

reviewed by OIRA under E.O. 12866 before issuance and must demonstrate compliance with the applicable requirements for regulations, including significant regulatory actions, set forth in applicable Executive orders. NEA will seek significance determinations from OIRA for guidance documents, as appropriate, in the same manner as for rulemakings. Prior to publishing these guidance documents, and with sufficient time to allow OIRA to review the document in the event that a significance determination is made. NEA will provide OIRA with an opportunity to review the designation request or the guidance document, if requested, to determine if it meets the definition of “significant” or “economically significant” under Executive Order 13891.

(d) Even if not “significant,” a guidance document will be considered “otherwise of importance to the Arts Endowment’s interests” within the meaning of this paragraph (d) if it may reasonably be anticipated:

(1) To relate to a major program, policy, or activity of the Arts Endowment or a high-profile issue pending decision before the Arts Endowment;

(2) To involve one of the Chairman’s top policy priorities;

(3) To garner significant press or congressional attention; or

(4) To raise significant questions or concerns from constituencies of importance to the Arts Endowment, such as Committees of Congress, states, Indian tribes, the White House or other departments of the executive branch, courts, consumer or public interest groups, or leading representatives of industry.

#### **§ 1157.6 Notice-and-comment procedures.**

(a) Except as provided in paragraph (b) of this section, all proposed Arts Endowment guidance documents determined to be a “significant guidance document” within the meaning of § 1157.5 are subject to notice-and-comment procedures. The Arts Endowment shall publish an advance notice in the **Federal Register** of the proposed guidance document and invite public comments for a minimum of 30 days, then publish a response to major concerns raised in the comments when the final guidance document is published.

(b) All significant guidance documents must have approval and signature on a non-delegable basis by the Chairman or Senior Deputy Chairman, before issuance.

(c) The requirements of paragraph (a) of this section will not apply to any

significant guidance document unless the Arts Endowment finds, in consultation with OIRA, good cause that notice-and-comment procedures thereon are impracticable, unnecessary, or contrary to the public interest (and incorporates the finding of good cause and a brief statement of reasons in the guidance issued). The Arts Endowment and OIRA may establish an agreement on presumptively exempted categories of guidance; such documents will be presumptively exempt from the requirements of paragraph (a) of this section.

(d) Where appropriate, the Arts Endowment may determine a particular guidance document that is otherwise of importance to the Arts Endowment’s interests shall also be subject to the notice-and-comment procedures described in paragraph (a) of this section.

#### **§ 1157.7 Petitions for guidance.**

(a) Interested parties may submit petitions to the Arts Endowment requesting withdrawal or modification of any effective guidance document by emailing [generalcounsel@arts.gov](mailto:generalcounsel@arts.gov), or sending the petition by mail to National Endowment for the Arts, Attn: Office of General Counsel, 400 7th St. SW, Washington DC 20506. Please include “Guidance Petition” in the subject line of any correspondence to ensure the letter is routed properly.

(b) Interested parties should include the guidance document’s title and a summarized justification describing why the document should be withdrawn, how it should be modified, or the nature of the complaint in the petition in order to receive an expedited response.

(c) The appropriate Arts Endowment official will review the petition and determine if withdrawal or modification is necessary or the best way to resolve the complaint, and respond to the petitioner with a decision no later than 90 days after receipt of the request.

#### **§ 1157.8 Rescinded guidance.**

The Arts Endowment may not cite, use, or rely on guidance documents that are rescinded, except to establish historical facts.

#### **§ 1157.9 Exigent circumstances.**

In emergency situations or when the Arts Endowment is required by statutory deadline or court order to act more quickly than normal review procedures allow, the Arts Endowment shall notify OIRA as soon as possible and, to the extent practicable, comply with the requirements of this part at the earliest opportunity. Wherever

practicable, the Arts Endowment will alter its proceedings to permit sufficient time to comply with the procedures set forth in this part.

#### **§ 1157.10 No judicial review or enforceable rights.**

This part is intended to improve the internal management of the Arts Endowment. As such, it is for the use of Arts Endowment personnel only and is not intended to, and does not create any right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its agencies or other entities, its officers or employees, or any other person.

#### **§ 1157.11 Reports to Congress and Government Accountability Office (GAO).**

Unless otherwise determined in writing by the Arts Endowment, it is the policy of the Agency that upon issuing a guidance document the Arts Endowment will submit a report to Congress and GAO in accordance with the procedures described in 5 U.S.C. 801 (the “Congressional Review Act”).

Dated: August 18, 2020.

**Jillian Miller,**

*Director of Guidelines and Panel Operations, Administrative Services, National Endowment for the Arts.*

[FR Doc. 2020–18459 Filed 8–27–20; 8:45 am]

**BILLING CODE 7537–01–P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Administration for Children and Families**

#### **45 CFR Parts 1304 and 1305**

**RIN 0970–AC77**

#### **Head Start Designation Renewal System**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule refines how the Office of Head Start uses deficiencies, Classroom Assessment Scoring System: Pre-K (CLASS®) scores, and audit findings for designation renewal. It also streamlines and updates the regulatory provisions on designation renewal to make them easier to understand.

**DATES:** This final rule is effective on October 27, 2020.

**FOR FURTHER INFORMATION CONTACT:** Catherine Hildum, Office of Head Start, 202–205–7328 (not a toll-free call). Deaf

and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8:00 a.m. and 7:00 p.m. Eastern Time.

#### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Statutory Authority
- II. Executive Summary
- III. Background
- IV. Public Comments Analysis
- V. Section-by-Section Discussion of Changes to the Designation Renewal System
  - 1304.11(a) Deficiency Condition
  - 1304.11(b) School Readiness Goals Condition
  - 1304.11(c) CLASS Condition
  - 1304.11(d) Revocation Condition
  - 1304.11(e) Suspension Condition
  - 1304.11(g) Fiscal Condition
  - 1304.12 Grantee Reporting Requirements Concerning Certain Conditions
  - 1304.15 Designation Request, Review, and Notification Process
  - 1305 Definitions
  - Effective Dates
- VI. Regulatory Process Matters
  - Regulatory Flexibility Act
  - Unfunded Mandates Reform Act
  - Treasury and General Government Appropriations Act of 1999
  - Federalism Assessment Executive Order 13132
  - Congressional Review
  - Paperwork Reduction Act of 1995
  - Regulatory Planning and Review Executive Order 12866, Executive Order 13563, and Executive Order 13771
- VII. Regulatory Impact Analysis

#### Tribal Consultation Statement

##### I. Statutory Authority

The Office of Head Start (OHS) publishes this final rule under the authority granted to the Secretary of Health and Human Services (the Secretary) by sections 641(a), 641(c), and 644(c), of the Head Start Act, as amended by the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110-134). Generally, under these sections, the Secretary is authorized to implement a system for designation renewal that determines if a grantee delivers high-quality and comprehensive services and adheres to financial management requirements. The Secretary is also authorized to designate any local public or private non-profit agency, including community-based and faith-based organizations, and for-profit organizations as a Head Start agency, as well as prescribe rules or regulations, which are binding on all agencies that perform Head Start activities.

##### II. Executive Summary

Since its inception in 1965, Head Start has been a leader in helping children from low-income families

reach kindergarten more prepared to succeed in school. Through the Improving Head Start for School Readiness Act of 2007 (the 2007 Reauthorization) amending the Head Start Act (the Act), Congress required HHS to ensure these children and their families receive the highest quality services possible. In support of that requirement, the 2007 Reauthorization directed the Secretary to establish the Designation Renewal System to (1) identify Head Start grantees delivering a high-quality and comprehensive Head Start program that could receive funding noncompetitively for a 5-year period and grantees not delivering a high-quality and comprehensive Head Start program that will be required to compete for continued funding, and (2) to transition all grants from indefinite grants to 5-year grant periods. Congress required that decisions about which grantees would have to compete be based on budget and fiscal management data (including annual audits), program monitoring reviews, classroom quality as measured by a valid and reliable research-based observational instrument, and other program information.

The Designation Renewal System regulation, promulgated in 2011, requires grantees to compete for continued funding if they meet one or more of the following seven conditions: (1) One deficiency under section 641A(c)(1)(A), (C), or (D) of the Act; (2) failure to establish, use, and analyze children's progress on agency-established school readiness goals; (3) scores below minimum thresholds in any of the three domains of the Classroom Assessment Scoring System: Pre-K (CLASS) or in the lowest 10 percent in any CLASS domain out of the grantees monitored in a given year, unless the grantee's score is equal to or above the standard of excellence for that domain; (4) revocation of a license to operate a center or program; (5) suspension from the program; (6) debarment from receiving federal or state funds or disqualification from the Child and Adult Care Food Program; or (7) an audit finding of being at risk for failing to continue as a "going concern."

Since 2011, all Head Start and Early Head Start grants have been reviewed under the Designation Renewal System and transitioned from indefinite to 5-year grant periods. Approximately a third of grants have been required to compete and two-thirds have received a new grant non-competitively. As required in section 641(c)(8) of the Head Start Act (42 U.S.C. 9836(c)(8)), ACF has been regularly analyzing data on the implementation of the Designation

Renewal System and on those grantees required to compete. In 2016, the ACF Office of Planning, Research and Evaluation published a report of its designation renewal evaluation, titled "Early Implementation of the Head Start Designation Renewal System," which examined how the system is addressing the goals of transparency, validity, and reliability.<sup>1</sup> The study explored whether the Designation Renewal System identifies lower-performing grantees for competition and how designation renewal might support program quality improvement. From the experience of individual grantees and the results of the designation renewal evaluation and other Head Start research, ACF is confident the Designation Renewal System has driven increases in the quality of Head Start and Early Head Start services, but believes improvements can be made to the system.

ACF believes revisions to the current conditions will better distinguish grantees for noncompetitive continued funding from those that could most benefit from competition, particularly after the transition of all grantees from indefinite to definite project periods. Therefore, we are making some adjustments to the seven conditions that require competition; we believe the adjustments will, going forward, better identify grantees whose data indicate they are lower performing in the important dimensions of quality that Congress requires we consider under the Designation Renewal System.

Regarding the deficiency condition, we will no longer require competition for grantees with a single deficiency during their project period. While all deficiencies are serious and substantial or systemic, we believe changing the condition to require competition after two deficiencies during the project period will better reflect significant quality failures of an agency. Additionally, the change will appropriately put the focus on grantees having systems in place to ensure health and safety incidents do not occur or are quickly identified and rectified, and on financial and human resource systems that support ongoing, high-quality operations.

With respect to the CLASS condition, we want to ensure this tool supports

<sup>1</sup> Derrick-Mills, T., Burchinal, M., Peters, H.E., De Marco, A., Forestieri, N., Fyffe, S., Hanson, D., Heller, C., Pratt, E., Sandstrom, H., Triplett, T., & Woods, T. (2016). *Early Implementation of the Head Start Designation Renewal System: Volume I*. OPRE Report #: 2016-75a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

quality improvement as part of the Designation Renewal System. The aspect of the CLASS condition that requires grantees scoring in the lowest 10 percent of any of the three domains of the tool to compete creates a moving target for grantees. The moving target combined with implementation challenges of this condition have led to periods of uncertainty for grantees regarding their designation status. Further, the relative nature of the condition in some cases has resulted in grantees with rather high scores on a specific domain being designated for competition due to that score, while grantees with a rather low score on another domain have not always been required to compete.

In the final rule, we drop the 10 percent criterion, while simultaneously establishing *quality thresholds* and raising the *competitive thresholds* (formerly minimum threshold) for each domain of the CLASS. For any grantee with a score below a quality threshold, OHS will provide support for quality improvement and help ensure the grantee's coordinated approach to training and professional development is supporting improvements in the learning environment, particularly in teaching practices and teacher-child interactions. We also raise the competitive thresholds for each domain and any grantee with a score below a competitive threshold will be designated for competition.

The establishment of quality thresholds for the CLASS domains builds on existing program quality improvement efforts to enhance classroom quality and will lead to more intentional OHS support for these efforts. Further, it is important to raise the CLASS competitive thresholds. Evidence suggests children learn more in well-organized classroom environments that are characterized by sensitive and responsive interactions that promote autonomy, conversation, literacy skills, and executive functioning. Children gain these skills when they experience higher quality teacher-child interactions and instruction. This revised approach will remove the moving target but appropriately set the focus on improving the quality of teacher-child interactions in all areas the CLASS measures and ensure grantees are focused on promoting rich, engaging, and sensitive interactions between teachers and children in all classrooms.

