\$85	\$91
2028	24.0%	\$135	\$150
2029	27.2%	\$638	\$723
2030	27.2%	\$718	\$835
2031	27.2%	\$798	\$953
2032	27.2%	\$798	\$977
2033	27.2%	\$798	\$1,003
2034	27.2%	\$798	\$1,029

## Disaggregation of Fringe Benefit Estimates

We use the same approach as in the NPRM to estimate the cost associated with each category of benefits in the final rule. We refer to the distribution of benefits provided to teachers,<sup>82</sup> who have an overall fringe rate of 32.5% according to data on employer costs for employee compensation released by BLS in December 2022.<sup>83</sup> There are more categories of benefits provided to teachers described by the BLS than will be required under the final rule, specifically retirement benefits are provided to teachers in the BLS data. In order to estimate the expenditures on the major benefits categories that will be required under the final rule, we first estimate the cost of Head Start teachers receiving the same fringe rate and major benefits categories (32.5%: health insurance, retirement, and paid leave). We then calculate the associated reduction in fringe associated with removing the retirement benefit in order to estimate the cost of the benefits policies under the final rule.

We tentatively apply the same distribution of fringe associated with each fringe category to the estimated expenditure on benefits for Head Start using the same overall fringe rate of 32.5%, which represents an increase of 8.5% from the current fringe rate. We then calculate the increased expenditure needed for each of the major benefits categories compared to existing expenditures in each category for Head Start programs.<sup>84</sup> This approach estimates the total projected cost associated with increasing the fringe rate from 24.0% to 27.2% to account for requirements in the final rule for health care coverage and paid time off. This is less than the target fringe rate of 27.8% used in NPRM to account for the removal of the requirement to

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<sup>82</sup> This occupational group was chosen because the total fringe rate aligns with internal estimates of the total fringe rate that would be associated with the benefit policies. The occupational group includes postsecondary teachers; primary, secondary, and special education teachers; and other teachers and instructors.

<sup>83</sup> [https://www.bls.gov/news.release/archives/ecec\\_03172023.pdf](https://www.bls.gov/news.release/archives/ecec_03172023.pdf). As reported in March 2024, the fringe rate in December 2023 was 32.1% for teachers overall and 34.2% for primary, secondary, and special education school teachers. We retain our target fringe of 32.5%, which is between these numbers. ecec.pdf (bls.gov).

<sup>84</sup> Estimates based on average fringe for each category of benefits calculated from a sample of Head Start program budgets.



provide paid family leave proposed in the NPRM.<sup>85</sup> Under the final rule, increased spending on health care coverage will account for 42% of the total cost of the benefits policy, and increased spending on paid time off will account for the remaining 58% of the total cost of the benefits policy. Under the policies proposed in the NPRM, the benefits requirements were required after two years; the final rule extends the implementation timeline for benefits by two years to year four.

Table C6 reports an expenditure breakdown for each major category of benefits that would be impacted by the final rule.

**Table C6. Additional Expenditure Breakdown by Benefit Policy, Millions of Nominal Dollars**

<b>Year</b>	<b>Total Benefits Expenditures<sup>1, 2</sup></b>	<b>Benefits Policy Total</b>	<b>Benefits Policy: Paid Time Off</b>	<b>Benefits Policy: Health Insurance</b>	<b>Fringe Associated with Wage Policy<sup>3</sup></b>
<b>2025</b>	\$17	\$0	\$0	\$0	\$17
<b>2026</b>	\$36	\$0	\$0	\$0	\$36
<b>2027</b>	\$91	\$0	\$0	\$0	\$91
<b>2028</b>	\$150	\$0	\$0	\$0	\$150
<b>2029</b>	\$723	\$550	\$416	\$307	\$173
<b>2030</b>	\$835	\$599	\$481	\$354	\$236
<b>2031</b>	\$953	\$651	\$548	\$404	\$302
<b>2032</b>	\$977	\$669	\$563	\$415	\$309
<b>2033</b>	\$1,003	\$687	\$577	\$426	\$316
<b>2034</b>	\$1,029	\$706	\$593	\$437	\$323

<sup>1</sup> Only benefits expenditures associated with baseline staff are shown here. Benefits expenditures associated with hiring additional staff under other policies in the final rule (e.g., additional family services staff hired under the Family Services Family Assignments policy) are included in the estimates for each specific policy.

<sup>2</sup> These estimates are calculated using the wages estimated under the wage policy.

<sup>3</sup> This cost represents the additional benefits expenditures associated with increased wages under the wage policy at the baseline fringe rate of 24%.

We identify several significant caveats to this analysis. First, because many existing Head Start grant recipients provide health care coverage to staff, the growth in costs for expanded health care coverage may be smaller than projected. We do expect that there will be

<sup>85</sup> The reduction in the fringe rate of 0.6% is made to account for the removal of the requirement for paid family and medical leave. This estimate is based on the 2017 report estimating that, as a share of national payroll, total benefits estimated to be paid out for a national paid family and medical leave policy range from 0.45 percent to 0.63 percent of payroll depending on the generosity of the model simulated. IMPAQ-Family-Leave-Insurance.pdf (dol.gov).

improvements in the quality of health plans and what employees are covered, and increases in the provision of life and disability insurance, which may increase overall insurance costs for some grant recipients, but it is likely not to increase linearly with wage increases. Further, some grant recipients may choose to encourage staff to enroll in plans available in the Marketplace because the quality and expenses of health insurance in the Marketplace may be better than what they can obtain as an employer, and therefore the proportion of fringe spent on insurance for those grant recipients would decrease. Second, legally required fringe components such as Social Security taxes are not necessarily comparable between the reference group of teachers included in the BLS data and Head Start staff. Most, but not all, State and local employees are not covered by Social Security because they are covered by State or local pension plans; as a result, legally required fringe may be lower for some teachers and retirement fringe higher for many teachers relative to a comparable benefits package for Head Start staff.

#### Discussion of Uncertainty

We have attempted to provide our best estimates of the potential effects of the staff wages and staff benefit provisions. We acknowledge several significant and unresolved sources of uncertainty. First, we note that these estimates use a single baseline, which is a limitation of this analysis. We have provided estimates using a single baseline that assumes a stable funded enrollment level consistent with projected FY2024 funded enrollment of 750,000, very similar to the funded enrollment levels we projected in the NPRM for FY2023. If funded enrollment were to increase, which would require congressional investment designated for expansion (and such increase occurs for reasons separate from this regulation), the impacts of this final rule would be underestimated. If funded enrollment were to decrease, particularly if it were to decrease below

the level of our current actual enrollment of 650,000, then the impacts of this rule would be overestimated. Furthermore, if other baseline assumptions were to vary, such as the child-to-staff ratio or the share of appropriations allocated to personnel costs, that would also impact the estimated effects. However, absent guiding data for the timing and magnitude of these possible variations, ACF presents estimates using the single, data-informed baseline.

Second, we followed a partial equilibrium modeling approach, focusing the primary scope of our analysis on the impacts to Head Start. General equilibrium or multi-market partial equilibrium modeling could potentially explore the impacts of the final rule on wages beyond Head Start staff. These effects could be informative for the estimates on expenditures, since wage increases experienced by Head Start staff could result in wage increases to other occupations that draw from a similar supply of workers, such as Kindergarten teachers. It is possible to anticipate a gradual feedback effect between Head Start staff and occupations that provide reference wages under the wage-parity policy. If this is the case, this would tend to indicate that our expenditure estimates are underestimated.

