



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1302

RIN 0970-AC63

Head Start Program

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

ACTION: Final rule; delay of compliance date.

SUMMARY: The Office of Head Start will delay the compliance date for background check procedures and the date for programs to participate in their state or local Quality Rating and Improvement Systems (QRIS). Both requirements are described in the Head Start Program Performance Standards (HSPPS) final rule that was published in the Federal Register on September 6, 2016. We believe programs and states will benefit from more time to fully implement these changes.

DATES: The date for programs to comply with background checks procedures described in 45 CFR 1302.90(b) and for programs to participate in QRIS described in 45 CFR 1302.53(b)(2) is delayed until September 30, 2018.

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, Division Director of Early Childhood Policy and Budget, Office of Early Childhood Development, OHS_NPRM@acf.hhs.gov, (202) 401-1195 (not a toll-free call). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION:

Background

The Head Start program provides grants to local public and private non-profit and for-profit agencies to provide comprehensive education and child development services to economically disadvantaged children, birth to age 5, and families and to help young children develop the skills they need to be successful in school. We amended our Head Start Program Performance Standards in a final rule that published in the Federal Register on September 6, 2016.

The Head Start Program Performance Standards define requirements grantees and delegate agencies must implement to operate high quality Head Start or Early Head Start programs and provide a structure to monitor and enforce quality standards.

Promoting Child Safety and State Partnerships

Child safety is a top priority in the final rule. We strengthened our criminal background check requirements at 45 CFR 1302.90(b), in the final rule, to reflect changes in the Improving Head Start for School Readiness Act of 2007, Pub. L. 110-134, and to complement background check

requirements in the Child Care and Development Block Grant (CCDBG) Act of 2014, Pub. L. 113-186.

In addition to background check requirements, we aim to strengthen partnerships between states and Head Start programs. As part of this effort, 45 CFR 1302.53(b) in the final rule requires Head Start programs to take an active role in promoting coordinated early childhood systems, including those in their state. As part of these requirements, most Head Start programs must participate in QRIS, if they meet certain conditions.

Compliance Dates

In the **SUPPLEMENTARY INFORMATION** section of the final rule, we provided a table, *Table 1: Compliance Table* that lists dates by which programs must implement specific standards. We currently list September 30, 2017, as the date by which programs must comply with background check requirements at 45 CFR 1302.90(b). We had previously extended background check requirements until September 30, 2017, to align with the background check requirement deadline in the CCDBG Act through a Federal Register document, published on December 6, 2016. However, programs are required to continue to adhere to the criminal record check requirements in section 648A of Head Start Act, as amended by the Improving Head Start for School Readiness Act of 2007, Pub. L. 110-134. We list August 1, 2017, as the date programs must participate in their states' Quality Rating and Improvement Systems (QRIS) pursuant to 45 CFR 1302.53(b)(2).

Background Checks Procedures in the final rule

Generally, 45 CFR 1302.90(b)(1) requires that before a person is hired, programs must conduct a sex offender registry check and obtain either a state or tribal criminal history records, including fingerprint checks, or a Federal Bureau of Investigation (FBI) criminal history records, including fingerprint checks.

In 45 CFR 1302.90(b)(2), (4), and (5), we afford programs 90 days to obtain whichever check they could not obtain before the person was hired, as well as child abuse and neglect state registry check, if available. We require programs to have systems in place that ensure these newly hired employees do not have unsupervised access to children until their background process is complete. A complete background check consists of a sex offender registry check, state or tribal history records, including fingerprint check and FBI criminal history records, including fingerprint check, as well as a child abuse and neglect state registry check, if available. We also require programs to conduct complete background checks for each employee at least once every five years.

We believe programs will need more time to implement systems to complete the backgrounds checks process listed at 45 CFR 1302.90(b)(2), (4), and (5) in our final rule. Also, we recognize most states will have systems that can accommodate our programs' background checks requests by September 30, 2018. Congress requires states that receive CCDBG funds to implement systems for comprehensive background checks for all child care teachers and staff. These states must have requirements, as well as policies and procedures to enforce and conduct criminal background checks for existing and prospective child care providers, by September 30, 2017, but

Congress gave states the authority to request extensions until September 30, 2018, and several states have done so. Since these systems enable Head Start programs to meet the HSPPS requirements in 45 CFR 1302.90(b), we can minimize burden on Head Start programs if we extend the compliance date for 45 CFR 1302.90(b) to September 30, 2018. Until September 30, 2018, the criminal record check requirements from section 648A of the Head Start Act continue to remain in place.

QRIS Requirement in the final rule

QRIS is a systemic approach to assess, improve, and communicate the level of quality in early and school-age care and education programs. QRIS award quality ratings to programs that meet a set of defined program standards. Since the 1990s, many states have developed a QRIS.

The requirements at 45 CFR 1302.53(b) require Head Start programs to take an active role in promoting coordinated early childhood systems to maximize access to services, reduce system duplication, foster informed quality improvement, and ensure Head Start programs are part of larger early childhood systems within their states. These requirements went into effect on November 7, 2016. To further Head Start's role in state systems of quality improvement, the HSPPS requires programs to participate in QRIS, if they meet certain conditions described at 45 CFR 1302.53(b)(2).

We understood from the public comment process and from subsequent discussions with Head Start grantees and state organizations that there are concerns about the time and resources needed by both the states and grantees to ensure Head Start grantees are able to participate in their QRIS.

We understand programs have taken steps to participate in QRIS and that many states are assessing their QRIS with new Head Start QRIS participation policies, but additional time is needed to align these systems. We want to minimize any unintentional burden on states that choose to adapt their systems to incorporate Head Start participation, as well as alleviate programs' concerns about meeting the current compliance date for participation in QRIS.

Given the variation in the state/local QRIS landscape and the applicability of the conditions in the regulation, the original compliance date for the requirement in the HSPPS at 45 CFR 1302.53(b)(2) was August 1, 2017 in the previously mentioned compliance table. Through this document, we are delaying the date by which programs must implement the specific requirement for QRIS participation until September 30, 2018. The broader requirement for Head Start programs to take an active role in promoting coordinated early childhood systems continues to be in effect.

Conclusion

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

We find good cause to waive public comment under section 553(b) of the APA because it is unnecessary and contrary to the public interest to provide for public comment in this instance. The delayed compliance date poses no harm or burden to programs or the public. A period for public comment would have only extended programs' concerns about complying with these requirements by the compliance date. Programs may voluntarily come into compliance at an earlier date if they have the processes already in place. Programs that do not have processes already in place, have until September 30, 2018, to comply with the requirements on background checks at 45 CFR 1302.90(b) and the requirement to participate in their states' QRIS at 45 CFR 1302.53(b)(2).

Dated: September 6, 2017.

Steven Wagner,
Acting Assistant Secretary
for Children and Families.

Approved: September 6, 2017.

Thomas E. Price,
Secretary.

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