The fiscal condition is also being revised because the current condition does not adequately identify grantees whose audit data indicates they may have serious fiscal issues warranting

competition. The current condition identifies for competition grantees that are at risk of failing to continue as a going concern, which means the organization is in such a dire financial situation that they are likely to no longer be a viable financial entity within 12 months. This condition only identifies grantees in the last stages of financial problems and has identified less than a dozen Head Start grantees for competition within the last 8 years, even as many other grantees have experienced significant financial management problems. While we retain the going concern condition and adjust the time window in which it is considered, we also add a second fiscal criterion in which any grantee that has a total of two or more audit findings of material weakness or questioned costs related to their Head Start funds in audits for a financial period within the current project period will also be required to compete. Material weaknesses and questioned costs indicate challenges in grantees' internal controls, appropriate use of funds, financial management, and reporting. These two audit findings indicate significant fiscal concerns that we believe warrants competition. We believe the additional criterion will provide a richer look at a grantee's fiscal management systems and financial systems and better identify grantees with potentially serious financial problems specifically in their Head Start grant before the financial problems might impact their viability. The new criterion will look more deeply at Head Start specific audit information, which is consistent with section 641(c)(1)(C) of the Act requiring use of annual audits in the system. However, it will not identify for competition grantees that have less significant audit findings or findings related to non-Head Start funds.

The new conditions will be effective on October 27, 2020. In general, grantee performance before the effective date of the rule is subject to the prior conditions and grantee performance after the effective date is subject to new conditions. Going forward, all decisions about which grantees will have to compete for renewed funding will be based on the conditions described in this rule. Grantees whose performance prior to the effective date of the rule met one or more conditions requiring them to compete will have a second look to determine if they still meet the new conditions. These grantees whose performance would have required competition under the prior conditions will only be required to compete after

the effective date of this rule if they would also be required to compete under the new conditions. Likewise, there will be no retroactive implementation of the new conditions to ensure grantees are not designated for competition based a condition on which they did not know they would be judged.

Prior to the effective date of this final rule, some grantees will have received a letter from OHS with a preliminary decision that they are eligible for renewed funding without competition based on not having met any of the DRS conditions at the time of the determination. These preliminary decisions will not be revisited under the new conditions, and these grantees will continue to be eligible for a noncompetitive new grant. Only in the rare case that such a grantee receives two or more deficiencies, a license revocation, suspension, debarment from any federal or state funds, disqualification from the Child and Adult Care Food Program, or an audit finding of a going concern before receiving their non-competitive 5-year grant award would the grantee be required to compete. This would also have happened under the current regulation, with the only difference being the number of deficiencies requiring competition.

Prior to the effective date of this final rule, other grantees will have received a letter from OHS with a preliminary decision that they will have to compete for renewed funding. These preliminary decisions will be revisited for each grantee, as long as the Funding Opportunity Announcement (FOA) for the competition has not yet been posted, to determine if a given grantee will still have to compete based on the new conditions put forth in this final rule. For competitions awaiting a FOA posting, only those grantees required to compete under the current conditions *and* the new conditions will be required to compete. For example, if a grantee was designated for competition based on the deficiency condition but had only one deficiency and the FOA has not been posted, they would not meet the new condition (two or more deficiencies). Therefore, this grantee would become preliminarily eligible for a non-competitive new grant. However, if a grantee was previously designated for competition based on the deficiency condition and had two deficiencies, the grantee would still be required to compete because the grantee would meet the new deficiency condition (two or more deficiencies) as well.

Similarly for the CLASS condition and fiscal condition, when making DRS

determinations that consider grantee performance prior to the effective date of the rule, OHS will take a second look to see if grantees would still be required to compete under the new conditions until a FOA for that grantee's service area has been posted. Grantees with CLASS data collected prior to the effective date of this rule will only still be required to compete after this final rule is effective if those CLASS scores would require competition under both the current CLASS condition and the new CLASS condition. For example, if a grantee was required to compete solely based on a CLASS score that was in the lowest 10 percent for one domain, but that score is above the new competitive threshold for that domain, this grantee will become preliminarily eligible for a non-competitive grant and not have to compete. However, if a grantee's CLASS score was in the lowest 10 percent for a given CLASS domain and is also below the new competitive threshold for that domain, they will still be required to compete. Additionally, any grantee with a going concern audit finding will still have to compete since that condition exists in both the current and new Designation Renewal System conditions. Because audit findings of material weakness and questioned costs are included in the new fiscal condition but not the prior fiscal condition, only audits from a grantee's fiscal years beginning after the effective date of the rule will be considered in competitive determinations.

Once a FOA has been posted to inform the public of the availability of funding in that service area, competition decisions will be final. After that time, there will be no opportunity for reconsideration based on changes in regulatory conditions requiring competition. During the first several years after the effective date of this rule, grantees that would have been subject to competition under the CLASS and deficiency conditions may no longer be required to compete under the new conditions. In addition, audit data from grantee fiscal years after the effective date of the rule to evaluate the new fiscal criterion will not yet be available. This means there may be less competition in the first few years of implementation of this final rule, compared to when the new conditions are fully implemented. However, the purpose of these revisions to the Designation Renewal System is not to ensure a certain level of competition, but to ensure all grantees understand the markers of quality that they should be aiming for so that quality is improved across all Head Start programs.

### III. Background

OHS released a request for comment in December 2017, titled "CLASS Condition of the Head Start Designation Renewal System," (82 FR 57905) in the **Federal Register** to collect information and input from the public for this rulemaking. The request solicited public input on specific changes to the way we use Classroom Assessment Scoring System (CLASS) for designation renewal. Specifically, we wanted the public's feedback on whether we should: (1) Remove the "lowest 10 percent" provision of the CLASS condition; (2) increase the minimum thresholds for the Emotional Support and Classroom Organization domains; (3) remove the minimum threshold for the Instructional Support domain; and (4) establish authority for the Secretary to set an absolute minimum threshold for the Instructional Support domain prior to the start of each fiscal year to be applied for CLASS reviews in the same fiscal year. We also sought feedback on ways we could incentivize robust competition to include new applicants, facilitate smooth transitions when there is a new grantee as a result of competition, and improve the designation renewal processes.

We considered comments we received from the request for comment, along with data we collected over the years, and published a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 13, 2019 (84 FR 39996). In the NPRM, we sought the public's opinion on whether we should consider a change to the single deficiency trigger. We also proposed changes to both the CLASS and fiscal conditions. Specifically, we proposed to raise the absolute threshold for each CLASS domain and to remove the lowest 10 percent criterion. We also proposed to add a second criterion related to audit findings to the fiscal condition.

The NPRM generated a diverse pool of comments. We analyze and discuss those comments below in Part IV. Public Comments Analysis and Part V. Section-by-Section Discussion of Changes with this Final Rule.

### IV. Public Comments Analysis

We received 63 unique submissions, which included a few comments with up to 100 signatories and one comment with 1,600 signatories on the NPRM. Commenters included Head Start grantees, teachers, other staff, large early childhood associations, advocacy organizations, early childhood vendors, Members of Congress, Indian tribes,

child development and policy experts, CLASS experts, and parents.

In drafting this final rule, we carefully reviewed each comment. Most of the comments were supportive of our efforts to hold programs accountable for delivering high-quality services. However, commenters also criticized our current approach to identifying low performing grantees. Commenters gave specific recommendations for how we should use deficiencies, CLASS, and the fiscal condition under designation renewal. We discuss those comments in Part V., Section-by-Section Discussion of Changes with this Final Rule. We also received the following comments that were not germane to what we proposed in the notice of proposed rulemaking.

*Comment:* Many commenters recommended OHS look for ways to move designation renewal from being punitive to an approach that better integrates continuous quality improvement and provides intentional support for programs to address challenges and improve quality. This was emphasized due to the disruption competition could cause to communities when there is a change in provider.

*Response:* Having to compete for continued funding is not an adverse action. All eligible grantees can compete for renewed funding and, in fact, the majority of grantees are re-awarded the grant following open competition. We are revising the conditions to better ensure grantees that are required to compete are those whose data and history show they are not high performing. Furthermore, the improvements we make in this final rule focus designation renewal more on continuous quality improvement.

*Comment:* A few commenters wanted to see the tribal consultation process improved. They wanted a forum where tribal officials could openly discuss issues that affect Head Start service delivery and have those issues resolved within a timely manner. A few commenters believed federal officials with policy-making authority should be required to attend tribal consultations and tribal leaders should be afforded sufficient advance notice and an agenda (at least 60 days) of scheduled consultations. Commenters asked for consultation reports to include a record of topics discussed along with next action steps.

*Response:* OHS conducts tribal consultations in accordance with the HHS policy on tribal consultations. We provide notice of all tribal consultations scheduled for the fiscal year to the leadership of tribal governments operating Head Start and Early Head

Start programs, and we ensure a federal official with policy-making authority attends each one. We organize the agenda around the statutory purposes of Head Start tribal consultations related to meeting the needs of American Indian/Alaska Native children and families. In addition, we share what actions we have taken and progress made to address the issues and concerns raised at these consultations. We appreciate commenters' suggestions, and we will continue to consider ways in which we can improve our consultations and align with the HHS policy.

*Comment:* According to some commenters, programs that are designated to compete spend money and other resources that could be better spent elsewhere, particularly given most of those programs get their grants back after competition.

*Response:* The purpose of designation renewal has always been to identify those communities where competition is most warranted and to improve quality through the process. We believe this final rule strikes an appropriate balance between the importance of competition to drive quality improvement and the resources required for the competitive process, and better ensures the right grantees are in competition. Specifically, we make changes in the CLASS condition and the deficiency condition to better target competition where scores show lower performance or there are systemic problems in operations. Further, Congress directed Head Start to establish a system of designation renewal that would (1) identify Head Start grantees delivering a high-quality and comprehensive program that could receive funding noncompetitively for a 5-year period and grantees not delivering a high-quality and comprehensive program that will be required to compete for continued funding, and (2) to transition all grants from indefinite grants to 5-year grant periods.

*Comment:* Many commenters suggested OHS establish an appeals process that has clear parameters, procedures, and time frames for final determinations, which would make the Designation Renewal System more transparent and equitable. Some believed an appeals process would afford grantees the opportunity to express concerns, seek clarification, address inconsistencies, and provide feedback about ways to improve the Designation Renewal System. A few commenters believed an appeals process would allow programs to reevaluate findings, seek redress, and better integrate the principles of continuous

quality improvement into the Designation Renewal System.

*Response:* Congress did not require grantees designated to compete for further funding be given an opportunity to appeal. However, Congress did require appeals for grantees that are terminated or suspended for more than 30 days. These different approaches indicate that Congress did not believe the requirement that a grantee compete for further funding was on par with termination or other actions for which Congress did require appeals.

Additionally, all eligible entities that have not been terminated from providing Head Start or Early Head Start services or denied refunding in the preceding five years, including the grantees designated for competition, are able and encouraged to apply through competition. Unlike a grant termination, a requirement to compete provides a mechanism for a current grantee to demonstrate its capacity to provide a high-quality program while providing the ability to shift funding to more capable entities if such entities exist in the community. Further, a grantee that competed and lost a competition would remain eligible for future competitions. The grantee that must compete for further funding is one whose level of compliance is sufficient to justify continuance in the Head Start program, provided that no other organization in the same community establishes through a competitive process that it is better able to provide a high-quality and comprehensive program.

## V. Section-by-Section Discussion of Changes With This Final Rule

In this section, we discuss comments we received specific to what we asked the public to consider, regarding the single deficiency trigger, and to what we proposed regarding the CLASS and fiscal conditions. We analyze and describe the changes we make to each section in the final rule, based on those comments.

We also make technical fixes that do not alter the substance of the standards in these sections. In drafting this final rule, we realize outdated, repetitive, and unnecessary language make these sections cumbersome and hard to follow. We believe the technical fixes we make below ensure these sections are clear, updated, streamlined, and transparent to the public.

### 1. Section 1304.11 Basis for Determining Whether a Head Start Agency Will Be Subject to an Open Competition

This section sets forth the seven conditions for designation renewal. It requires a program to compete for

continued funding in their service area, if they meet any of these seven conditions. While we did not propose any changes to this introductory paragraph nor did we receive comments on it, we make a few technical fixes to this paragraph that do not alter the substance of the provision. We remove the word "shall" and replace it with the word "will." We also remove the phrase "covered by the responsible HHS official's review." These fixes remove outdated regulatory language, along with repetitious, unnecessary language to streamline the section and make it easier to read.

#### i. 1304.11(a) Deficiency Condition

This paragraph establishes the trigger for competition related to deficiencies. It requires an agency that has one or more deficiencies on a single review to compete for continued funding. Since the Designation Renewal System was launched in 2011, we have held one deficiency is serious enough to cause a grantee to compete for continued funding. However, we have heard concerns the single deficiency trigger is too stringent and causes grantees that otherwise provide high-quality comprehensive services to compete because of a single incident that is not a result of system failures. Most of the comments we received addressed the deficiency condition.

In the NPRM, while we did not propose a change to the deficiency condition, we did seek comment about whether we should consider a change to the single deficiency trigger.

In this final rule, we amend the deficiency condition requiring a grantee to compete from a single deficiency to two or more deficiencies. However, this does not mean that all single incidents necessarily reflect an isolated issue. If a single serious incident is the result of multiple failures within a program, it may very well result in more than one deficiency. In addition, it is important to note that a single deficiency always leads to follow-up reviews to ensure it is corrected. Additionally, if there is serious risk for harm to staff and/or children's health and safety, substantial injury to property or loss of project funds, OHS can exercise its authority to suspend or terminate financial assistance pursuant to §§ 1304.4 and 1304.5(a)(2)(iii).