Third, the analysis assumes that average compensation for Head Start staff (in the baseline scenario) and preschool teachers in public school settings (in the baseline scenario and under the final rule) increases with inflation, or equivalently, that their average compensation remains constant in real terms, over the time horizon of this analysis. If compensation for preschool teachers in public school settings grows more slowly over time than compensation for Head Start staff, this would tend to indicate that our expenditure estimates are overestimated. Alternatively, if compensation for preschool teachers in public school settings grows faster than compensation for Head Start staff, this would tend to indicate that our expenditure estimates are underestimated.

In regard to the inherent uncertainty over the availability of funding to fully implement this final rule, section J presents a sensitivity analysis on that significant source of uncertainty.

*D. Workforce Supports: Staff Wellness- Staff Breaks*

The final rule outlines requirements for programs to provide break times during work shifts. Specifically, for each staff member, a program must provide regular breaks of adequate length based on hours worked.

This increased flexibility does not change our approach to estimating the costs of the staff breaks requirements (in other words, we expect that programs will adopt similar breaks policies and frequencies). The scope of this element of the final rule covers approximately 108,869 education staff, the estimate of education staff that is proportionally decreased to reflect the reduced enrollment in 2024 compared to 2023. Across all staff, the final rule requires an average break time of about 28 minutes per shift.<sup>86</sup> We assume 180 average shifts per year for each education staff, for a total of 5,049 minutes of break time per year per staff.<sup>87</sup> For 108,869 total education staff, the final rule requires a minimum of about 9.2 million hours of break time per year.<sup>88</sup> We do not have detailed information from Head Start programs on their current policies for staff breaks. For the purposes of this analysis, we adopt the following assumptions:

- 1) Under the baseline scenario of no regulatory action, 20% of Head Start programs offer break time for education staff.

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<sup>86</sup>  $13\% * 15 + 87\% * 30 = 28.05$ .

<sup>87</sup>  $2,805 * 180 = 5,049$ .

<sup>88</sup>  $5,049 * 108,869 / 60 = 9,161,293$ .

- 2) Under the final rule, 50% of Head Start programs will shift the workloads of existing Head Start staff to provide coverage during the additional breaks.
- 3) Under the final rule, Head Start programs who do not already provide breaks and cannot shift workloads of existing staff would provide coverage during the additional breaks by hiring ‘floaters.’
- 4) On average, Head Start programs will pay the ‘floaters’ hourly wages in line with assistant teachers with no credential.

In line with assumptions 1 and 2, we adjust the 9.2 million hours estimate downwards by 70% and estimate that the final rule would result in about 2.7 million hours of additional breaks for educational staff. Using the wage target for assistant teachers of \$16.96 per hour under the wage-parity target and accounting for the benefits policy, the breaks policy would result in additional expenditures of about \$64 million per year (in constant 2024 dollars). This policy would take effect in 2027, and the total expenditures would increase in line with the wages under the wage-parity policy. Table D1 reports the expenditures needed to fund this policy, in constant and nominal dollars. Table D2 reports the additional value-of-time costs by year for those programs who provide breaks by shifting existing workloads, in constant and nominal dollars. Tables D1 and D2 reflect the policy cost using the benefits fringe rate in the final rule benefits policy.

**Table D1. Expenditures by Year to Fund Staff Breaks Policy, Millions of Dollars**

<b>Year</b>	<b>Constant 2024 Dollars</b>	<b>Nominal Dollars</b>
<b>2024</b>	\$0	\$0
<b>2025</b>	\$0	\$0
<b>2026</b>	\$0	\$0
<b>2027</b>	\$64	\$69
<b>2028</b>	\$64	\$70

<b>2029</b>	\$64	\$72
<b>2030</b>	\$64	\$74
<b>2031</b>	\$64	\$75
<b>2032</b>	\$64	\$77
<b>2033</b>	\$64	\$79
<b>2034</b>	\$64	\$81

**Table D2. Additional Value-of-Time Costs by Year for Staff Breaks Policy, Millions of Dollars**

<b>Year</b>	<b>Constant 2024 Dollars</b>	<b>Nominal Dollars</b>
<b>2024</b>	\$0	\$0
<b>2025</b>	\$0	\$0
<b>2026</b>	\$0	\$0
<b>2027</b>	\$107	\$115
<b>2028</b>	\$107	\$117
<b>2029</b>	\$107	\$120
<b>2030</b>	\$107	\$123
<b>2031</b>	\$107	\$125
<b>2032</b>	\$107	\$128
<b>2033</b>	\$107	\$131
<b>2034</b>	\$107	\$134

*E. Family Partnership Family Assignments*

This final rule ensures that the planned number of families assigned to work with individual family services staff is no greater than 40, unless a program can demonstrate higher family assignments provide high quality family and community engagement services and maintain reasonable staff workload. 2023 PIR data reveals that approximately 44 percent of grants have staff family assignments that are 40 families or less. Across all grants with ratios of families per family services staff that exceed 40, we estimate that Head Start programs would need to hire an additional 2,282 staff to provide family partnership services to meet this new caseload requirement. The policy allows programs to request a waiver to go above the caseload of 40 families, if they can demonstrate appropriate staff competencies, program outcomes, and

reasonable staff workload. This estimate includes an assumption that 10% of programs will apply for and receive this waiver to exceed a caseload of 40.<sup>89</sup> This estimate also assumes that grants will only provide family partnership services to 85% of families they serve at any given time, due to average family turnover.

We adopt an estimate of \$40,000 in wage compensation per year per family service staff, which results in a \$52,631 total compensation in the baseline scenario or \$54,945 total compensation under the benefit policy. For 2,282 workers, this would result in additional expenditures across Head Start programs of \$125 million. This policy would begin to take effect in 2028. Table E1 reports the expenditures needed to fund this policy, in constant and nominal dollars.

**Table E1. Expenditures by Year to Fund Family Service Family Assignments Policy, Millions of Dollars**

<b>Year</b>	<b>Constant 2024 Dollars</b>	<b>Nominal Dollars</b>
<b>2024</b>	\$0	\$0
<b>2025</b>	\$0	\$0
<b>2026</b>	\$0	\$0
<b>2027</b>	\$125	\$135
<b>2028</b>	\$125	\$138
<b>2029</b>	\$125	\$141
<b>2030</b>	\$125	\$144
<b>2031</b>	\$125	\$147
<b>2032</b>	\$125	\$151
<b>2033</b>	\$125	\$154
<b>2034</b>	\$125	\$158

*F. Mental Health Services*

The final rule enhances requirements for mental health supports to integrate mental health more fully into every aspect of program services as well as elevate the role of mental health consultation to support the wellbeing of children, families, and staff. In response to comments,

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<sup>89</sup> For the purposes of this estimation, we assume that all of the programs that exceed the threshold have an average caseload of 60.

we incorporated flexibility into the requirements for mental health supports, including by centering a multidisciplinary approach instead of a specific team, and by revising the requirement related to mental health consultation to allow programs to meet the monthly frequency requirement, in part, with behavioral health specialists. Given this additional flexibility, we adjust our NPRM estimates to anticipate that this element of the rule so that half of agencies will hire roughly equivalent to one additional full-time employee (FTE) per Head Start agency to support the requirements for mental health supports in the final rule. We estimate 775 agencies will need an additional FTE to comply with the policy.

