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Re: Comments on Notice of Proposed Rulemaking
Head Start Program, 45 CFR Part 1307 (RIN 0970-AC44)
Docket Number: ACF-2010-0003

The Center for Law and Social Policy (CLASP) is submitting comments on the proposed regulations to implement the statutory provisions of the Improving Head Start for School Readiness Act of 2007 published September 22, 2010, at 75 Fed. Reg. 57704. We appreciate this opportunity, and applaud the Office of Head Start for the thoughtful work that they have done to implement the requirements of the new law while continuing to promote the goals of the Head Start program.

We largely approve of the seven conditions proposed at Section 1307.3(b) to determine whether a Head Start or Early Head Start agency will be required to compete for a new five-year cycle of funding. These seven criteria reflect the most important indicators of whether an agency is meeting its financial, administrative, and educational responsibilities and present a frame for programs to achieve the highest quality. At the same time, we have some concerns that, as written, implementation of the NPRM will present unnecessary challenges and complications to the designation renewal system (DRS). These comments reflect specific concerns with the NPRM and propose changes to help ensure that the program continues to meet the needs of our most vulnerable children and families.

General Comments

While we applaud the Office of Head Start for its effort to bring together a set of criteria that ensure program and financial management requirements and standards are the focus of work in Head Start programs, it is also true that the Office is proposing a new usage of the CLASS: Pre-K, in addition to a set of criteria that have never been looked at together. We recommend that the

regulations set out clear procedures for an ongoing examination of this system for recompetition. Over time, the review process should be able to identify whether, for example, a particular type of grantee is disproportionately represented among those grantees required to recompetete—such as grantees serving primarily infants, Migrant and Seasonal or tribal programs, or grantees in a particular region of the country, or grantees of a particular size. If the system does appear to disadvantage certain types of grantees in a way that does not reflect their relative quality, there should be an opportunity to revise the system to remove any unintended bias.

We also urge the Office to take into account the special needs and structures of Early Head Start programs and Migrant and Seasonal programs and ensure that any observational assessments or assessments of program quality that are developed for these programs are reliable, validated and tested in program settings before being made a permanent part of future regulations.

Finally, we believe that the success of the new DRS will depend on good training of monitors to ensure that the use of “deficiency” is enforced uniformly and objectively, to determine a meaningful definition of “the establishment and implementation of goals to improve school readiness” (1307.3(2)(i)) and “to analyze child assessment data” (1307.3(2)(ii)), and to use the CLASS: Pre-K in this new way. We strongly encourage the Office of Head Start to invest significant resources in training of monitors, and to continue to provide strong oversight of this process as the new system is implemented.

Section 1307.3: Basis for determining whether a Head Start agency will be subject to an open competition

1307.3(a): Recompetition is an important opportunity for programs to examine their practices, ensure that they are meeting the needs of the children and families in their catchment area, and engage in strategic planning for the future. It is also a time and resource consuming process for grantees that may not have additional resources in place. To justify these efforts and to address issues raised later in the NPRM, it would be helpful to either a) understand the data used to derive the notion that 25 percent of all grantees reviewed in a year will be required to recompetete (i.e., average percent of programs who, in the past, have met one of the seven criteria in 1207.3(b), average number of programs receiving negative outcomes on a monitoring visit, etc.); b) to adjust the percentage to be recompeteted to meet an objective criteria; or c) to remove this requirement and only recompetete those programs that meet the seven criteria.

1307.3(b): The term agency used in this section and throughout the NPRM is defined in 1307.1 as “a public or private non-profit entity designated by ACF to operate a Head Start or Early Head Start program.” This seems to suggest that only grantees or delegate agencies are subject to the criteria in the NPRM. However, there is evidence from the field that monitoring visits—and findings of deficiencies—have been applied to non-delegate agencies with whom a grantee has an established a partnership but not a full delegate relationship.

The regulations—both in definition and in the applicable sections—should note that the seven criteria *only* apply to grantees and their delegates. Further, there needs to be clarity that if a non-delegate partner agency receives a deficiency in a monitoring visit that cannot be translated to a deficiency for the grantee.

It is our concern that the lack of clarity in this area could create a disincentive to grantee and delegate agencies to form partnerships. As these relationships have had significant positive impacts in communities, it is important to help them continue.

Accordingly, we recommend that a deficiency only be considered a condition requiring recompetition if the deficiency is identified in a grantee or delegate agency that is included in the grant document. This clarification will ensure that a grantee will be held accountable only for the actions of agencies over which the grantee can effectively exercise control.

1307.3(b)(2): The criteria described in this section under (i) and (ii) should be clearly defined, as the phrases “taken steps to achieve its goals for improving school readiness” (i) and “to plan how to individualize experiences and instructional approaches to *best* support each child’s progress” (ii) are fairly subjective. Further, we encourage the Office of Head Start to help grantees operationalize these criteria through guidance and additional training at the regional and local levels.