*Comment:* Most commenters believed two or more deficiencies, within a project period, better reflect a significant issue in a program than a single deficiency. A few commenters offered other suggestions for how we should further change the deficiency condition including to combine the CLASS and

deficiency condition, increase the number of deficiencies to three or more, and not count self-reported or corrected deficiencies.

Most commenters expressed concern we do not differentiate deficiencies either by severity or between a one-time incident that is or is not a result of multiple system failures. This would result in cases where one mishap of an individual could require an entire program to compete. A few of these commenters recommended we take steps to distinguish whether a one-time incident is a result of multiple system failures, while most commenters indicated a change to two or more deficiencies would help address this concern since two or more deficiencies would be a better reflection of systemic issues.

*Response:* We considered commenters' suggestions, along with monitoring data we collected over the years. Our data shows about half of the deficiencies that programs received are most likely the result of a single incident of inadequate supervision, which often occur during the transition of a group of children from one space to another. These findings are substantial but can be often seen as isolated by the grantee, especially when training was provided to the staff to prevent such an incident or the staff involved faced consequences for the incident. We believe a change to two or more deficiencies will capture significant quality failures of an agency and will mitigate the concern of grantees that a single incident that is not a result of multiple system failures could lead to competition.

One of our primary goals of competition is to improve quality through competition. Multiple deficiencies are an indication of lower quality in overall program performance and changing the deficiency trigger to two or more better aligns with this goal. However, in cases where there is a substantial material failure, a serious risk for substantial injury to property or loss of project funds or harm to staff and children's health and safety, OHS will exercise its authority to suspend or terminate financial assistance pursuant to §§ 1304.4 and 1304.5(a)(2)(iii) regardless of the number of deficiencies involved. We would not change the deficiency condition if we did not have the authority to mitigate or remove serious risk. In prior years' competitions, determinations for about half of grantees were based on a single deficiency, and we therefore expect this revision may result in a reduction in competition associated with deficiencies.

In this final rule, we do not define and differentiate deficiencies based on severity or distinguish whether a one-time incident is a result of multiple system failures since Congress, as discussed earlier, already defined the term "deficiency" under section 637 of the Head Start Act in part as "systemic or substantial material failure." However, we revise the deficiency condition from a single deficiency to two or more deficiencies to mitigate the concern that a single isolated incident that is not a result of multiple system failures may cause a grantee to have to compete. Specifically, we amend paragraph (a), by removing the word "one" and replacing it with the word "two." We also remove the phrase "been determined by the responsible HHS official to have." This phrase is repetitious as this language is established in the introductory paragraph of this section and does not add anything of substance by being in this paragraph. Further, we remove the phrase "on a single review" and replace it with the phrase "on reviews" to ensure grantees that receive one deficiency on one monitoring review and another deficiency on a second review within the same five-year grant period would be designated for competition since the total count of deficiencies is cumulative across all reviews within a project period. Finally, we remove the phrase "covered by the responsible HHS official's review" because it is unnecessary and does not make the sentence easy to understand.

#### ii. 1304.11(b) School Readiness Goals Condition

In this paragraph, a program meets one of the two or more conditions for designation renewal if the program does not have school readiness goals that meet specific criteria, that are not aggregated and analyzed at least three times a year, and that are not analyzed to inform progress. We did not receive any comments on this paragraph. Therefore, as we proposed in the NPRM, we remove dates and learning tools that are either outdated or are no longer relevant. Specifically, we amend this paragraph by removing the phrase "After December 9, 2011" in paragraphs (b)(1) and (2). We also remove the phrase "Birth to Five Head Start Child Outcomes Framework" and replace it with the new framework "Head Start Early Learning Outcomes Framework: Ages Birth to Five" in paragraph (b)(1)(ii).

In addition, we make a few technical fixes to streamline this paragraph by removing unnecessary, repetitive language that is already established in

the introductory paragraph. These fixes do not alter the substance of the regulation, but they make this section easier to read. In paragraph (b), we remove the phrase "been determined by the responsible HHS official" and replace that phrase with the word "not," and a comma. Similarly, in the same paragraph, we remove the phrase "covered by the responsible HHS official's review." It is well established in the introductory paragraph that the responsible HHS official reviews a program's operations to determine whether that program meets a condition for designation renewal. It is not necessary for us to repeat that here. Finally, we remove the phrase "not to have" to make the sentence easier to read.

#### iii. 1304.11(c) CLASS Condition

Section 1304.11(c) describes the use of the CLASS tool to assess a grantee's designation status. The current CLASS condition consists of two criteria for each domain of the tool: An absolute threshold and a relative threshold. The CLASS domains are Emotional Support, Classroom Organization, and Instructional Support.

In the NPRM, we proposed to amend the CLASS condition in the following ways:

(1) Drop the relative threshold criterion of this condition, often referred to as the "lowest 10 percent" criterion.

(2) Raise the absolute thresholds across the three CLASS domains as follows: Raise Emotional Support threshold from 4 to 5; raise Classroom Organization threshold from 3 to 5; raise Instructional Support threshold from 2 to 2.5.

In this final rule, we:

(1) Drop the relative threshold criterion of this condition, often referred to as the "lowest 10 percent" criterion.

(2) Raise the competitive threshold for Emotional Support from 4 to 5, for Classroom Organization from 3 to 5, and for Instructional Support from 2 to 2.3. Further, for CLASS reviews beginning on August 1, 2025, the competitive threshold for Instructional Support will be raised to 2.5.

(3) Establish a quality threshold for each CLASS domain as follows: 6 for Emotional Support, 6 for Classroom Organization, and 3 for Instructional Support.

Most of the public comments on the NPRM included discussion of the proposed changes to the CLASS condition or some other aspect of CLASS in relation to its use in the Designation Renewal System. We summarize the types of comments we received related to CLASS and our

corresponding responses, including our approach for the CLASS condition in this final rule. The comments we received on the CLASS condition were diverse as they covered various aspects of the condition. To make our discussion below easier to follow, we organize the comments, our responses, and regulatory text changes (if applicable) as follows: (1) Absolute Thresholds for the CLASS Condition; (2) Lowest 10 Percent Criterion of the CLASS Condition; (3) CLASS as a Quality Improvement Tool; (4) Methodological and Implementation Issues with CLASS; (5) Research Base on CLASS; and (6) Other Miscellaneous Comments on CLASS.

#### Absolute Thresholds (Competitive Thresholds) for the CLASS Condition

*Comment:* Most commenters discussed the proposed changes to the absolute thresholds across the three CLASS domains. Some were supportive of the increased thresholds we proposed across all three domains (Emotional Support = 5, Classroom Organization = 5, Instructional Support = 2.5). These commenters noted that the increased thresholds seemed fair and are supported by research or are a “step in the right direction” to move programs toward higher quality.

However, most commenters who discussed the absolute thresholds were not supportive of some aspect of our proposal to increase the thresholds. More specifically, most commenters supported the proposed higher thresholds of 5 for the Emotional Support and Classroom Organization domains, but did not support the proposal to raise the Instructional Support threshold from 2 to 2.5. These commenters stated there is not sufficient evidence for a specific threshold for Instructional Support that is related to improved outcomes for children. Some commenters said we should not increase any of the absolute thresholds. They stated that they believed the raised thresholds are not supported by research. Commenters also expressed concerns that the higher threshold on Instructional Support would create more fear and stress for programs and teachers.

A few commenters supported the proposed thresholds for Emotional Support and Instructional Support, but said Classroom Organization should not be raised to 5. These commenters argued that there has been an increase in challenging behaviors in Head Start classrooms due to more exposure to traumatic experiences among the population of children and families that Head Start serves, and this makes it

difficult for teachers to score highly on the Classroom Organization domain of CLASS. One commenter suggested that a threshold of 5 for the Classroom Organization domain may unintentionally incentivize programs to “pass over” children that are harder to serve due to behavior issues. One commenter agreed with our proposal to raise the Instructional Support threshold to 2.5, but said the Emotional Support and Classroom Organization thresholds should each be 4. One commenter felt the Instructional Support threshold of 2.5 is too low and should, instead, be a 3. One commenter requested an exemption for American Indian/Alaska Native programs if the CLASS absolute thresholds are raised as proposed in the NPRM.

*Response:* We believe it is important to raise the absolute thresholds (now referred to as competitive thresholds in this final rule) across the three CLASS domains to continue to encourage Head Start programs to strive for improving the quality of teaching practices and teacher-child interactions in their classrooms. To inform the CLASS competitive thresholds in this final rule, we considered the public comments received on the NPRM and research on the use of the measure in early education settings, as well as our own data from several years of implementation of the CLASS condition.

Evidence suggests children learn more in well-organized classroom environments that are characterized by sensitive and responsive interactions that promote autonomy, conversation, literacy skills, and executive functioning. Children gain these skills when they experience higher quality teacher-children interactions and instruction.<sup>2</sup> On the CLASS tool, scores of 1 to 2 (low range of quality) reflect a classroom environment where teachers poorly manage children’s behaviors, instruction is purely rote, and where there is little teacher-child interaction. Scores of 3 to 5 (midrange of quality) reflect a classroom environment where teachers show a mix of effective interactions with periods when interactions are either not effective or are absent. Scores of 6 to 7 (high range of quality) reflect a classroom environment where teachers consistently demonstrate effective teacher-child interactions. Research suggests that higher levels of instructional quality are linked to

improvements in child outcomes. Although research does not indicate a specific threshold of classroom quality that programs must reach to see impacts on child outcomes, there is a growing body of research indicating classrooms need to be out of the low-quality range (*i.e.*, above a 2 on CLASS) to support children’s development.<sup>3</sup>

Therefore, we believe strongly that the competitive thresholds for all domains of the CLASS should be above a 2, in order to continue to strengthen the quality of teacher-child interactions across all Head Start classrooms. This final rule raises the competitive threshold for Emotional Support from 4 to 5, for Classroom Organization from 3 to 5, and for Instructional Support from 2 to 2.3, as of the effective date of this rule. Further, beginning on August 1, 2025, the competitive threshold for Instructional Support will be raised to 2.5. A grantee with a score below any of these competitive thresholds will be designated for competition. Scores of 5 in Emotional Support and Classroom Organization are in the mid-quality range on the CLASS tool. We believe the changes to these competitive thresholds increase the minimum standard of quality and set the expectation for programs to work toward moving into the high-quality range.

We take a different approach with the Instructional Support domain than the other two CLASS domains, as a result of public comments, research, and our own data. We recognize the concern expressed by commenters regarding increased stress and fear among program staff that may result if the competitive threshold for the Instructional Support domain is raised immediately from 2 to 2.5 (as proposed in the NPRM). We also recognize the fact that teachers across a variety of preschool settings tend to score lower in this domain, and that it takes time to improve teacher-child interactions in a way that reflects in

<sup>2</sup> Hatfield, B.E., Burchinal, M.R., Pianta, R.C., & Sideris, J. (2016). Thresholds in the association between quality of teacher-child interactions and preschool children’s school readiness skills. *Early Childhood Research Quarterly*, 36, 561–571.

<sup>3</sup> Broekhuizen, M.L., Mokrova, I.L., Burchinal, M.R., Garrett-Peters, P.T., & The Family Life Project Key Investigators. (2017). Classroom quality at pre-kindergarten and kindergarten and children’s social skills and behavior problems. *Early Childhood Research Quarterly*, 36, 212–222.; Burchinal, M., Vernon-Feagans, L., Vitiello, V., & Greenberg, M. (2014). Thresholds in the association between child care quality and child outcomes in rural preschool children. *Early Childhood Research Quarterly*, 29(1), 41–51.; Burchinal, M., Zaslow, M., & Tarullo, L. (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*; U.S. Department of Health and Human Services. (2012). *Report from the Secretary’s Advisory Committee on Head Start Research and Evaluation*. Washington, DC: HHS. Retrieved from: [https://www.acf.hhs.gov/sites/default/files/opre/eval\\_final.pdf](https://www.acf.hhs.gov/sites/default/files/opre/eval_final.pdf).



improved CLASS scores.<sup>4</sup> For example, the Head Start Family and Child Experiences Survey (FACES)—a large, nationally representative study of Head Start children, families, staff, and programs—examined changes over time in classroom quality after the implementation of the Designation Renewal System, and findings showed an increase in average Instructional Support scores across programs, but only over a significant time, from an average of 1.9 across programs in 2007 to an average of 2.4 in 2015.<sup>5</sup> This study also found an increase over this time period in the number of programs scoring in the mid- or high-range of quality for the Instructional Support domain, and fewer programs scoring in the low-range of quality for this domain.<sup>6</sup> Qualitative findings from the evaluation of the early Designation Renewal System implementation indicate that inclusion of CLASS in this system is incentivizing Head Start programs to focus on improving teacher-child interactions as part of their overall quality improvement efforts.<sup>7</sup>

According to our own monitoring data from the past 5 fiscal years, programs have averaged between a 2.8 and 3.0 in the Instructional Support domain. In addition, the average cut-off for the bottom 10 percent of grantee scores in this domain has been about a 2.2 or 2.3 over the past 5 fiscal years.