As we did in the NPRM, we adopt an estimate of \$60,000 in wage compensation per year per FTE which represents an average of the various salaries of the staff members who we assume will complete the additional work. In addition to wage compensation, we assume that fringe benefits will be associated with the additional FTE, or about \$18,947 under the baseline assumptions for benefits, or \$22,418 under the benefit policy. In total, under the final rule, we estimate that each additional FTE would require \$78,947 in total compensation in years prior to the effective date of the benefits policy, and \$82,418 in total compensation in all future years. For 775 FTEs, this would result in additional expenditures across Head Start programs of \$64 million. We assume that these impacts would begin immediately. Table F1 reports the expenditures needed to fund this policy, in constant and nominal dollars.

**Table F1. Expenditures by Year to Fund Mental Health Services Policy, Millions of Dollars**

<b>Year</b>	<b>Constant 2024 Dollars</b>	<b>Nominal Dollars</b>
<b>2024</b>	\$0	\$0
<b>2025</b>	\$61	\$63
<b>2026</b>	\$61	\$64
<b>2027</b>	\$64	\$68
<b>2028</b>	\$64	\$70
<b>2029</b>	\$64	\$72
<b>2030</b>	\$64	\$73



<b>2031</b>	\$64	\$75
<b>2032</b>	\$64	\$77
<b>2033</b>	\$64	\$78
<b>2034</b>	\$64	\$80

*G. Preventing and Addressing Lead Exposure*

The final rule includes new requirements to prevent and address lead exposure through water and lead-based paint in Head Start facilities. This analysis presents estimates of the costs associated with testing, inspection, and, as needed, remediation or abatement actions, in Head Start facilities where lead hazards may still exist. For purposes of this analysis, the cost estimates are split between preventing exposure to lead in water and preventing exposure to lead in paint.

*Preventing Exposure to Lead in Water*

To assess the likely magnitude of the costs associated with preventing exposure to the lead in water requirement, we assume the majority of plans and ongoing practices by programs will align with approaches states have developed to address exposure to lead in water in school systems. We estimate a total of 18,500 service locations, with an average of 7.5 water fixtures per service location, for 138,750 total fixtures. States use varying approaches on the frequency of testing, percent of fixtures tested in a facility, and remediation. For frequency of testing, we assume some portion of all fixtures each year at a rate of 25% of all fixtures would be tested in the first year, or 34,688 water fixtures, and following the first year, about 4% of all water fixtures would be tested every year, about 4% would be tested every 3 years, and 16% of will be tested every 5 years. We adopt an estimate of \$100 per fixture tested. For remediation costs, we assume 12 percent of all water fixtures sampled will have a lead concentration at or above the state's action level, or about 4,163 water fixtures. We assume for the cost of remediation that about 95% of water fixtures will be using point-of-use devices, while 5% will be addressed through lead

service line replacements, although we recognize that there may be other approaches to remediation including restricting access to the water fixture and using an alternative water source. For point-of-use devices, we adopt an estimate of \$30 per filter, with filters replaced quarterly, or a cost per fixture of \$120 per year. For lead service line replacement, we assume \$6,500 per lead service line replaced. To estimate the cost of remediation for the 4,163 water fixtures with a lead concentration at or above the state's action level, we calculate an annual cost of \$890,882 for remediation. Although replacement of lead service lines would reduce ongoing costs of remediation, we maintain this cost consistent each year assuming new lead hazards in water fixtures would emerge over time. Some of this cost can be covered by Federal funding under the Bipartisan Infrastructure Law (as enacted by the Infrastructure Investment and Jobs Act); many states are already using this funding.

#### Preventing Exposure to Lead in Paint

To assess the likely magnitude of the costs associated with the preventing exposure to lead in paint requirement, we first adopt estimates of 18,500 service locations with about 1,762 average square feet per service location based on required usable indoor space of 35 square feet for each child served increased by 25% for other general common areas where children may be served. We assume a prevalence of lead-based paint in about 28% Head Start facilities. Thus, about 5,180 service locations would be inspected for an estimate \$1,000 per service location. Across all service locations requiring evaluation, we estimate an initial total cost associated with evaluations of about \$5.18 million that would be split evenly among the first two years for a total of \$2.59 million in the first year.

Of rooms undergoing an evaluation, we assume that 14% of rooms would be identified as having a significant lead-based paint hazard needing abatement.<sup>90</sup> Thus, after the first round of assessments covering 5,180 service locations, we estimate that 2,590 service locations would have a significant lead-based paint hazard needing abatement split across the first two years, or 1,259 service locations in the first year. We assume \$2,750 cost for remediation or abatement of lead in paint hazards per service location which includes costs associated with interior paint repair (\$710); friction/impact work (\$430); area cleanup (\$110), and unit cleanup (\$640). These cost estimates reflect the costs for a single family unit at 1,775 square feet but are then increased to account for additional administrative costs for these type of activities in a Head Start facility setting. Across all 1,259 service locations requiring abatement following the first round of assessments, this would be about \$3.56 million.

To model reassessments and remediation or abatement in future years, we assume reinspection for all facilities with lead-based paint in years 3 and 4, followed by half of those programs continuing to be reinspected in years 5 and onward. Since lead-based paint abatement reflects measures that are expected to eliminate or reduce exposures to lead hazards for at least 20 years under normal conditions and other remediation or interim controls can also be effective for many years with proper maintenance, we assume a significant decrease in continuing costs associated with remediation or abatement of exposure to lead in paint.

**Table G1. Expenditures by Year to Fund the Exposure to Lead in Paint Prevention Policy  
(Millions of Constant 2024 Dollars)**

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<sup>90</sup> <https://downloads.regulations.gov/EPA-HQ-OPPT-2020-0063-0197/content.pdf>.

Year	Inspection	Reinspection	Remediation or Abatement	Cost of Evaluations	Cost of Remediation or Abatement	Cost of Policy to Prevent Exposure to Lead in Paint
2025	2,590	0	1,295	\$2,590,000	\$3,561,250	\$6,151,250
2026	2,590	0	1,295	\$2,590,000	\$3,561,250	\$6,151,250
2027	0	2,590	259	\$2,590,000	\$712,250	\$3,302,250
2028	0	2,590	259	\$2,590,000	\$712,250	\$3,302,250
2029	0	648	65	\$647,500	\$178,063	\$825,563
2030	0	648	65	\$647,500	\$178,063	\$825,563
2031	0	648	65	\$647,500	\$178,063	\$825,563
2032	0	648	65	\$647,500	\$178,063	\$825,563
2033	0	648	65	\$647,500	\$178,063	\$825,563
2034	0	648	65	\$647,500	\$178,063	\$825,563

Table G2 reports the yearly costs associated with the lead in water policy.

**Table G2. Expenditures by Year to Fund the Exposure to Lead in Water Prevention Policy**

(Millions of Constant 2024 Dollars)

Year	Testing	Retesting	Remediation	Cost of Testing	Cost of Remediation	Cost of Policy to Prevent Exposure to Lead in Water
2025	34,688	0	4,163	\$3,468,800	\$890,882	\$4,359,682
2026	0	5,550	4,163	\$555,000	\$890,882	\$1,445,882
2027	0	5,550	4,163	\$555,000	\$890,882	\$1,445,882
2028	0	11,100	4,163	\$1,110,000	\$890,882	\$2,000,882
2029	0	5,550	4,163	\$555,000	\$890,882	\$1,445,882
2030	0	27,750	4,163	\$2,775,000	\$890,882	\$3,665,882
2031	0	11,100	4,163	\$1,110,000	\$890,882	\$2,000,882
2032	0	5,550	4,163	\$555,000	\$890,882	\$1,445,882
2033	0	5,550	4,163	\$555,000	\$890,882	\$1,445,882
2034	0	11,100	4,163	\$1,110,000	\$890,882	\$2,000,882