1307.3(b)(3): The Classroom Assessment Scoring System: Pre-K (CLASS: Pre-K) is a valuable tool for assessing teacher-child interactions, a fundamental determinant of the quality of a Head Start program, and can play a useful role in determining which grantees should be recompleted. However, in writing the final regulations, the Office of Head Start should follow the recommendations of developers of the CLASS: Pre-K in adapting the instrument—which currently is being used primarily to identify a teacher’s professional development needs—for this new purpose as a program assessment and accountability tool.

We understand that work is being done to either validate the CLASS for younger age groups or to find ways to assess classroom quality for Early Head Start programs, for mixed age group classrooms such as those in Migrant and Seasonal Head Start, and for programs using either a family child care or other home-based model. We applaud the recognition that CLASS is not currently appropriate for these age groups and settings, and encourage the Office of Head Start to take the time to find or develop an appropriate measure and ensure that it is validated and reliable. We believe that the remaining six criteria can be used appropriately to determine whether programs must be required to be recompleted.

The Office of Head Start should also ensure that CLASS is used within a process that offers a sufficient number of observations of a sufficient number of classrooms to provide a fair representation of the quality of teacher-child interactions in each grantee’s classes.

We also encourage the Office of Head Start to clarify in the final regulations how averaging individual classroom scores on the CLASS: Pre-K will be used to determine whether a grantee should be included in the DRS and how the system will be used to ensure fairness for all grantees, regardless of size, number and age of children served, or geographic location.

Section 1307.3(c): If the Office of Head Start does plan to select additional grantees for recompetition beyond those identified using the seven conditions at Section 1307.3(b), we would

like to offer our suggestions for a process that will promote high quality and give grantees some choice in the process of recompetition.

We recommend using a modified version of the second approach under consideration by the Office of Head Start, which would introduce evidence-based rating instruments into the Head Start monitoring review system. *See* 75 Fed. Reg. 57707-08. Rather than using such rating instruments to identify low performers that may be subject to recompetition, we recommend using the rating instruments—along with other criteria—to identify high-performers that would be exempt from recompetition.

Under our proposed system, a grantee would be exempt from recompetition if (in addition to being free of the seven specified conditions that automatically subject grantees to recompetition) it met one of several criteria that designated it as a high-quality program. These criteria could include: accreditation by a nationally recognized organization, attaining the top level of the state’s quality rating and improvement system, a high score on the applicable environmental rating scale (ECERS, ITERS, or FDCRS), a high CLASS score, being selected as a Center of Excellence, or having a clean monitoring review with no findings.

Grantees meeting none of these criteria for high-quality designation would be entered into a lottery. If application of the seven basic criteria does not elicit enough grantees for recompetition, any additional grantees required to recompute would be randomly selected from this pool. The number of grantees to be selected in this lottery would equal the difference between 25 percent of all grantees reviewed that year and the number of grantees already identified as being required to recompute based on meeting one of the seven conditions at Section 1307.3(b).

This proposed system would allow the recompetition process to highlight high performers among Head Start grantees and give grantees incentive to achieve a high level of quality, rather than solely emphasizing deficiencies and low performance.

Once the Office of Head Start has determined the process it plans to use for identifying the additional grantees to be recomputed, it should submit that process for public comment in accordance with Section 553 of the Administrative Procedure Act. Any secondary criteria for selecting grantees to meet a 25 percent threshold will have no less impact on the Head Start Program than the primary seven criteria described at Section 1307.3(b), and the secondary criteria referenced at Section 1307.3(c) must therefore be given equal opportunity for public evaluation and input.

Section 1307.5: Requirements to be considered for a five-year period when no entity in a community is determined to be delivering a high-quality and comprehensive Head Start program.

Under the proposed rule, “[a]ny agency that has been terminated as a Head Start or Early Head Start agency in the preceding five years will be excluded from competing in such competition.” We recommend some clarification of this prohibition.

Does terminated in this usage refer to a program that was recompeted under the seven criteria and lost, or does it mean a program that failed to meet legal requirements for fiscal governance, licensing requirements, etc?

Does the agency in this usage refer to any delegate agency that led a grantee to be recompeted or terminated, or does it only refer to the grantee agency?

We recommend that the rule be clarified to include only those grantee agencies who have been terminated for failing to meet legal requirements and that it not be extended to include the seven criteria that lead to recompetition. Further, we recommend that the rule be clear that a new grantee may not include a delegate agency who failed to meet legal requirements under a previous grant.

Section 1307.7: Designation Request and Review Process

Several issues are raised by the designation request and review process that particularly apply to large grantees (known as “supergrantees”) and those operating in areas where there may not be enough resources for competition.

In the case of all grantees with delegate agencies, the regulations should be clear on the process for recompetition. Due to the large number of delegate agencies under their supervision, “supergrantees” may be especially at risk of recompetition under the “one deficiency” criteria. The regulations should provide an explanation of the process that will be used when a supergrantee is designated for recompetition. The regulations should indicate whether a large grant that is being recompeted will, in some or all cases, be broken into several smaller grants to be recompeted separately and, if so, the procedure for both determining the way in which that large grant will be broken up and whether and how the existing “supergrantee” can compete for the new grant.

In addition, in areas where no other agency has the capacity to recompute, the Office of Head Start should establish a process to ensure that programs are subject to a review similar to that in the reading process that occurs during the competition for grants.