These data demonstrate that, in general, most programs are scoring above a 2 in this domain of CLASS over the past five fiscal years. However, our

monitoring data also demonstrate that a fair number of programs score below a 2.5 in this domain (approximately 20 percent of those grantees with CLASS scores from the past five years). Meanwhile, we must consider the growing body of research indicating programs need to be out of the low-quality range to support children's development.<sup>8</sup> Therefore, to take into account both where Head Start grantees currently score in this CLASS domain as well as concerns we heard in the public comments, but to still push quality improvement over time and on an ongoing basis, this final rule uses a graduated approach to increasing the competitive threshold for the Instructional Support domain, rather than immediately raising the threshold to 2.5 as proposed in the NPRM.

For the first five years following the effective date of this final rule, through July 31, 2025, there will be an interim competitive threshold for Instructional Support of 2.3. A grantee with a score below this interim competitive threshold from a CLASS observation conducted as part of Head Start monitoring through July 31, 2025, will be designated for competition. Beginning on August 1, 2025, the competitive threshold for the Instructional Support domain will be raised to 2.5. Therefore, a grantee with a score below 2.5 in Instructional Support from a CLASS observation conducted as part of Head Start monitoring on or after August 1, 2025, will be designated for competition. A score of 2.3 in Instructional Support is an interim step that will encourage all grantees to move out of the low-range and toward the mid-range of quality on CLASS. Our graduated approach to increasing this threshold incentivizes programs to undertake quality improvement efforts and provides a window of opportunity for programs to make such improvements before the

competitive threshold for Instructional Support raises to a higher bar. This five-year window also aligns with the five-year grant cycle, allowing grantees a reasonable amount of time to make improvements. Furthermore, we believe our graduated approach sets a minimum bar for quality, considers where most programs as well as the broader early childhood field tend to score on this domain, addresses concerns raised by public comments, and pushes up the bar to a higher standard within a reasonable timeframe. Finally, in this final rule we do not provide an exemption from the raised competitive thresholds for any specific programs because we believe it is important that all children in Head Start are in classroom environments with high-quality teacher-child interactions. The next paragraph provides a summary of the changes to the regulation text for the absolute (competitive) thresholds for CLASS.

We amend § 1304.11(c)(1) by removing the phrase “After December 9, 2011,” and capitalizing “To.” We also remove the word “minimum” from that same provision and replace it with the word “competitive.” We also amend paragraph (c)(1)(i) (Emotional Support) in that section by removing the word “minimum” and replacing it with the word “competitive,” and we remove the number “4” and replace it with “5.” Similarly, in paragraph (c)(1)(ii) (Classroom Organization), we remove the word “minimum” and replace it with the word “competitive” and we remove the number “3” and replace it with “5.” Finally, in paragraph (c)(1)(iii) (Instructional Support), we remove the word “minimum” and replace it with the word “competitive” and we remove the number “2” and replace it with the phrase “2.3 through July 31, 2025, and 2.5 on and after August 1, 2025.”

#### Lowest 10 Percent Trigger of the CLASS Condition

*Comment:* Most commenters agreed with our proposal to remove the “lowest 10 percent” criterion from the CLASS condition in the Designation Renewal System. These commenters cited reasons similar to those described in the NPRM, including that the lowest 10 percent criterion lacks transparency for programs and creates a significant amount of stress and uncertainty, as programs usually must wait several months to learn if they are designated for competition based on the annual calculation of the lowest 10 percent in each CLASS domain. Commenters discussed how this aspect of the CLASS condition feels arbitrary and unfair, as the “cut-off” for the lowest 10 percent for any given fiscal year depends on the

<sup>4</sup> Hamre, B.K., Pianta, R.C., & Mashburn, A.J. Building a science of classrooms: Application of the CLASS framework in over 4,000 U.S. early childhood and elementary classrooms. Charlottesville, VA: University of Virginia.; Denny, J.H., Hallam, R., & Homer, K. (2012) A multi-instrument examination of preschool classroom quality and the relationship between program, classroom, and teacher characteristics. *Early Education and Development*, 23(5), 678–696.; Aikens, N., Bush, C., Gleason, P., Malone, L., & Tarullo, L. (2016). *Tracking quality in Head Start classrooms: FACES 2006 to 2014. OPRE Report #2016–82*. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

<sup>5</sup> Aikens, N., Bush, C., Gleason, P., Malone, L., & Tarullo, L. (2016). *Tracking quality in Head Start classrooms: FACES 2006 to 2014. OPRE Report #2016–82*. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

<sup>6</sup> Ibid.

<sup>7</sup> Derrick-Mills, T., Burchinal, M., Peters, H.E., De Marco, A., Forestieri, N., Fyffe, S., Hanson, D., Heller, C., Pratt, E., Sandstrom, H., Triplett, T., & Woods, T. (2016). *Early Implementation of the Head Start Designation Renewal System: Volume I. OPRE Report #2016–75a*. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

<sup>8</sup> Burchinal, M., Kainz, K., & Cai, Y. (2011). How well do our measures of quality predict child outcomes? A meta-analysis and coordinated analysis of data from large-scale studies of early childhood settings. In M. Zaslow, I. Martinez-Beck, K. Tout, & T. Halle (Eds.), *Quality measurement in early childhood settings* (pp. 11–32). Baltimore, MD: Paul H. Brookes Publishing Co.; Burchinal, M., Vandergrift, N., Pianta, R., & Mashburn, A. (2010). Threshold analysis of association between child care quality and child outcomes for low-income children in pre-kindergarten programs. *Early Childhood Research Quarterly*, 25, 166–176.; Burchinal, M., Vernon-Feagans, L., Vitiello, V., & Greenberg, M. (2014). Thresholds in the association between child care quality and child outcomes in rural preschool children. *Early Childhood Research Quarterly*, 29(1), 41–51.; Burchinal, M., Zaslow, M., & Tarullo, L. (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*.



grantees that were observed that fiscal year. As described in the NPRM, commenters also noted how the lowest 10 percent criterion sometimes captures grantees with fairly high scores (*i.e.*, scores above a 5) in the domains of Emotional Support and Classroom Organization. One commenter disagreed with our proposal to remove the lowest 10 percent criterion and described it as a “safety net” that “saved” their program from competition.

**Response:** We agree with some of the concerns noted by commenters regarding the lowest 10 percent criterion of the CLASS condition. Additionally, our approach of raising the Instructional Support competitive threshold to 2.3 combined with the implementation of the new quality threshold of 3.0 (discussed in more detail in the next section) will maintain the same expectation of minimum quality standards under the current CLASS condition while also raising expectations for quality beyond the minimum and eliminating the uncertainty created by the lowest 10 percent criterion. Therefore, in this final rule, we eliminate this aspect of the CLASS condition in the Designation Renewal System. Specifically, we amend § 1304.11(c)(2) by removing the current provision that describes the “lowest 10 percent” criterion of the CLASS condition.

#### CLASS as a Quality Improvement Tool

**Comment:** Many commenters described the way CLASS is used in the Designation Renewal System as punitive. These commenters said CLASS can be helpful as a professional development tool to examine and reflect on teachers’ practices in the classroom and support quality improvement efforts, but should not be used in the types of decisions made under the Designation Renewal System. A few said CLASS should not be used in the Designation Renewal System at all or should be used differently. One commenter suggested the specific mention of CLASS in regulation has undermined the market for the development of other tools to measure classroom quality. A few stated that they believe the CLASS tool does not meet, or is not the only tool that could meet, the requirements of the Head Start Act for use of a valid and reliable research-based observational measure of teacher-child interactions in the Designation Renewal System.

Many commenters noted that CLASS as used in the Designation Renewal System creates fear and stress for teachers and does not provide enough support for improvement, which

undermines its usefulness as a professional development tool. A few commenters specifically suggested CLASS scores below the designated thresholds should trigger support or professional development for teachers and programs. Some said that American Indian/Alaska Native programs in particular need more professional development and technical assistance support in order to achieve higher CLASS scores.

**Response:** A large body of research points to the importance of effective teacher-child interactions as a critical component of a high-quality early education program that promotes children’s development and learning.<sup>9</sup> The Act requires the use of a research-based observational measure of teacher-child interactions as a basis for competition in the Designation Renewal System. CLASS is a research-based measure of the quality of teacher-child interactions in preschool classrooms, meeting the requirement in the law. In fact, in the Conference Report accompanying the 2007 Reauthorization,<sup>10</sup> Congress specifically suggested HHS consider using the CLASS to meet this requirement. Following the passage of the 2007 Reauthorization, the Office of Head Start had discussions with numerous early childhood research experts who agreed that the CLASS was the best tool that fits these requirements. The CLASS can also be used to help understand areas of teaching and learning where individual teachers excel, as well as areas where they may need extra support. Its use in the Designation Renewal System over the past several years has enhanced

programs’ focus on the importance of effective teacher-child interactions for promoting stronger outcomes for children served in Head Start programs. Indeed, as summarized previously, the evaluation of the Designation Renewal System found that the inclusion of the CLASS in this system incentivized programs to focus on improving teacher-child interactions as part of their quality improvement efforts.<sup>11</sup> Furthermore, data from the 2015 Head Start FACES study demonstrate that, on average, CLASS scores are improving over time across Head Start programs.<sup>12</sup>

However, although it is not the intent of the CLASS regulatory provisions, we appreciate the public comments we received describing how CLASS, as used in the Designation Renewal System, can feel punitive. We share the view expressed by many commenters that CLASS can be an effective tool for programs to use as part of their local continuous quality improvement efforts, and we recognize that many programs already do so, separate from the Head Start monitoring process. The competitive thresholds represent the minimum scores in each CLASS domain that a program must achieve to avoid competition. Meanwhile, OHS recognizes programs already strive for CLASS scores above the competitive thresholds since the aim by programs is to continuously improve classroom quality and eventually reach high-quality scores across all three domains. Therefore, in this final rule, we develop an approach to reframe the use of CLASS in the Designation Renewal System that supports using CLASS as a tool for quality improvement, while also continuing to use it as a quality indicator as required by the Head Start Act. This approach includes the establishment of a quality threshold for each CLASS domain that does not relate to competition, but instead reflects a quality improvement focus in teacher-child interactions, with support from OHS. We believe the establishment of quality thresholds for the CLASS domains will build on existing program quality improvement efforts to enhance

<sup>9</sup> Bredekamp, S., & Copple, C., eds. (2002). *Developmentally Appropriate Practice in Early Childhood Programs*. Rev. ed. Washington, DC: National Association for the Education of Young Children.; Burchinal, M. (2017). Measuring early care and education quality. *Child Development Perspectives*, 12(1), 3–9.; Melhuish, E., Ereky-Stevens, K., Petrogiannis, K., Ariescu, A., Penderi, E., Rentzou, K., Tawell, A., Slot, P., Broekhuizen, M., & Leseman, P. (2015). A review of research on the effects of early childhood Education and Care (ECEC) upon child development. CARE project; Curriculum Quality Analysis and Impact Review of European Early Childhood Education and Care (ECEC). Retrieved from: <http://ecec-care.org/resources/publications/>; Pianta, R., Downer, J., & Hamre, B. (2016). Quality in early education classrooms: Definitions, gaps, and systems. *The Future of Children*, 26(2), 119–137.; Phillipsen, L.C., Burchinal, M.R., Howes, C., & Cryer, D. (1997). The prediction of process quality from structural features of child care. *Early Childhood Research Quarterly*, 12, 281–303.; Soliday Hong, S.L., Sabol, T.J., Burchinal, M.R., Tarullo, L., Zaslow, M., & Pesiner-Feinberg, E.S. (2019). ECE quality indicators and child outcomes: Analyses of six large child care studies. *Early Childhood Research Quarterly*, 49, 202–217.

<sup>10</sup> <https://www.congress.gov/110/crpt/hrpt439/CRPT-110hrpt439.pdf>.

<sup>11</sup> Derrick-Mills, T., Burchinal, M., Peters, H.E., De Marco, A., Forestieri, N., Fyffe, S., Hanson, D., Heller, C., Pratt, E., Sandstrom, H., Triplett, T., & Woods, T. (2016). *Early Implementation of the Head Start Designation Renewal System: Volume I*. OPRE Report #: 2016–75a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

<sup>12</sup> Aikens, N., Bush, C., Gleason, P., Malone, L., & Tarullo, L. (2016). *Tracking quality in Head Start classrooms: FACES 2006 to 2014*. OPRE Report #2016–82. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

classroom instruction beyond any set floor and will lead to more intentional OHS support for these efforts.