**Table G3. Expenditures by Year to Fund the Lead Policies (Millions of Constant 2024**

**Dollars and Nominal Dollars)**

<b>Year</b>	<b>Cost of Lead in Water Policy</b>	<b>Cost of Lead-Based Paint Policy</b>	<b>Total Cost, Constant \$</b>	<b>Total Cost, Nominal \$</b>
<b>2025</b>	\$4.4	\$6.2	\$10.5	\$10.8
<b>2026</b>	\$1.4	\$6.2	\$7.6	\$8.0
<b>2027</b>	\$1.4	\$3.3	\$4.7	\$5.1
<b>2028</b>	\$2.0	\$3.3	\$5.3	\$5.8
<b>2029</b>	\$1.4	\$0.8	\$2.3	\$2.5
<b>2030</b>	\$3.7	\$0.8	\$4.5	\$5.1
<b>2031</b>	\$2.0	\$0.8	\$2.8	\$3.3
<b>2032</b>	\$1.4	\$0.8	\$2.3	\$2.7
<b>2033</b>	\$1.4	\$0.8	\$2.3	\$2.8
<b>2034</b>	\$2.0	\$0.8	\$2.8	\$3.5

*H. Administrative Costs*

Several of the provisions of the final rule will likely entail additional administrative costs beyond those that we have otherwise quantified in this analysis. For example, we anticipate that programs would expend resources to develop program-specific policies while preparing to implement the workforce wage and benefits provisions. To account for these impacts, we use the same approach as we did in the NPRM. We adopt an assumption that each Head Start program would spend a total of 600 hours per program, spread across directors, education managers, disability managers, health managers, and other management staff to develop program-specific policies. To value the time spent on these activities, we adopt a fully loaded hourly wage of \$60 per hour, reflecting a mix of wages across several roles. We assume that this impact will primarily occur in the first year of the time horizon of our analysis, before most of the impacts associated with wage and benefits policies take effect, and thus we do not adjust these upwards to account for other provisions of the final rule. For each program, we value this impact at

\$36,000.<sup>91</sup> Across nearly 3,000 Head Start programs, we estimate the total impact as \$108 million, all occurring in 2025.<sup>92</sup>

*I. Timing of Impacts*

The final rule includes an implementation timeline for several of the provisions, described above. Table I1 summarizes the impacts on expenditures assuming a funded enrollment level consistent with the projected FY2024 funded enrollment, consistent with this implementation timeline, reporting yearly estimates, and present value and annualized values corresponding to a 2% discount rate, with all monetary estimates reported in millions of constant 2024 dollars. Tables I2 reports the same impacts except in nominal dollars.

**Table I1. Expenditures of the Final Rule, Baseline Scenario (Millions of Constant 2024 Dollars)**

<b>Year</b>	<b>Wage</b>	<b>Benefit</b>	<b>Breaks</b>	<b>Family Services</b>	<b>Mental Health</b>	<b>Lead</b>	<b>Other</b>	<b>Total</b>
2025	\$49	\$16	\$0	\$0	\$61	\$11	\$108	\$245
2026	\$99	\$31	\$0	\$0	\$61	\$8	\$0	\$199
2027	\$247	\$78	\$64	\$125	\$64	\$5	\$0	\$583
2028	\$395	\$125	\$64	\$125	\$64	\$5	\$0	\$778
2029	\$592	\$587	\$64	\$125	\$64	\$2	\$0	\$1,435
2030	\$789	\$661	\$64	\$125	\$64	\$4	\$0	\$1,708
2031	\$987	\$735	\$64	\$125	\$64	\$3	\$0	\$1,978
2032	\$987	\$735	\$64	\$125	\$64	\$2	\$0	\$1,977
2033	\$987	\$735	\$64	\$125	\$64	\$2	\$0	\$1,977
2034	\$987	\$735	\$64	\$125	\$64	\$3	\$0	\$1,978
<b>PV, 2%</b>	\$5,314	\$3,836	\$451	\$883	\$568	\$42	\$106	\$11,200
<b>Annualized, 2%</b>	\$592	\$427	\$50	\$98	\$63	\$5	\$12	\$1,247

**Table I2. Expenditures of the Final Rule, Baseline Scenario (Millions of Nominal Dollars)**

<sup>91</sup> \$36,000 = 600 hours \* \$60 / hour.

<sup>92</sup> \$108,000,000 = \$36,000 / program \* 3,000 programs. Head Start funding is only used for a portion of the salaries of these management positions.

<b>Year</b>	<b>Wage</b>	<b>Benefit</b>	<b>Breaks</b>	<b>Family Services</b>	<b>Mental Health</b>	<b>Lead</b>	<b>Other</b>	<b>Total</b>
2025	\$51	\$16	\$0	\$0	\$63	\$11	\$110	\$251
2026	\$103	\$33	\$0	\$0	\$64	\$8	\$0	\$208
2027	\$264	\$84	\$69	\$135	\$69	\$5	\$0	\$625
2028	\$432	\$138	\$70	\$138	\$70	\$6	\$0	\$854
2029	\$663	\$666	\$72	\$141	\$72	\$3	\$0	\$1,616
2030	\$905	\$769	\$74	\$144	\$73	\$5	\$0	\$1,970
2031	\$1,157	\$877	\$75	\$147	\$75	\$3	\$0	\$2,335
2032	\$1,184	\$900	\$77	\$151	\$77	\$3	\$0	\$2,391
2033	\$1,211	\$924	\$79	\$154	\$79	\$3	\$0	\$2,449
2034	\$1,239	\$948	\$81	\$158	\$80	\$4	\$0	\$2,509
<b>PV, 2%</b>	\$6,249	\$4,621	\$524	\$1,026	\$645	\$46	\$108	\$13,219
<b>Annualized, 2%</b>	\$696	\$514	\$58	\$114	\$72	\$5	\$12	\$1,472

All estimates reported above are impacts compared to our baseline budget scenario described in Table B1. Further, we calculate the cost per child, in 2031, when the rule is fully implemented, using 2024 funded enrollment levels to be \$22,357 (nominal dollars). As discussed previously, we recognize that projected FY2024 funded enrollment exceeds estimated FY2024 actual enrollment. Based on national estimates, if programs fully implement these policies and maintain funded enrollment at least consistent with FY2024 actual enrollment (i.e., 650,000), they will not need additional appropriations beyond the baseline budget scenario until 2031, when they would need an additional \$100 million. In 2032, programs will need an additional \$104 million, \$109 million in 2033, and additional \$114 million in 2034 above the baseline budget scenario funding levels to fully implement the policies and maintain a funded enrollment level consistent with estimated FY2024 actual enrollment. However, as previously discussed, individual programs may need additional resources depending on their current policies, local wages, and cost of living in their area.

### *J. Sensitivity Analysis- Potential Enrollment Reductions*

In the previous analysis, we framed results as the Federal appropriations increase needed to fully fund these requirements and maintain current funded enrollment of 750,000.

As we did in the NPRM, in the interest of transparency, we perform a sensitivity analysis to evaluate the impacts of the final rule under a scenario of no additional funding above the baseline budget scenario in Table B1 (or increased appropriations that cannot be used to support this regulation and/or are not increased in response to it). Under this scenario, Head Start programs will likely comply with the final rule by reducing the size of their funded enrollment, which would also result in a reduced workforce at Head Start programs.