In this final rule, we establish a quality threshold for each CLASS domain as follows: 6 for Emotional Support, 6 for Classroom Organization, and 3 for Instructional Support. A score of 6 is in the high-quality range and a score of 3 is in the mid-quality range on CLASS. Over the previous five fiscal years, the average score across grantees in Emotional Support and Classroom Organization is about 6.1 and 5.8, respectively. The average score in Instructional Support over the previous five fiscal years is 2.9. The quality thresholds we establish in this final rule will encourage programs to continue to strive for improvements in classroom quality and will also lead to OHS support for quality improvement efforts among programs as they continuously examine and improve effective teacher-child interactions in their preschool classrooms. The inclusion of quality thresholds for the CLASS addresses the request of commenters to make better use of CLASS as a quality improvement tool.

If a grantee receives a score on any domain of the CLASS that is below the *quality threshold*, then OHS will support the grantee to promote improvement in teacher-child interactions across classrooms. Specifically, OHS will identify and connect grantees to resources (e.g., resources on the ECLKC website including webinars and professional development materials, meetings with OHS regional TA specialist if appropriate, etc.) designed to support improvement in the area(s) of teacher-child interactions that are below the quality thresholds. OHS will further support the program to analyze areas where their education staff most need support, and ensure a coordinated approach to training and professional development.

This approach does not place new requirements on programs but, rather, provides an opportunity for OHS to support programs in refining and improving their existing quality improvement efforts to meet the related requirements in the Head Start Act and the Head Start Program Performance Standards (HSPPS). This approach also reframes the use of the CLASS in Designation Renewal System with a growth mindset. The Head Start Act requires that information from the assessment of teacher-child interactions included in the Designation Renewal System be used to inform professional development plans that lead to improved teacher effectiveness.

Furthermore, several areas of the HSPPS require grantees to have planned, intentional approaches to quality improvement in their programs. For example, Head Start programs are required to establish and implement a systematic approach to staff training and professional development, a coordinated strategy for intensive coaching, and program-wide coordinated approaches that ensure the training and professional development system effectively supports the delivery and continuous improvement of high-quality services (see §§ 1303.92(b), 1302.92(c), and 1302.101(b)). The addition of CLASS quality thresholds to the Designation Renewal System follows the same model of intentional support for targeted quality improvement.

If a program falls below the quality threshold on any CLASS domain, OHS will support the program in determining and addressing the specific areas of teacher-child interactions that need the most support and improvement, aligned with the program's existing coordinated approach for training and professional development. More specifically, within a reasonable timeframe after a CLASS review in which a grantee scores below one or more of the quality thresholds, OHS will identify and connect grantees with resources that focus on the areas of teacher-child interactions in which the grantee most needs improvement. This may include National TTA Center suites, other professional development resources available on the ECLKC website, and/or connections with their regional TTA support. The grantee will not have to request this; rather, scores below the quality threshold will trigger action on the part of OHS. OHS plans to use existing CLASS data more effectively to inform decision-making around delivery of TTA. OHS will leverage existing systems to develop a streamlined way of identifying appropriate resources and make these connections for grantees, based on their CLASS scores. OHS may request a description of the program's efforts in grant applications or through monitoring reviews.

OHS reminds programs that they have a wealth of resources available to support implementation of their coordinated approach to training and professional development. As part of their individual grant, every program has training and technical assistance funds that can be used at the program's discretion. A portion of these training and technical assistance dollars could be spent on activities that aim to improve teaching practices in the classroom and support effective teacher-child interactions. Grantees may use

research-based resources available to them on the Early Childhood Learning and Knowledge Center (ECLKC) website. For instance, on the ECLKC website, grantees can find several materials that support the use of CLASS for professional development, such as the *15-minute in-service suites*<sup>13</sup> and the *ELOF Effective Practice Guide*<sup>14</sup> that have been cross-walked with the dimensions and domains of the CLASS.<sup>15</sup> In addition, through their regional office, grantees may request regional training and technical assistance support. Resources, including the Head Start Coaching Companion,<sup>16</sup> are also available to help support programs to implement intensive coaching, which research shows to be a critical component in professional development and an effective strategy for improving teacher practice.

To make regulatory changes for the quality thresholds on CLASS, we amend § 1304.11(c)(2) by removing the current provision that describes the "lowest 10 percent" criterion of the CLASS condition as previously stated, and we replace this provision with the following:

"If an agency is determined to have an average score below the quality threshold on any of the three CLASS: Pre-K domains across all classrooms observed, the Office of Head Start will support the program to strengthen its coordinated approach to training and professional development as required in § 1302.92(b) and (c), to help promote improvement in teaching practices and teacher-child interactions. The quality threshold for each domain is as follows:

- (i) For the Emotional Support domain, the quality threshold is 6;
- (ii) For the Classroom Organization domain, the quality threshold is 6;
- (iii) For the Instructional Support domain, the quality threshold is 3."

#### Methodological Issues With CLASS

*Comment:* Many commenters who discussed CLASS expressed various concerns with methodological issues related to the CLASS. Some commenters raised concerns with the reliability and/or validity of CLASS scores. A few noted that there is measurement error inherent in any tool like the CLASS.

Some commenters also raised concerns regarding the validity of CLASS use with culturally and linguistically diverse populations,

<sup>13</sup> <https://eclkc.ohs.acf.hhs.gov/professional-development/article/15-minute-service-suites>.

<sup>14</sup> <https://eclkc.ohs.acf.hhs.gov/school-readiness/effective-practice-guides/effective-practice-guides>.

<sup>15</sup> <https://eclkc.ohs.acf.hhs.gov/professional-development/article/crosswalk-15-minute-service-suites-class>.

<sup>16</sup> <https://eclkc.ohs.acf.hhs.gov/professional-development/article/head-start-coaching-companion>.

including American Indian/Alaska Native populations, Migrant and Seasonal Head Start programs, and classrooms with high proportions of dual language learners. These commenters noted that the CLASS does not adequately take into account cultural or linguistic differences with these populations and/or that there is not adequate research using the CLASS with diverse samples.

**Response:** While we appreciate the comments related to methodological issues with use of the CLASS tool in the Designation Renewal System, we largely disagree with these assertions. We did not propose any changes in the NPRM related to CLASS methodology, and we do not make any changes in this final rule based on these comments. Section 641A(c)(2)(F) of the Act requires the Secretary to include as part of the Head Start monitoring review process “a valid and reliable research-based observational instrument, implemented by qualified individuals with demonstrated reliability, that assesses classroom quality, including assessing multiple dimensions of teacher-child interactions that are linked to positive child development and later achievement.” Section 641(c)(1)(D) of the Head Start Act requires that this tool be used as part of the Designation Renewal System. As discussed previously, the CLASS specifically meets these requirements and was suggested by Congress and numerous leading early childhood experts as the best instrument to meet these statutory requirements.

Regarding its use in culturally and linguistically diverse classrooms, there is an ample body of research examining CLASS and its relationship to children’s outcomes. This research largely demonstrates that children in classrooms with higher CLASS scores are more likely to have stronger outcomes across a variety of developmental domains,<sup>17</sup> and this includes research in classrooms with

diverse populations.<sup>18</sup> Further, there is widespread agreement in the early childhood field that the aspects of teacher-child interactions that CLASS measures are important features for supporting young children’s development. However, we will continue to examine the use of CLASS in culturally and linguistically diverse settings, including American Indian/Alaska Native programs.

#### Implementation of CLASS Observations in Head Start Programs

**Comment:** Most commenters who discussed CLASS raised concerns related to OHS implementation procedures for conducting CLASS observations. We did not propose changes in the NPRM to OHS’s procedures for conducting CLASS observations as part of Head Start monitoring and in fact such procedures are not governed by regulation. However, we summarize the comments here as we feel it is important to acknowledge and respond to these comments.

Most commenters stated that teachers need more time in the classroom (e.g., 6 months) before they are observed with the CLASS for Head Start monitoring purposes, in order to better acclimate to the classroom environment. Some commenters said observers need mandatory cultural and linguistic awareness training and training in racial equity to improve the use of CLASS with diverse Head Start populations. Some said OHS needs to utilize more bilingual CLASS observers.

Many commenters pointed out that OHS does two cycles of observation per classroom with the CLASS instrument and said OHS should instead conduct four cycles of observation, as described in the CLASS manual. Some commenters said OHS needs to ensure observers are following appropriate protocols for classroom observations, such as observing classrooms for the appropriate length of time and during appropriate times of the day (i.e., not at nap time). A few said observers should have regular re-training to maintain reliability and appropriate compliance with observation protocols. Relatedly, some commenters stated that external factors can impact observations and

should be taken into account when considering grantee scores, such as the time of day or year of observations, teacher turnover and lack of qualified staff, low teacher wages, teacher stress, and challenging behaviors in the classroom. A few suggested that OHS collect CLASS observations via video to help with some of these concerns.

A few commenters suggested that if initial CLASS scores were too low, OHS give programs the opportunity to improve their scores through follow-up observations. A few commenters requested that OHS be more transparent with CLASS data and share specific classroom scores and/or observer notes with programs, to help programs better target quality improvement efforts. A few others requested OHS establish a formal grievance process to challenge CLASS observations that a program feels was not carried out correctly.

**Response:** We appreciate the comments related to the protocol and procedures for use of the CLASS tool in Head Start classrooms. We do not make any changes in this final rule related to these topics. However, we provide responses to each of these comments, in the order summarized in the prior section.

We understand the desire to allow teachers to have time to acclimate to the classroom environment before CLASS observations are conducted by OHS. However, we believe strongly that it is critically important that children are exposed to high-quality teacher-child interactions for the entirety of their time in Head Start. Further, in order to ensure OHS can complete all CLASS observations scheduled within a given program year, OHS must be able to begin CLASS observations in the fall. Therefore, we do not agree that OHS should wait at least 6 months before observing a teacher with CLASS; for many children, this represents more than half or most of the program year, and we believe strongly that programs should ensure teacher-child interactions are of high-quality throughout the program year.

We appreciate comments related to the need for cultural and linguistic awareness and racial equity training for CLASS reviewers. We are always looking for ways to improve reviewer training and are exploring whether this is something that should be implemented in the future. With respect to the need for more bilingual CLASS reviewers, OHS strives to recruit bilingual individuals who can serve as CLASS reviewers. Most of the bilingual CLASS reviewers OHS currently has are fluent in Spanish and English. It is challenging to find individuals who are

<sup>17</sup> Burchinal, M., Vandergrift, N., Pianta, R., & Mashburn, R. (2010). Threshold analysis of association between child care quality and child outcomes for low-income children in pre-kindergarten programs. *Early Childhood Research Quarterly*, 25(2), 166–176.; Hatfield, B.E., Burchinal, M.R., Pianta, R.C., & Sideris, J. (2016). Thresholds in the association between quality of teacher-child interactions and preschool children’s school readiness skills. *Early Childhood Research Quarterly*, 36, 561–571.; Perlman, M., Falenchuk, O., Fletcher, B., McMullen, E., Beyene, J., & Shah, P.S. (2016). A systematic review and meta-analysis of a measure of staff/child interaction quality (the Classroom Assessment Scoring System) in early childhood education and care settings and child outcomes. *PLOS ONE* 11(12). Retrieved from: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0167660#ack>.

<sup>18</sup> Burchinal, M., Field, S., Lopez, M.L., Howes, C., & Pianta, R. (2012). Instruction in Spanish in pre-kindergarten classrooms and child outcomes for English language learners. *Early Childhood Research Quarterly*, 27(2), 188–198.; Downer, J.T., Lopez, M.L., Grimm, K., Hamagami, A., Pianta, R.C., & Howes, C. (2011). Observations of teacher-child interactions in classrooms serving Latinos and dual language learners: Applicability of the Classroom Assessment Scoring System in diverse settings. *Early Childhood Research Quarterly*, 27(1), 21–32.

fluent in languages other than Spanish or English and have the training and experience to serve as reviewers. However, OHS continues to seek such individuals that could become part of the pool of qualified CLASS reviewers. In the event that OHS does not have a reviewer fluent in the primary language of instruction for a classroom, OHS does not conduct a CLASS review in that classroom.

With regard to the number of observation cycles per classroom, in the initial design of the Designation Renewal System, ACF worked with the CLASS developers to help determine the most appropriate number of observations to conduct per classroom. Although the CLASS manual describes the recommended protocol as four cycles in each classroom, the CLASS developers at the University of Virginia (UVA) and other researchers with expertise in using the CLASS in Head Start settings advised ACF that four cycles with a single teacher, while appropriate for research, is not the best use of resources when ACF's objective is to get a picture of classroom quality at the grantee level. Instead, they recommended a protocol that involved fewer observation cycles per teacher, but that included more teachers.

Further, data from the Head Start FACES study reinforced ACF's decision to conduct two rather than four CLASS observation cycles in each classroom. FACES data indicated that four CLASS observations were not consistently conducted of all grantees, even though that was the intention in the study design. Attempting to conduct four observations in every monitoring review when it could not be accomplished in FACES, and doing so on a scale much larger than the FACES study, likely would result in differential treatment of grantees since some grantees would likely get four observations and others would get fewer. Finally, results from the evaluation of early implementation of the Designation Renewal System found no differences in grantee-level CLASS scores when either four observation cycles or a fewer number of cycles were conducted in classrooms. In other words, findings from this evaluation suggest CLASS ratings are the same when classrooms are observed for either two cycles or four cycles with the CLASS tool.<sup>19</sup> Therefore, given the

importance of observing more classes, rather than fewer classes for a longer period of time, ACF chose to conduct two cycles of observation in each classroom within the sample for a given grantee. Overall, we believe the sampling and observation methods we use best meet the goal of finding a grantee-level score for each CLASS domain.

Further, we also have a protocol that all CLASS reviewers must follow, which includes detailed information on the length of time to implement CLASS observations as part of monitoring, as well as what time of day and what types of classroom or learning activities are acceptable for an observation cycle. All CLASS reviewers must undergo rigorous training, including annual recertification of reliability. With respect to external factors that can impact observations (e.g., teacher stress and turnover, challenging behaviors), we appreciate the realities of the challenges of teaching young children; however, the purpose of the CLASS tool is to get a picture of the kinds of interactions children are experiencing in the classroom on a regular basis. Regarding the suggestion to collect CLASS observations via videotape, this is an approach we have explored and may consider further in the future. We frequently review the policies and procedures we use to implement CLASS observations and consider where there can be improvements in the process.

Any program that feels that their CLASS observation was not done fairly or appropriately should raise that concern with OHS. While there is not a formal appeals process established by the Act or regulation, programs regularly raise concerns with CLASS observations to OHS, and we investigate all of them. OHS will also share classroom level scores if requested. However, the methodology we use for CLASS data collection as part of monitoring is designed to get a grantee-level score; the score for any single classroom may be less useful for a program. We are aware of many programs that conduct their own separate CLASS observations for training and professional development purposes.

Regarding the opportunity for a program to have a follow-up observation if CLASS scores are low, we disagree. The purpose of the CLASS observation is to capture a picture of the quality of teacher-child interactions in the program. If a grantee is designated for competition due to low CLASS scores,

they then have the opportunity to demonstrate through the competitive process how they have or will improve their program. Further, for American Indian/Alaska Native Head Start programs, the Act provides a process for an initial review of Designation Renewal System conditions, a period of improvement, and then a follow-up review of these conditions, but explicitly does not provide such a process for all other programs.

#### Research Base on CLASS

*Comment:* Most commenters suggested that additional research is needed on CLASS, such as in the following areas: Relations between specific CLASS thresholds and child outcomes; use of CLASS in the Designation Renewal System; reliability and validity issues; use of CLASS with culturally and linguistically diverse populations or alternative measures to assess classroom quality for these populations; use of CLASS with children with disabilities; and lessons learned from programs who are "positive outliers" on CLASS. A few commenters specifically stated that research does not indicate that increased CLASS scores will lead to improved child outcomes, or requested more information on this topic. Conversely, a few commenters specifically stated that there is research evidence to support the association between CLASS scores and child outcomes.

*Response:* We appreciate the comments received regarding the research base on CLASS and relations between measures of classroom quality and child outcomes. As previously discussed, there is a large body of research examining relations between the quality of teacher-child interactions as measured by the CLASS and children's outcomes. This research largely demonstrates children in classrooms with higher CLASS scores are more likely to have stronger outcomes across a variety of developmental domains.<sup>20</sup> However, we agree more research could be beneficial to continue to examine these relations, as well as broader issues related to measurement of classroom quality in early childhood settings. ACF is currently funding a variety of research studies on related issues, including: (1) The impact of various features of classroom quality on child outcomes (Variations in Implementation of Quality Interventions (VIQI)); study on-

<sup>19</sup> Derrick-Mills, T., Burchinal, M., Peters, H.E., De Marco, A., Forestieri, N., Fyffe, S., Hanson, D., Heller, C., Pratt, E., Sandstrom, H., Triplett, T., & Woods, T. (2016). *Early Implementation of the Head Start Designation Renewal System: Volume I. OPRE Report #:* 2016-75a. Washington, DC: Office of Planning, Research and Evaluation, Administration

for Children and Families, U.S. Department of Health and Human Services.

<sup>20</sup> Burchinal et al. (2010); Hatfield et al. (2016); Perlman et al. (2016).

going through 2021<sup>21</sup>); (2) use of CLASS with diverse populations; and (3) alternative measures of quality for infant and toddler classrooms (the Quality of Caregiver-Child Interactions for Infants and Toddlers (Q-CIIT)); there is a final report on this measure as well as accompanying professional development tools; the contractor is currently disseminating the tool through trainings for early childhood programs).<sup>22</sup> We also welcome additional research on these complex issues.

#### Other Miscellaneous Comments on CLASS

*Comment:* A few commenters noted that CLASS is used in many state quality rating and improvement systems (QRIS), but not in a high-stakes manner in those systems. A few also noted that many of the areas measured by the CLASS are not areas supported by public school leadership, which makes it challenging for Head Start classrooms located in public schools. A few commenters noted that the underlying assumptions of the CLASS are based on a more “traditional” approach to early learning with “high quantity” teacher feedback, which may disadvantage alternative approaches and teaching styles such as Montessori and Reggio Emilia. A few commenters said the cost of competition due to low CLASS scores is not a good use of resources.

*Response:* We disagree with the assertion that CLASS is used in a high-stakes manner in the Designation Renewal System. Meeting the CLASS condition only places a grantee into competition where they then have the opportunity to demonstrate how they have or will improve their program. Unlike termination, competition is not an adverse action. In fact, the majority of incumbent grantees win back their grant in full or part. We appreciate the comments regarding challenges for programs in public school settings or for programs that use an alternative teaching approach such as Montessori or Reggio Emilia. However, as summarized previously, in order for children to receive a high-quality early education experience, we strongly believe that the kinds of teacher-child interactions the CLASS measures should be occurring in Head Start

classrooms on a regular basis throughout the program year. Finally, we disagree with the assertion that the cost of competition is not a good use of resources. As discussed previously, findings from the ACF-funded evaluation of the Designation Renewal System indicate that inclusion of CLASS in this system incentivizes Head Start programs to focus on improving teacher-child interactions as part of their overall quality improvement efforts.<sup>23</sup> We believe this is a key area for quality improvement efforts, given the importance of a high-quality classroom environment for facilitating positive outcomes for children.

#### iv. 1304.11(d) Revocation Condition

We also amend paragraph (d) in this section to make a technical change that does not alter the substance of the provision. We remove the word “shall” in the second sentence of the paragraph and replace it with the word “will.” “Shall” is outdated regulatory language.

#### v. 1304.11(e) Suspension Condition

Under this paragraph, any grantee that has been suspended from the Head Start program must compete for funding. When we implemented designation renewal, grantees had the opportunity to appeal certain administrative decisions, including suspensions. However, we eliminated the appeal process in 2016, when we published the Head Start Program Performance Standards final rule. When we removed the process for appeals, we did not remove references to the process in this paragraph. So, in the NPRM, we proposed to remove those references to keep our performance standards streamlined and up to date. We did not receive any comments or suggestions on the technical changes we proposed. Therefore, we amend this paragraph, as we proposed in the NPRM, by removing the phrase “there is a pending appeal and” in the second sentence. In the third sentence of paragraph (e), after the word “cause,” we add the phrase “and the suspension remains in place,” and remove the phrase, “regardless of appeal status.” We also remove the incorrect cross-reference to “1304.16,” and replace it with “1304.15.”

#### vi. 1304.11(g) Fiscal Condition

This paragraph establishes the fiscal condition for designation renewal. Head Start programs are required to have annual audits, and the Head Start reauthorization requires that information from a grantee’s annual audit be considered in the Designation Renewal System. The current fiscal condition uses information from those audits only to identify grantees with such serious fiscal problems that they may be near bankruptcy and fails to identify additional grantees with very serious financial concerns. Although the current condition uses one of the most serious audit findings, we believe this already available rich and broad fiscal audit data could be better used to determine competition status.

The current condition of going concern audit finding is a very serious fiscal finding indicating threat of liquidation of an organization; however, this finding may not effectively capture problems in the financial management of the Head Start grant. We revise the fiscal condition to better utilize existing requirements and Head Start related audit data more effectively for improvement of grantees’ fiscal systems and management. The revised condition aims to require competition before a grantees’ fiscal condition becomes so dire that it potentially impacts the program’s viability.

The NPRM provided additional background and rationale for adding an addition to the fiscal condition. In the NPRM, we proposed to amend the fiscal condition at § 1304.11(g) in the following way:

(1) Revise the timeframe for the going concern condition from within the previous 12 months to any time during the 5-year grant period.

(2) Add a second criterion to the fiscal condition that would require grantees to compete for continued funding if they had audit findings associated explicitly with their Head Start funds in two or more audit reports filed during the first, second, or third years of their current grant period.

In this final rule, we:

(1) Revise the timeframe for the going concern condition from within the previous 12 months to anytime during the current Head Start project period.

(2) Add a second criterion to the fiscal condition but clarify which specific audit findings associated explicitly with any funding from the Office of Head Start for a grantee’s fiscal years within the project period would require a grantee to compete for continued funding. It is important to note that Head Start funds include Head Start,

<sup>21</sup> See this link for additional information on the VIQI study: <https://www.acf.hhs.gov/opre/resource/coming-soon-viqi-2016-2018>.

<sup>22</sup> See these links for more information and resources on the Q-CIIT: <https://www.acf.hhs.gov/opre/research/project/development-of-a-measure-of-the-quality-of-caregiver>; <https://www.acf.hhs.gov/opre/research/project/professional-development-tools-to-improve-the-quality-of-infant-toddler-care-q-ciiit-pd-tools>.

<sup>23</sup> Derrick-Mills, T., Burchinal, M., Peters, H.E., De Marco, A., Forestieri, N., Fyffe, S., Hanson, D., Heller, C., Pratt, E., Sandstrom, H., Triplett, T., & Woods, T. (2016). *Early Implementation of the Head Start Designation Renewal System: Volume I*. OPRE Report #: 2016-75a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

Early Head Start, Early Head Start—Child Care Partnerships grant funding or any other supplemental funding provided by the Office of Head Start.

We received comments, including letters with many signatories, related to various aspects of the proposed condition itself and how we would implement it. Additional commenters addressed general concerns about auditors and audit processes and some requested special consideration for specific types of grantees. To make our discussion easier to follow, we organize the comments, our responses, and regulatory text changes (if applicable) as follows: (1) Going Concern Criterion Timeframe; (2) Additional Audit Findings Criterion; and (3) Other Comments about Audits and Fiscal Condition.

#### Going Concern Criterion Timeframe

*Comment:* Most commenters stated we should maintain the current timeframe for the going concern determination, only considering the previous 12 months rather than the full length of the project period as proposed in the NPRM.

These commenters argued that OHS should only consider the most recent audit data. Further, commenters stated that if a grantee had a going concern finding early in the project period, they could recover their fiscal viability within the 5-year project period. The argument is that if a grantee has corrected the going concern finding, they should not be required to compete.

*Response:* We disagree that keeping the 12-month timeframe for going concern findings is the appropriate policy. We believe the finding that a grantee is at risk of failing to continue as a going concern is so serious it warrants competition regardless of when, during the grant period, the condition is identified. This finding means an organization risks ceasing to exist as a viable entity in the near future. While commenters assert organizations can recover from this situation, the fact that the situation occurred any time warrants competition. For that reason, we maintain the timeframe we proposed in the NPRM and consider going concern findings anytime during the project period to identify a grantee for competition.

Therefore, we revise the regulatory text to reflect this policy and also update the language in the following way. We revise paragraph (g) and add new paragraphs (g)(1) and (g)(2). New paragraph (g) outlines the two fiscal criteria and reads as follows, “An agency meets one of two fiscal criteria,

if the agency:.” Existing paragraph (g) is redesignated as (g)(1) and is revised by removing unnecessary and repetitive language and by changing the timeframe for considering a finding of going concern. Specifically, we remove the phrase “an agency has been determined,” because it is now part of the revised introductory language in (g). We also remove the phrase “within the twelve months preceding the responsible HHS official’s review under 1304.15” and replace it with “within the current project period.”

#### Additional Audit Findings Criterion

*Comment:* Most commenters expressed concern that the proposal to use additional audit findings in the second fiscal criterion is vague and could be subjective. These commenters requested clarification about which audit findings will determine designation renewal decisions. Concerns about inconsistency of findings in their severity and in their identification by individual auditors were mentioned by these comments. Commenters asserted that some audit findings may not be serious enough to warrant competition and feared that we may compete grantees with low-level findings.

*Response:* We agree and have made the condition more specific about exactly which additional audit findings will require competition. We limit the findings considered for competition to only findings of material weakness and questioned costs related to any funding from the Office of Head Start. Additionally, the condition only requires competition if there are a total of two or more of either of these types of findings across the two most recent audit reports. Each of these findings is significant and raises concerns about a grantee’s management of its federal funding dedicated to the Head Start program. Further, two or more findings of material weakness or questioned costs indicates a pattern of fiscal challenges that warrant competition.