To calculate the number of slots at Head Start programs under this last scenario, we multiply the total number of slots under the full-funding scenario by the share of funding available compared to full funding. For example, we estimate that \$15.7 billion in total Head Start funding will be necessary to fully implement the final rule in 2034 and maintain funded enrollment consistent with the estimated FY2024 actual enrollment of 650,000. Under our baseline budget scenario, \$15.5 billion will be available, which is about 99% of the funding needed. Thus, we estimate approximately 645,500 slots will be available, which is 99% of enrollment at the estimated FY2024 actual enrollment level, or a % change in slots of -1%.

Table J1 reports the change in total slots<sup>93</sup> over time that we estimate may be necessary to implement the final rule compared to both projected FY2024 funded enrollment and estimated FY2024 actual enrollment, absent an increase in Federal appropriations. Based on national estimates, we estimate that programs can approach full implementation of the policies in the final

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<sup>93</sup> For this analysis, we assume that staffing reductions occur at the same rate as slot reductions.



rule without additional appropriations by aligning their funded enrollment levels with their actual enrollment. As in the NPRM, we estimate that only a small reduction in slots from estimated FY2024 actual enrollment, 1%, will be needed to reach full implementation of the policies in the final rule. Specifically, programs may need to reduce funded enrollment from the projected FY2024 funded enrollment of 750,000 by 14%, to a funded enrollment of approximately 645,500 in 2031, which reflects a 1% reduction from estimated FY2024 actual enrollment of 650,000.<sup>94</sup> All monetary estimates are reported in nominal dollars.

**Table J1. Slot Loss under Baseline Head Start Budget Scenario (Millions of Nominal Dollars)**

<b>Year</b>	<b>Funding under Baseline Budget Scenario</b>	<b>Slots Funded by Baseline Budget under Final Rule</b>	<b>% Change in Slots from 2024 Funded Enrollment</b>	<b>% Decline in Slots from 2024 Actual Enrollment*</b>
2025	\$12,592	735,364	-2%	--
2026	\$12,882	738,074	-2%	--
2027	\$13,178	716,037	-5%	--
2028	\$13,481	705,315	-6%	--
2029	\$13,791	671,318	-10%	--
2030	\$14,108	658,098	-12%	--
2031	\$14,433	645,543	-14%	-1%
2032	\$14,765	645,466	-14%	-1%
2033	\$15,104	645,364	-14%	-1%
2034	\$15,452	645,236	-14%	-1%

\* We note that reductions in funded enrollment in response to the final rule will require some degree of shifting of funds from existing expenditures, such as those to support funded slots that are currently empty or spending to recruit and train staff in a high turnover environment. Please see the discussion under the heading “Connecting Baseline Uncertainty with Differing Estimates of Regulatory Effects.”

<sup>94</sup> We note that reductions in funded enrollment in response to the final rule will require some shifting of funds from existing expenditures, such as those to support funded slots that are currently empty or spending to recruit and train staff in a high turnover environment. Please see the discussion under the heading “Connecting Baseline Uncertainty with Differing Estimates of Regulatory Effects.”

### *K. Non-Quantified Impacts of Certain Elements of the Final Rule*

In addition to the effects that are quantified elsewhere in this analysis, we have identified a select number of provisions that are expected to have impacts that are not quantified or monetized.

#### Estimated Impact of Relevant Provisions on Slot Loss

Sections C through G of this Regulatory Impact Analysis (RIA) monetize the provisions of this final rule that we anticipate will have the largest potential impact. Some of the provisions described in this section may also result in costs that have not been monetized. As quantified above, one potential impact of enacting these standards at current funding levels is a reduction in Head Start slots in some programs. A reduction in Head Start slots would reduce access to high-quality early childhood education for some children ages birth to 5 from low-income families. However, this impact is difficult to quantify because a substantial number of current Head Start slots remain unfilled currently, due to staffing shortage and other constraining factors. A loss of funded slots that are unfilled would not impact children who are currently enrolled.

The children who may be impacted by this loss of access will not receive high-quality services from Head Start and would not experience the positive outcomes for children and families who participate in the Head Start program. Some children who lose access to Head Start may receive early childhood education through State or local preschool programs, which are offered in many areas of the country. Another potential impact is that some children who would otherwise have been served by Head Start may receive early care and education in programs or settings that lack the quality to adequately support their learning and development, though we note that, absent the quality improvements under this final rule, Head Start quality is likely to

deteriorate over time. Loss of access to Head Start may also reduce opportunity for parents and caregivers to participate in the workforce.

#### Expected Impact of Preventing and Addressing Lead Exposure (§ 1302.48)

This final rule has new requirements for programs to have a plan to prevent children from being exposed to lead in the water or paint of Head Start facilities. Below we summarize findings from a few select research studies. Decades of research have shown that high lead levels are harmful for children’s development.<sup>95</sup> Research also shows, however, that lead remediation has long-term benefits to children’s health and economic benefits to society as they mature into adolescence and beyond. For instance, a 2002 CDC study found that reduced lead exposure in the United States since 1976 has resulted in a \$110 billion to \$319 billion economic benefit due to higher IQs and worker productivity.<sup>96</sup> Furthermore, a research study that conducted a cost-benefit analysis on every dollar invested in lead paint control has been estimated to be a \$17 to \$221 return.<sup>97</sup> This research suggests there may be a societal benefit that lead remediation regulations can make.<sup>98</sup> Additionally, there is research showing that having classmates who were exposed to lead has implications for everyone in the classroom.<sup>99</sup> While we cannot estimate the quantitative cost savings that this provision will have, we note that testing on its own does not make anyone healthier; the cause-and-effect chain between testing and health outcomes includes activities that have costs.

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<sup>95</sup> Finkelstein, Y., Markowitz, M. E., & Rosen, J. F. (1998). Low-level lead-induced neurotoxicity in children: an update on central nervous system effects. *Brain research reviews*, 27, 168-176.

<sup>96</sup> Grosse, S. D., Matte, T. D., Schwartz, J., & Jackson, R. J. (2002). Economic gains resulting from the reduction in children's exposure to lead in the United States. *Environmental health perspectives*, 110(6), 563–569. <https://doi.org/10.1289/ehp.02110563>.

<sup>97</sup> Gould, E. (2009). Childhood Lead Poisoning: Conservative Estimates of the Social and Economic Benefits of Lead Hazard Control. *Environmental Health Perspectives*, 117(7). <https://doi.org/10.1289/ehp.0800408>.

<sup>98</sup> Gazze, Ludovica, Persico, Claudia and Spirovska, Sandra (2022). “The Spillover Effects of Pollution: How Exposure to Lead Affects Everyone in the Classroom.” (forthcoming) *Journal of Labor Economics*. The Long-Run Spillover Effects of Pollution: How Exposure to Lead Affects Everyone in the Classroom | NBER.

<sup>99</sup> Gazze, Ludovica, Persico, Claudia and Spirovska, Sandra (2022). “The Spillover Effects of Pollution: How Exposure to Lead Affects Everyone in the Classroom.” *Journal of Labor Economics*. The Long-Run Spillover Effects of Pollution: How Exposure to Lead Affects Everyone in the Classroom | NBER.