The findings of material weakness and questioned costs represent serious concerns about an organization’s internal controls or reasonable fiscal management. An independent auditor evaluates an entity based on a set of several elements related to management of financial systems and prudent fiscal decision making, or internal controls. Internal controls, as defined in accounting and auditing, is a process for assuring an organization’s objectives in operational effectiveness and efficiency, reliable financial reporting, and compliance with laws, regulations, and policies.

The finding of material weakness indicates that it is likely that the entity’s leadership may not have accurate or sufficient information to understand the entity’s financial status well enough to make reasonable decisions about the management of the organization. Material weakness is defined as a deficiency, or combination of deficiencies, in an internal control, such that there is a reasonable possibility that a material misstatement of the entity’s financial statements will not be prevented, or detected, or corrected on a timely basis. This means that there is the likelihood that financial information is not accurate or sufficient for decision makers to make reasonable financial decisions.

A questioned costs finding in an audit report raises concerns about fiscal management and potential risks to federal Head Start funding. An auditor notes a finding of questioned costs because they observe an issue that indicates a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award. A questioned cost finding could also mean the costs, at the time of the audit, are not supported by adequate documentation; or the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

As stated earlier, fiscal challenges may result in operational challenges that create reduced program quality and stability of services to children and families. We believe findings of material weakness and questioned costs are significant, transparent, and specific findings to appropriately identify grantees for competition.

*Comment:* Commenters expressed concern that we would not be able to track findings to a Head Start grant, especially if an organization receives multiple federal grants. These commenters stated concerns we would require an agency to compete for a fiscal problem that was actually a fiscal problem in another federal grant.

*Response:* In response to comments that fiscal challenges with respect to other federal programs could cause an audit finding in Head Start, we will only look at audit findings specifically related to Head Start, Early Head Start, Early Head Start—Child Care Partnerships grant funding or any other supplemental funding provided by the Office of Head Start, identified on the federal audit report. This will ensure that the identified audit findings that require a Head Start grantee to compete directly affect Head Start grant funds and highlights potential risk to Head Start funds that must be addressed.

Therefore, with the exception of a going concern audit finding, Head Start grantees will not be required to compete due to findings in other funding sources and the organization's overall fiscal management.

*Comment:* Some commenters raised concerns that there is confusion and inconsistency regarding timing of audits and audit reports between grantees. Many commenters noted challenges caused by differences in their agency's fiscal year, project year, and the nine months allowed to file audit reports after their fiscal year. For example, for some grantees, audit reports in the first year of the current project period may cover a fiscal year that was in the previous 5-year project period. Therefore, for some grantees, there may be a period of two years in the current project grant period before an audit report from the first year of the project period is filed. Other commenters suggested that the timing will not allow grantees to know and correct findings before the next audit and could cause repeat findings or confusion.

*Response:* We agree with commenters' concerns that lack of alignment in grantees' fiscal years, project years, and the audit report filing period could cause implementation problems and greater clarity is needed. In order to address these timing challenges, we revise the criterion to focus on the number of findings and clarify that an audit must represent a financial period within the grantee's current project period. We believe this approach focuses on grantees with a pattern of findings, multiple or repeat audit findings, related to Head Start funds. In addition, this approach provides greater consistency across grantees regardless of timing of their project period and fiscal years. Furthermore, focusing on the findings rather than the timing of the audits is consistent with other DRS conditions in which findings are considered over the entire project period.

*Comment:* Many commenters said only repeat or identical findings in consecutive audits should trigger competition. Some of these commenters specifically believed grantees should have the ability to correct findings before they are required to compete. They recommended we not require competition for those grantees who have corrected their findings and did not have the same finding in the next audit report. One commenter suggested we rely on very serious findings rather than on repeat findings to trigger competition.

*Response:* We disagree with the suggestion only repeat findings should

be considered. Therefore, we do not make changes in this final rule to address repeat audit findings. The second audit criterion in the final rule requires competition for grantees with two or more audit findings. In response to the comment that very serious findings rather than repeat findings be used to trigger competition, OHS believes that multiple findings related to Head Start funds during the project period indicates a pattern of fiscal concern. Furthermore, audit findings of material weakness and questioned costs represent serious findings. We do not require the same or repeat findings, but we also believe that the findings we have chosen are serious and indicate red flags for a program's management of their Head Start grant.

Regarding comments about grantees' ability to correct findings before being required to compete, all grantees are required to correct audit findings. This rule does not contemplate the audit resolution, it only focuses on the existence of the findings. A total of two or more findings related to Head Start funds during the project period identifies a pattern of financial concern whether the findings are unique or repeated. We believe audit findings identified in the final rule, material weakness and questioned costs, are significant enough that the virtue of just having these findings would warrant competition. This is similar to the treatment of deficiencies for designation renewal purposes. The existence of the findings, regardless of its correction, determines whether a grantee will compete.

Based on the reasons previously described, we amend the regulatory language as follows. We amend paragraph (g) by adding paragraph (g)(2), which includes a new criterion that reads: "Has a total of two or more audit findings of material weakness or questioned costs associated with its Head Start funds in audit reports submitted to the Federal Audit Clearinghouse (in accordance with section 647 of the Act) for a financial period within the current project period."

#### Other Comments About Audits and the DRS Fiscal Condition

##### General Issues With Auditors and Audit Process

*Comment:* Commenters said there were challenges with the audit process and inconsistency between auditors, which would make it unfair that some grantees would have to compete and others with similar findings characterized differently by an auditor

would not be required to compete. Commenters stated audits are not uniform and some auditors use outdated guidance.

*Response:* While we appreciate commenters' concerns, we believe there is general consistency across federal audits. Each grantee chooses its own auditor and so has control over the quality of their audits. Furthermore, each grantee is required to have a member on its Board with a background in fiscal management or accounting to guide the grantee in fiscal matters, including audits. While individual differences between auditors exist, every auditor conducting single audits of a Head Start program is required to follow established regulations and Generally Accepted Governmental Accounting Standards. All auditors are required to use the federal audit instructions and the most current Compliance Supplement to ensure uniformity.

In response to commenters' concerns that auditors are using outdated information, we note that in 2014, the Office of Management and Budget issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). This guidance replaced the long-standing A-133 circular. This regulation overhauled federal audit rules and procedures and required all federal departments to issue implementing regulations to conform to it. HHS issued implementing regulations for the Uniform Guidance in 45 CFR part 75 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards*. The Head Start Program Performance Standards published in 2016 made clear these rules applied to Head Start.

Given the factors described here, we do not believe the challenges suggested by commenters prohibit us from fairly and consistently implementing the new fiscal criterion. Finally, we believe the consistency is even stronger for the serious audit findings of going concern, material weakness and questioned costs, which we will use for designation renewal determinations as further described in a previous section.

##### Special Considerations for Tribal Grantees

*Comment:* A large tribal organization stated that tribal audits should account for the unique fiscal reporting implications of the tribal grantee—tribal nation relationship. The commenters stated that in some cases, the Head Start program does not get information related to the audit reports, and it is not



clear how OHS would identify findings specific to Head Start.

*Response:* We respect the sovereignty of the tribal nations that administer American Indian/Alaska Native Head Start programs. Tribal programs are required, like all other federal grantees, to submit annual audits to the Federal Audit Clearinghouse. The only unique requirement for tribal grantees is that tribes have an option to not make the audit reports public. Otherwise, there are not specific requirements for tribal grantees. A majority of Head Start programs are run by large agencies that receive multiple federal grants, so we will only consider findings specifically associated with Head Start funds in the added fiscal criterion for designation renewal determinations.

#### Technical Assistance Versus Competition

*Comment:* Some commenters stated that OHS should not require competition based on audit findings, but should use audit findings as a trigger for additional technical assistance.

*Response:* We believe the limited types of audit findings that will be considered as part of the designation renewal determination are serious enough to trigger competition. Furthermore, we provide continuous and ongoing technical assistance to grantees on fiscal management through our extensive training and technical assistance system. The National Center on Program Management and Fiscal Operations has developed many resources and trainings for programs on fiscal management and provides grantees with opportunities to work with expert fiscal consultants through the Fiscal Consulting Initiative. Training and technical assistance will continue, and grantees with multiple serious audit findings will be required to compete for continued Head Start funding.

#### Audit Condition Appeal

*Comment:* Most commenters stated they thought the audit condition should have an appeal process due to the challenges with audits they mentioned. They suggested we establish a process by which grantees could challenge audit findings and report on unfair audit practices that erroneously caused the grantee to be identified with findings that lead to competition.

*Response:* We do not agree an appeals process for the audit condition is necessary. Therefore, we do not add such a provision to the final rule. Congress did not require an appeals process in the establishment of the Designation Renewal System rule in the 2007 Reauthorization for any of the

conditions that would require a program to be designated for competition. Furthermore, each Head Start grantee chooses its own auditor and therefore grantees work through the audit process with their selected auditor.

#### 2. Section 1304.12 Grantee Reporting Requirements Concerning Certain Conditions

This section requires a grantee to notify OHS if it loses its state or local license to operate a center; files for bankruptcy; has been debarred from receiving state or federal funding; or has been found to be at risk of failing to continue functioning as a going concern.

We did not propose any policy changes to this section in the NPRM. However, we did propose to remove dates that are no longer relevant, and made minor word changes that did not change any meaning. We did not receive any comments from the public on what we proposed in the NPRM. Therefore, in this final rule, we amend § 1304.12 by removing paragraph (a) in its entirety. In paragraph (b), we remove the phrase “Head Start agencies” and replace it with the phrase “A Head Start agency,” and we add the word “of” after “occurrence” as an additional technical fix to the regulatory text. We also remove the phrase “following December 9, 2011.” Because paragraph (a) is removed, paragraph (b) becomes the sole paragraph in this section and, therefore, becomes the introductory text. Finally, we redesignate paragraphs (b)(1) through (4) as paragraphs (a), (b), (c), and (d) respectively.

#### 3. Section 1304.15 Designation Request, Review, and Notification Process

This section describes the process for designation renewal and explains how a grantee will be notified of its designation renewal status.

In the NPRM, we proposed to simplify, clarify, and update this section by removing outdated language that refers to the transition to 5-year grants and the process before and after the transition. The language is no longer relevant as all grantees have transitioned through designation renewal to 5-year grants. We also proposed to revise language to make it clear that only data from the grantee’s current grant period will be reviewed for designation determinations. In addition, we no longer send communication to grantees via certified mail, so we proposed to remove that language as well.

We did not receive any comments from the public on what we proposed in the NPRM. We made all of the changes proposed in the NPRM and additional

small technical fixes to make this section consistent with other sections in this Part. Specifically, we amend paragraph (a) with a technical fix by replacing the word “Grantees” with the phrase, “A grantee.” As proposed in the NPRM, we remove paragraph (a)(1) entirely. In existing paragraph (a)(2), we remove the phrase “After the transition period,” at the beginning of the first sentence because it is out of date. Next, we remove the word, “each” and replace it with “A.” We also remove “their” and replace it with the word “its” to make the sentence grammatically correct, and we remove the word “shall” and replace it with the word “must.” The word “must” connotes the same meaning as “shall.” “Shall” is outdated regulatory language. Finally, we redesignate paragraph (a)(2) as paragraph (a).

In paragraph (b), we make an additional technical fix to remove the phrase “agency’s program” and replace it with “agency.” We also add the phrase “during the current project period,” at the end of the sentence since all grantees are now on five-year project periods and only data from the current project period will be reviewed. We remove the colon “:” and replace it with a period “.” We also remove paragraphs (b)(1), (2), and (3) in their entirety because they are out of date.

We amend paragraph (c) by removing the colon “:” after “§ 1304.14” and replacing it with a comma “,”. At the end of paragraph (c), we add the phrase “at least 12 months before the expiration date of a Head Start or Early Head Start agency’s current grant stating:”. We also remove paragraphs (c)(1), (c)(2), and (c)(3) entirely because they mention the transition period. Consequently, we redesignate paragraph (c)(3)(i) as paragraph (c)(1) and paragraph (c)(3)(ii) as paragraph (c)(2).

Finally, in paragraph (c)(2), we remove the reference to “(c)(3)(i),” and replace it with “(c)(1).”

#### Section 1305.2 Terms

Section 1305.2 defines certain terms in the performance standards. We realized we accidentally omitted a definition for “denial of refunding,” when we published the Head Start Program Performance Standards final rule in 2016. Therefore, in the NPRM, we proposed to add the following definition:

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

or otherwise is in violation of applicable law, regulations, or other policies.

Given we did not receive any comments or suggestions from the public, we amend § 1305.2 by adding the definition as proposed.

**Effective Dates:** In the NPRM, we proposed that the improvements made to the Designation Renewal System become effective the fiscal year immediately following the publication of a final rule, but not less than 30 days after the publication date.

We did not receive any comments or suggestions from the public regarding this effective date. We simplify the effective date to be October 27, 2020.