## Additional Impact of Workforce Supports: Staff Wages and Benefits (§ 1302.90)

In addition to the effects (costs) quantified in this RIA, these provisions may also result in potential cost savings to governments at various jurisdictional levels (which are mostly transfers, when categorized from a society-wide perspective) due to benefit reductions for ECE workers. Specifically, an increase in wages and benefits for Head Start workers may result in a reduction in the number of households receiving a range of safety net benefits, including Low Income Home Energy Assistance Program (LIHEAP), housing assistance, Medicaid/Children's Health Insurance Program (CHIP), Marketplace premium tax credits, SNAP, Supplemental Security Income (SSI), TANF, and WIC. Additionally, increases in staff wages will likely have an outsized impact on improving the educational quality of Head Start programming. While descriptive and non-causal, research illustrates that low wages are a primary driver of high turnover in early childhood educator positions.<sup>100</sup> When early childhood teachers achieve pay parity with teachers in public schools their stress likely decreases, and research finds evidence that increased wages reduces turnover and improves worker focus and attention to children's needs.<sup>101</sup> This will improve the quality of services delivered in programs. Research has also demonstrated that improved wages are correlated with higher quality programs.<sup>102</sup> The majority of research in this area is not causal and, to the best of our knowledge, no cost-benefit analysis has been conducted related to the impact of increased wages in the early childhood sector.

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<sup>100</sup> Caven, M., Khanani, N., Zhang, X., & Parker, C. E. (2021). *Center- and program-level factors associated with turnover in the early childhood education workforce (REL 2021-069)*. U.S. Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, Regional Educational Laboratory Northeast & Islands.; Whitebook, M., Howes, C., & Phillips, D. (2014). *Worthy Work, STILL Unlivable Wages: The Early Childhood Workforce 25 Years after the National Child Care Staffing Study*. Center for the Study of Child Care Employment. <https://cscce.berkeley.edu/wp-content/uploads/publications/ReportFINAL.pdf>. Morrissey, T.W., & Bowman, K. (2024). Early care and education workforce compensation, program quality, and child outcomes: A review of the research. *Early Education & Development*. Early Care and Education Workforce Compensation, Program Quality, and Child Outcomes: A Review of the Research: Early Education and Development: Vol 0, No 0 - Get Access (tandfonline.com).

<sup>101</sup> Doromal et al. (2024). Wage supplements strengthen the child care workforce. The Urban Institute. Wage Supplements Strengthen the Child Care Workforce | Urban Institute. Bassok et al. (2021). The effects of financial incentives on teacher turnover in early childhood settings: Experimental evidence from Virginia. The University of Virginia. 6de6fd54-e921-4c88-a452-ad7cabccc362.pdf (elfsightedn.com).

<sup>102</sup> Isaccs, J., Adelstein, S., Kuehn, D. (2018). Early Childhood Educator Compensation in the Washington Region. Urban Institute. [https://www.urban.org/sites/default/files/publication/97676/early\\_childhood\\_educator\\_compensation\\_final\\_2.pdf](https://www.urban.org/sites/default/files/publication/97676/early_childhood_educator_compensation_final_2.pdf).

Therefore, our conclusions here are tentative but rooted in strong developmental science on the importance of continuity of care and adult-child interaction as a predictor of program quality in early education settings.

By improving wages, teachers may choose to stay in the profession longer and may spend more time building the skills necessary to support high-quality early childhood programming and high-quality teacher-child interactions. Furthermore, improvements in staff retention overall due to improved wages and benefits likely promotes more stable staffing across the program and provides continuity of services for enrolled children and may also reduce stress and workload for other staff in the program due to fewer staff vacancies. Further, a strong and stable early childhood workforce can lead to improved child behavior and stronger social competence.<sup>103</sup>

It is also likely that there will be potential cost savings from the effects of this final rule mitigating the high expenses associated with high turnover. When Head Start programs experience staffing shortages, they often ask existing staff to work additional hours to compensate for the lack of adequate coverage. In some cases, substitute or temporary staff will be hired and sometimes this comes at an increased cost. Presumably, after the implementation of this policy, these excess costs (experienced as remunerations increases for the aggregate collection of Head Start teachers) will be reduced because the workforce will be more stable and programs will experience improved retention.

#### Estimated Impact of Secretary's Waiver Authority for Wage Policies (§ 1302.90)

This RIA assumes annual increases in appropriations that are sufficient to keep pace with inflation. The Secretary's waiver authority described in § 1302.90(e)(7) through (10) protects

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<sup>103</sup> Choi, Y., Horm, D., Jeon, S. & Ryu, D. (2019). Do Stability of Care and Teacher-Child Interaction Quality Predict Child Outcomes in Early Head Start?, *Early Education and Development*, 30:3, 337-356.

against unintended consequences if annual appropriations are far below what is sufficient to keep pace with inflation (i.e., less than 1.3%) for programs that meet certain criteria. This funding scenario would be an historic anomaly and ACF would expect significant impacts on programs as a result of unprecedented low funding levels. While this scenario is unlikely, ACF is providing information on how costs and slots could be impacted should appropriations be much lower than anticipated.

In order to qualify for the waiver, should the authority be exercised, programs must meet several criteria. ACF assumes that most programs will meet several of the criteria to be eligible for a waiver by 2028. First, programs must demonstrate they would need to cut enrolled slots in order to comply with the wage policies. By 2028, when the Secretary's authority could be exercised, we expect that nearly all programs will have reached full enrollment, either through enrolling more children or through reducing their funded service level and would thus meet this criterion. Programs must also demonstrate that they are making progress toward pay parity, which ACF expects all programs will do as a requirement of the final rule.

However, ACF believes some programs will not be eligible because they do not meet health, safety, and quality criteria. ACF anticipates that the majority of programs that are disqualified for a waiver due to this criterion will be ineligible because they were required to compete as part of the DRS. Over the last 10 years (from 2013-2023), an average of 21% of Head Start grants that were monitored in a given year were designated to compete for continued funding and thus would not be eligible for a waiver. Should this waiver authority be exercised, we estimate that approximately 80% of programs would be eligible under the Secretary's waiver authority.

Combined with the exemption for small programs, we estimate that the vast majority of programs could be exempt from many of the wage policies if the Secretary's waiver authority is exercised. Further, we expect that the costs (experienced by workers as increased remuneration) associated with the wage requirements of this rule would decrease significantly as a result of this Secretarial authority, which would likely lead to slower loss of funded slots attributable to the rule implementation. However, we would also expect that the overall expenditures on wages would continue to increase, albeit at a slower rate, as programs with an exemption or waiver would be required to continue to make progress on wages.

#### Estimated Impact of Mental Health Services (Part 1302, Subparts D, H, and I)

In addition to the effects (costs) quantified in section E of this RIA, there are numerous additional benefits to enhancing provisions related to mental health supports. Advancing science in child development demonstrates that birth to age five is an important period for brain development and is a critical foundation on which all later development builds. Mental health and social-emotional well-being during this period are foundational for family well-being, children's healthy development, and early learning and are associated with positive long-term outcomes. Early childhood experiences, like trusting relationships with caregivers in a stable, nurturing environment, aid in the development of skills that build resilience. The enhancements to the requirements for mental health supports are expected to promote higher-quality services for children in Head Start programs across the country and support child, family, and staff well-being.

Specifically, revisions to part 1302, subpart D, enhances health program services to explicitly include mental health. These regulatory changes also reflect a preventative approach to mental health across comprehensive service areas, such as health and family engagement. The

addition of mental health screening will support programs in having conversations about mental health early and often. Screening will facilitate the identification of children, families, and staff with specific needs and allow for intervention before more time and resource intensive care becomes necessary. Mental health screening may result in nominal costs to programs that elect to purchase specific screening tools. This rule also adds a requirement that a program take a multidisciplinary approach to mental health. We expect that this work would be carried out by existing staff and may have an associated opportunity cost not reflected in budgets.

Expected Benefits of Child Health and Safety (§§ 1302.47; 1302.90; 1302.92; 1302.101; 1302.102)

The rule includes several provisions to ensure basic health and safety measures are taken to protect all children. These provisions include a revision of previous requirements to ensure we are as clear as possible and that our requirements reflect current best practices and more precise terminology around standards of conduct. These changes will result in aligned definitions with other Federal resources and clarifications to existing requirements. Non-quantifiable benefits of these enhancements include critical supports to child safety by supporting staff in recognizing potential child abuse and neglect and understanding their legal responsibility as mandated reporters, which will improve child safety and program response to violations of standards of conduct.

These provisions also enhance requirements for incorporating child health and safety training into existing annual staff training and professional development. We assume there will be nominal costs (included in the estimates below) associated with improved training on child health and safety because programs will replace other on-the-job activities. Non-quantifiable benefits of an increased frequency of training include allowing programs to offer staff advanced



training opportunities on areas of local importance or greater complexity, such as culturally responsive practices in reporting, issues related to disproportionate reporting, and information about at-risk populations. This policy change also creates more equitable opportunities for staff to understand and discuss their ethical and legal responsibilities. Annual training on positive strategies to understand and support children’s social and emotional development also enhances the use of positive strategies and have the added benefit of increasing opportunities for peer support as appropriate. Together, these changes will have the benefit of ensuring the safety and wellbeing of all who participate in Head Start programs.

The cost estimates for the additional annual training content are provided below and represent value-of-time costs by year for all staff in Head Start programs who will be required to take this annual training. We predict this cost will be borne out by shifting existing content of existing staff trainings to accommodate this new requirement. Table K1 reflects this value-of-time cost using the average target wage for all position types and the benefits fringe rate in the final rule benefits policy. These costs were estimated using an hourly wage of \$24.36 which represents the midpoint between the baseline and target wage averages, which is \$33.46 per hour when final rule benefits policy are included. We assume 0.5 hours of training annually for 178,690 staff (which represents all education staff and half of other types of staff who will expect will receive the training).

**Table K1. Additional Value-of-Time Costs by Year for Child Health and Safety Training Policy, Millions of Dollars**

<b>Year</b>	<b>Constant 2024 Dollars</b>	<b>Nominal Dollars</b>
<b>2024</b>	<b>\$0</b>	<b>\$0</b>
<b>2025</b>	<b>\$3</b>	<b>\$3</b>
<b>2026</b>	<b>\$3</b>	<b>\$3</b>

<b>2027</b>	<b>\$3</b>	<b>\$3</b>
<b>2028</b>	<b>\$3</b>	<b>\$3</b>
<b>2029</b>	<b>\$3</b>	<b>\$3</b>
<b>2030</b>	<b>\$3</b>	<b>\$3</b>
<b>2031</b>	<b>\$3</b>	<b>\$4</b>
<b>2032</b>	<b>\$3</b>	<b>\$4</b>
<b>2033</b>	<b>\$3</b>	<b>\$4</b>
<b>2034</b>	<b>\$3</b>	<b>\$4</b>

Estimated Impact of Modernizing Engagement with Families (§§ 1302.11; 1302.13; 1302.15; 1302.34; 1302.50)

These provisions enhance existing requirements that programs must follow when completing their community needs assessments. Programs will be required to identify communication methods to best engage with prospective and enrolled families, and to use modern technologies to streamline information gathering and improve communications. There is significant benefit to families in giving them a voice in the way that programs choose to communicate. Using communication modalities and methods that are easiest to families would enhance engagement with Head Start and increase program accessibility. Programs will also be required to implement improvements to streamline the enrollment experience for families. There may be nominal costs for programs to make these determinations and implement new technologies. Streamlining the enrollment experience for families will create more user-friendly and efficient processes, reduce burden and build trust with families, and support Head Start in more equitably and effectively delivering services.

## Estimated Impact of Community Assessment (§ 1302.11)

The changes to these provisions address concerns that Head Start programs and others in the field have raised about the burdens of the community needs assessment. These provisions promote clarity on the intent of the community assessment, align with best practices, and increase the effectiveness in how the community assessment is used to inform key aspects of program design and approach. Requiring a strategic approach to determine what data to collect prior to conducting the community needs assessment and how to use the needs assessment to achieve intended outcomes will promote overall effectiveness of the community assessment to drive programmatic decision making. These changes may also facilitate reductions in cost of time-consuming or complex assessment and analytical techniques and reduce barriers to programs being able to use their community assessment data to effectively guide programmatic decisions. Programs will also be allowed to use readily available data on their community, which will reduce duplication of efforts and further lessen burden, and may facilitate coordination with other community programs.

Other new requirements related to the collection of specific elements in the community needs assessment, such as geographic location, race, ethnicity, and languages, facilitate Head Start's ability to understand the diversity of populations most in need of services, which in turn will help promote equity, inclusion, and accessibility in service delivery. Factors related to transportation needs and resources in communities reflects that transportation remains a significant barrier for many of the hardest to serve families and impedes Head Start's mission. Ensuring transportation needs and resources are part of the data that informs a program's design and service delivery will enable Head Start to more effectively meet the needs of families and improve access to Head Start services.

Estimated Impact of Adjustment for Excessive Housing Costs for Eligibility  
Determination (§ 1302.12)

This provision allows a program to adjust a family's income to account for excessive housing costs. This provision reflects a transfer of benefits from one potentially eligible family to another, however, consistent with §§ 1302.14 and 1302.13 in the HSPPS which are unchanged in this rule, programs will continue to establish selection criteria that prioritize selection of participants based on need. There may be nominal implementation costs as Head Start programs implement these new income calculations. Children whose families have few resources because they earn near-poverty level wages and live in areas with a high-cost of living may be newly eligible for Head Start. This enables Head Start to continue to prioritize the enrollment of families most in need of services. This provision also increases alignment with other means-tested Federal programs that use an income adjustment to account for excessive housing costs.

Estimated Impact of Tribal Eligibility (§ 1302.12)

The modifications to eligibility requirements for Tribal programs in this provision benefits Tribal programs by reducing barriers to families in need of program services. The rule allows Tribal programs the flexibility to consider eligibility regardless of income. Tribal programs can use their selection criteria to enroll pregnant women and age-eligible children who would benefit from Head Start services but do not meet income eligibility requirements. This selection criteria may include prioritizing children in families in which a child, family member, or member of the household is a member of an Indian Tribe. There may be nominal costs for Tribal programs to establish or revise their selection criteria and administrative procedures for enrollment.

#### Estimated Impact of Migrant and Seasonal Head Start Eligibility (§ 1302.12)

The modifications to eligibility requirements for MSHS programs in this provision benefits MSHS programs and families by reducing barriers to enrolling farmworker families in need of program services. First, MSHS programs may now serve any pregnant woman or age-eligible child who has one family member whose income comes primarily from agricultural employment as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802), even if they do not meet other income eligibility requirements. This change will allow for the families of migrant and seasonal farmworkers to benefit from Head Start without losing their eligibility if they pursue additional economic opportunities in other sectors. Second, the provisions related to eligibility duration address an existing inequity between infants and toddlers served in Early Head Start programs and those served in MSHS programs. The existing requirement creates an inequity because infants and toddlers served in Early Head Start programs can receive services for the duration of the program, meaning until they turn three and age out of the program, whereas the MSHS family is no longer considered eligible for the program after two years. Therefore, the young children of agricultural workers are not provided the same potential duration of services as infants and toddlers served by Early Head Start. This change also promotes continuity for families served by MSHS and reduces paperwork for families and programs.

#### Estimated Impact of Serving Children with Disabilities (§ 1302.14)

These provisions clarify language to address an inconsistency between the HSPPS and the Act. This provision reflects a transfer of benefits from one potentially eligible family to another. A non-quantifiable benefit of this provision is to address confusion caused by the discrepancy. Further clarification that the requirement to fill ten percent of slots with children

with disabilities under IDEA is a floor and not a ceiling supports Head Start in maximizing services to children with disabilities who benefit from the program's strong focus on inclusive early childhood settings.

#### Expected Benefits of Family Partnership Family Assignments (§ 1302.52)

This provision seeks to ensure that an individual family services staff is assigned to work with no greater than 40 families. Based on internal data, 44 percent of programs have caseloads that exceed 40 families. We estimate that a total of 2,282 new family services staff will need to be hired to meet this new requirement at a total cost of \$125 million. There are numerous non-quantifiable benefits to lower family assignments. This provision will address staff well-being, reduce burnout, and reduce job frustration and dissatisfaction. For staff well-being, large caseloads are associated with staff burnout and turnover, feeling overwhelmed, and expression of job frustration and dissatisfaction. This provision will improve the quality of family services and improve staff well-being and reflects best practice in the field.

#### Expected Benefits of Participation in Quality Rating and Improvement Systems (§ 1302.53)

This provision encourages Head Start programs to participate in State QRIS to the extent practicable if the State system has strategies in place to support their participation. We assume that programs newly participating in QRIS will incur additional costs and burden from substantive changes in the form of revised processes and potentially additional or different documentation, as well as possible duplication of monitoring and assessment processes. However, the rule allows for program to choose not to participate in QRIS if it presents an undue burden. Non-quantifiable benefits of participation in QRIS include continued quality improvement efforts, providing a common metric through which families can understand and

make decisions about program options, and aligning standards across a statewide early care and education system.

#### Expected Benefits of Services to Enrolled Pregnant People (§§ 1302.80; 1302.82)

This provision enhances services to enrolled pregnant people by requiring the newborn visit to include a discussion of maternal mental and physical health, infant health, and support for basic needs; and requiring programs to track and record information on service delivery for enrolled pregnant women. We assume programs may incur nominal costs associated with enhancements to recordkeeping. Non-quantifiable benefits of these provisions include assessing the child care, health, and mental health needs of mothers in the critical period after child birth, which will enable Head Start to provide support to mothers and identify opportunities for collaboration and intervention. Improved tracking and recording of services to enrolled pregnant women also supports ACF in understanding the services provided and identifying how to best be responsive to the needs of enrolled pregnant people. These records will also be used to validate the use of Federal funds to serve pregnant people and to inform ongoing conversations program staff have with the pregnant person about their needs before and after the baby is born.

#### Expected Benefits of Definition of Income (§1305.2)

This provision revises the definition of income by providing a clear and finite list of what is considered income and what is not considered income. Non-quantifiable benefits of this provision include making the policy less burdensome and complicated for programs to implement, ensuring programs can more easily identify an applicants' income, and promoting consistent interpretation on what to include in calculating income across programs.

## *Final Small Entity Analysis*

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This analysis, as well as other sections in this document and the Preamble of this final rule, serves as the Final Regulatory Flexibility Analysis, as required under the Regulatory Flexibility Act.

### *A. Description and Number of Affected Small Entities*

The SBA maintains a Table of Small Business Size Standards Matched to North American Industry Classification System Codes (NAICS).<sup>104</sup> We replicate the SBA's description of this table:

This table lists small business size standards matched to industries described in the North American Industry Classification System (NAICS), as modified by the Office of Management and Budget, effective January 1, 2022.

The size standards are for the most part expressed in either millions of dollars (those preceded by "\$") or number of employees (those without the "\$"). A size standard is the largest that a concern can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the average annual receipts or the average employment of a firm. How to calculate average annual receipts and average employment of a firm can be found in 13 CFR § 121.104 and 13 CFR § 121.106, respectively.

This final rule will impact small entities in NAICS category 624410, Child Care Services, which has a size standard of \$9.5 million dollars. We assume that most Head Start programs, if not all, are below this threshold and are considered small entities.

### *B. Description of the Potential Impacts of the Rule on Small Entities*

In the main analysis, we estimate that about \$2.51 billion (nominal dollars) in additional funding will be necessary to fully implement the final rule in 2034, which is about a 17% increase above baseline funding levels. Most of the funding needed is proportional to the size of

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<sup>104</sup> U.S. Small Business Administration (2023). "Table of Size Standards." March 17, 2023, <https://www.sba.gov/document/support--table-size-standards>.



the Head Start program or agency, so we do not separately assess the potential impacts of the rule on small entities of different sizes. The Department considers a rule to have a significant impact on a substantial number of small entities if it has at least a 3% impact on revenue on at least 5% of small entities. Since the final rule will likely result in increased expenditures of about 17%, we find that the final rule will likely have a significant impact on a substantial number of small entities.

In response to comments and concerns regarding the sustainability of small programs in implementing these policies, ACF is exempting agencies with 200 or fewer funded slots from most of the staff wage and benefit requirements in the final rule. However, small Head Start agencies are still required to make improvements in wages and benefits for staff over time to reduce disparities between wages and benefits in Head Start and preschool teachers in public schools. While small agencies have flexibility to phase in wage increases according to their budgets, ACF strongly encourages these programs to invest in higher wages by restructuring their budgets, targeting annual COLA increases to wages, and seeking other available funding sources that can be used to enhance wages.

### *C. Alternatives to Minimize the Burden on Small Entities*

ACF considered many policy alternatives to the final rule, some of which are quantified in this analysis. Tables I1 and I2 summarize the impacts on expenditures under the wage-parity policy, reporting yearly estimates, and present value and annualized values corresponding to a 2% discount rate. These tables present separate analyses of the following policies: staff wages, staff benefits, staff breaks, family service worker family assignments, mental health supports, and preventing and addressing lead exposure. This document also considers the impacts of expenditures associated with the minimum pay requirement, and itemized impacts of the lead in

water and lead-based paint policies. These analyses demonstrate the impact of exempting Head Start agencies with 200 or fewer funded slots from the wages and benefits requirements, estimated to be among the most expensive requirements of the final rule, and minimizes burden on small entities. The estimates in this final rule are lower than those estimated in the NPRM because of policy changes, such as removing the requirement for paid family leave, and the exemption of Head Start agencies with 200 or fewer slots from the wage and benefits requirements, which was added in response to comments and the particular challenges that small Head Start agencies may face in implementing these policies. In the NPRM, we also modeled an alternative policy that included retirement benefits, which the final does not include. In section J of this Regulatory Impact Analysis, we describe a sensitivity analysis that explores how the rule's effects are expected to manifest themselves if there are no increases in Federal appropriations above baseline (or such increases occur but not in response to this regulation and/or the increased appropriations could not be used to support the policies in the final rule). In addition, we report the likely reductions in funded enrollment under the final rule, which are also lower than estimated for the provisions in the NPRM. These tables and additional analyses in the narrative of this document enabled ACF to appropriately consider a range of feasible policy alternatives.

## **List of Subjects**

### **45 CFR Part 1301**

Early education, Grant programs, Head Start, Program governance, Social programs

### **45 CFR Part 1302**

Compensation, Early education, Grant programs, Head Start, Mental health, Quality improvement, Social programs, Workforce.

**45 CFR Part 1303**

Early education, Financial management, Grant programs, Head Start, Social programs.

**45 CFR Part 1304**

Accountability, Early education, Grant programs, Head Start, Monitoring, Social programs.

**45 CFR Part 1305**

Definitions, Early education, Grant programs, Head Start, Social programs.

Dated: August 1, 2024.

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**Xavier Becerra,**

*Secretary,*

*Department of Health and Human Services.*