## VI. Regulatory Process Matters

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act, requires federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term "small entities," as defined in the RFA, comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Under this definition, some Head Start grantees may be small entities. We consider a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact on revenue on at least five percent of small entities. However, the Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not have a significant impact on a substantial number of small entities. We expect there to be fewer grantees in competition due to the changes in this final rule and we also do not expect increased costs for grantees to meet the revised conditions; therefore, we do not expect there to be a significant impact on a substantial number of small entities.

In the proposed rule, we requested comments on whether any member of the public believed their business, organization, or governmental jurisdiction qualifies as a small entity and that the actions proposed in the notice of proposed rulemaking would have a significant economic impact on it. We did not receive any comments from the public on this issue.

### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (UMRA), see 2 U.S.C. 1501 *et seq.*, was enacted to avoid imposing unfunded federal mandates on state, local, and tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately \$154 million. This rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or on the private sector, in excess of the threshold.

### *Treasury and General Government Appropriations Act of 1999*

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. We believe it is not necessary to prepare a family policymaking assessment, see Public Law 105–277, because the action we take in this final rule will not have any impact on the autonomy or integrity of the family as an institution. In the proposed rule, we requested public comment on whether this action would have a negative effect on family well-being, and we did not receive any comments on this issue.

### *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 rule will not have substantial direct impact on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the

preparation of a federalism summary impact statement.

### *Congressional Review*

The Congressional Review Act (CRA) allows Congress to review "major" rules issued by federal agencies before the rules take effect, see 5 U.S.C. 802(a). The CRA defines a major rule as one that has resulted or is likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets, see 5 U.S.C. Chapter 8. The Office of Information and Regulatory Affairs has designated this rule as major.

### *Paperwork Reduction Act of 1995*

The Paperwork Reduction Act of 1995, Public Law 104–13, 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 Paperwork Reduction Act 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)). This final rule changes the burden of an existing information collection currently approved with Office of Management and Budget Control Number 0970–0148 under the Paperwork Reduction Act. This information collection is entitled the Head Start Program Performance Standards and does not contain any standardized instruments to promote flexibility for local programs.

Although no comments were received in response to the Paperwork Reduction Act section of the proposed rule, comments were received on other changes that were incorporated into the final rule. The changes to the burden table reflect those of the final rule.

| Requirement  | Annual number of respondents | Average annual burden per respondent (hours) | Total annual burden hours |
|--|------------------------------|--|---------------------------|
| § 1304.13: Agencies required to compete will have to complete an application for each grant competed.  | 75 Grants .....              | 60   | 4,500                     |
| § 1304.15(a): Each Head Start or Early Head Start agency wishing to be renewed for 5 years without competition shall request that status from ACF. | 400 Grants .....             | 0.25   | 100                       |

#### *Description of Information Collection and Associated Burden*

When a Head Start grant meets any of the conditions outlined in § 1304.11, the grantee is designated for competition and must submit an application during competition to be considered for continued funding as required under § 1304.13. The burden to submit an application is estimated at 60 hours for an estimated 75 grants each year. These projections are based on data available on CLASS, deficiencies, and audits from prior years.

Head Start grantees are required by § 1304.15(a) to submit a letter requesting renewal for a new non-competitive continuation grant, and the estimated burden to submit a letter is 15 minutes for 400 grants. The non-competitive renewal request consists of filling in a template letter and sending it through the OHS system, so the burden is small. This calculation assumes in any given year, about one-fifth of all 2,000 grants, or 400 grants, are nearing the end of their current project period and, therefore, a designation under the Designation Renewal System will be made for these grants.

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

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) Having an annual effect on the

economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. A regulatory impact analysis must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year), and an “economically significant” regulatory action is subject to review by the Office of Management and Budget.

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017 (82 FR 9339, February 3, 2017) and requires that the costs associated with significant new regulations “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.” This rulemaking is not expected to be subject to the requirements of Executive Order 13771 because it would result in no more than *de minimis* costs.

#### **VII. Regulatory Impact Analysis**

##### *Estimated Impact of Designation Renewal System Changes on the Public*

This regulatory action is necessary to improve a governmental process: The process to identify grantees that are lower performing in the important dimensions of quality that Congress requires we consider under the Designation Renewal System. As a result of public comment, we consider revisions to the conditions in the Designation Renewal System from those proposed in the NPRM in this regulatory impact analysis.

We revise the prior deficiency, CLASS, and fiscal condition of the Designation Renewal System in this new rule. We estimate that about 20% of grants meet the deficiency condition under the prior rule which will decrease to 7% in this new rule, about 13% of grants meet the CLASS condition under the prior rule which will decrease to 9% in this new rule, and nearly no grants meet the fiscal condition under the prior rule which will increase to 6% in this new rule. There are a few grants that meet multiple conditions, but altogether, we estimate that roughly one-third of grants are required to compete in the prior rule and this will decrease to about one-fifth of grants.

With grants potentially affected by this rule totaling \$10.4 billion per year, then this estimated net decrease in the portion of grant activity subject to competition would translate to \$1.35 billion. Historically, 71 percent of re-competing grantees have received their full service area back and an additional 7 percent have received part of their service area back, so we estimate that the effect of this rule is to reallocate approximately \$297 to \$392 million (= 22% × \$1.35 billion to 29% × \$1.35 billion) from new potential grantees to existing grantees, with this amount being reached in the fifth year after rule finalization after a roughly linear increase in the preceding years. However, this rule raises the competitive threshold for the Instructional Support domain from 2.3 to 2.5 for CLASS reviews conducted on or after August 1, 2025. This approach intends to allow grantees to make necessary quality improvements and gradually move to higher quality; the establishment of the quality threshold aligns and supports this approach. The estimates provided above will be impacted by any changes to the distribution of CLASS scores, especially in the Instructional Support domain. Although the following is not expected, if scores in the Instructional Support domain do not increase by the time the 2.5 threshold goes into effect, then there would be an estimated increase of competition ranging between 4 to 6%

resulting in a lower reallocation of funds from the prior rule than projected above. This range of estimates may understate the rule's transfer impact because it reflects only the estimated net decrease in competition, rather than the mix of some regulatory provisions increasing competition and some reducing it. The possibility of the rule changing the 71 to 78 percent success rate of re-competing grantees introduces further uncertainty into the estimates.

The quantifiable costs of implementation of these rules for the subset of grantees that would be required to compete in any year is well under \$1 million. The cost grantees designated for competition will bear in completing a competitive application is estimated at \$3,097 per grantee. It assumes 60 hours per application at a cost of \$51.62 per hour in staff time (we multiply the \$25.81 hourly wage by two to account for fringe benefits). Applications would likely be completed by a combination of the Head Start Assistant Director and other managers in the program (*i.e.*, Child Development Manager or Family and Community Partnership Manager). The average hourly wage for these positions is based on the U.S. Bureau of Labor Statistics Job Code 11–9031. The total estimated cost for grantees to complete competitive applications would be \$247,760 per year (400 grantees would compete across five years which is an average of 80 grantees per year at \$3,097 each). This cost of competition decreases in this new rule since fewer grantees would be required to compete.

A non-quantified opportunity cost for this new rule is fewer opportunities for entities that are not existing Head Start grantees to be able to compete and potentially grow as an early childhood provider in their community. However, we believe there is an added benefit of existing grantees being able to focus on the cost of quality improvement rather than the cost of competition, especially considering there were several competitions where the incumbent agency was the only applicant.

Although not possible to quantify, this new rule has the added benefit of removing the stress caused by the lowest 10 percent criterion of the CLASS condition. Grantees will no longer have to wait several months to learn if they are designated for competition due to this moving target. Additionally, changes to the deficiency condition in this new rule will have the added benefit of reducing the fear expressed by grantees that one mishap of an individual could require their entire program to compete.

This new rule establishes quality thresholds for the CLASS domain and grantees that fall below them are designated for quality improvement. For any grantee with a score below a quality threshold, OHS will provide support for quality improvement and help ensure the grantee's coordinated approach to training and professional development is supporting improvements in the learning environment. The overall Head Start budget includes about \$250 million for training and technical assistance, of which about half goes directly to grantees. A number of grantees already spend some portion of their Head Start technical assistance dollars on activities related to CLASS; in addition, we make available several materials related to supporting positive teacher-child interactions to grantees on the Early Childhood Learning and Knowledge Center website.

The cost of quality improvement activities in CLASS leverages these existing resources. The key difference is that OHS and grantees will shift these existing resources to focus on particular domains of CLASS needing improvement for each grantee. Although there is a cost to fewer resources going to domains where a grantee already excels while other resources go to domains needing improvement, the added benefit of this cost is more data-driven and effective use of existing resources.

Although there is an overall estimated decrease of competition, we estimate more grantees will compete due to the fiscal condition, which will result in an additional cost for those subset of grantees. An anticipated benefit of this cost is competing grantees before known fiscal challenges escalate to a crisis point, which could prevent potential termination or relinquishment of the grant. A disruption in services to children and families may occur if a Head Start grantee is terminated or relinquishes the grant but OHS will take all actions necessary to attempt to prevent a disruption in services.

#### Tribal Consultation Statement

OHS conducts an average of five Tribal Consultations each year for those tribes operating Head Start and Early Head Start. The consultations are held in four 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 the opportunity for most of the 150 tribes that operate Head Start and Early Head Start programs are able to attend and voice their concerns about issues

regarding service delivery. We complete a report after each consultation, and then we compile a final report that summarizes the consultations and submit the report to the Secretary at the end of the year.

We received comments from tribes on the NPRM. Most of the comments focused on the CLASS condition, Head Start's tribal consultation process, and suggestions for special considerations during the audit process. We considered those comments, responded to them, and used them to develop this final rule.

#### List of Subjects

##### 45 CFR Part 1304

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

##### 45 CFR Part 1305

Administrative practice and procedure.

Dated: August 10, 2020.

Lynn A. Johnson,

Assistant Secretary for Children and Families.

Approved: August 10, 2020.

Alex M. Azar, II,  
Secretary.

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

#### PART 1304—FEDERAL ADMINISTRATIVE PROCEDURES

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

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

■ 2. Revise § 1304.11 to read as follows:

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

A Head Start or Early Head Start agency will be required to compete for its next five years of funding whenever the responsible HHS official determines that one or more of the following seven conditions existed during the relevant time period under § 1304.15:

(a) An agency has two or more deficiencies across reviews conducted under section 641A(c)(1)(A), (C), or (D) of the Act during the relevant time period under § 1304.15.

(b) An agency has not, based on a review conducted under section 641A(c)(1)(A), (C), or (D) of the Act during the relevant time period under § 1304.15:

(1) Established program goals for improving the school readiness of

children participating in its program in accordance with the requirements of section 641A(g)(2) of the Act and demonstrated that such goals:

(i) Appropriately reflect the ages of children, birth to five, participating in the program;

(ii) Align with the Head Start Early Learning Outcomes Framework: Ages Birth to Five, state early learning guidelines, and the requirements and expectations of the schools, to the extent that they apply to the ages of children, birth to five, participating in the program and at a minimum address the domains of language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development;

(iii) Were established in consultation with the parents of children participating in the program.

(2) Taken steps to achieve the school readiness goals described under paragraph (b)(1) of this section demonstrated by:

(i) Aggregating and analyzing aggregate child-level assessment data at least three times per year (except for programs operating less than 90 days, which will be required to do so at least twice within their operating program period) and using that data in combination with other program data to determine grantees' progress toward meeting its goals, to inform parents and the community of results, and to direct continuous improvement related to curriculum, instruction, professional development, program design and other program decisions; and

(ii) Analyzing individual ongoing, child-level assessment data for all children birth to age five participating in the program and using that data in combination with input from parents and families to determine each child's status and progress with regard to, at a minimum, language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development, and to individualize the experiences, instructional strategies, and services to best support each child.

(c) An agency has been determined during the relevant time period covered by the responsible HHS official's review under § 1304.15:

(1) To have an average score across all classrooms observed that is below the following competitive thresholds on any of the three CLASS: Pre-K domains from the most recent CLASS: Pre-K observation:

(i) For the Emotional Support domain, the competitive threshold is 5;

(ii) For the Classroom Organization domain, the competitive threshold is 5;

(iii) For the Instructional Support domain, the competitive threshold is 2.3 through July 31, 2025, and 2.5 on and after August 1, 2025.

(2) If an agency is determined to have an average score across all classrooms observed below the quality threshold on any of the three CLASS: Pre-K domains, the Office of Head Start will support the program to strengthen its coordinated approach to training and professional development as required in § 1302.92(b) and (c), to help promote improvement in teaching practices and teacher-child interactions. The quality threshold for each domain is as follows:

(i) For the Emotional Support domain, the quality threshold is 6;

(ii) For the Classroom Organization domain, the quality threshold is 6;

(iii) For the Instructional Support domain, the quality threshold is 3.

(d) An agency has had a revocation of its license to operate a Head Start or Early Head Start center or program by a state or local licensing agency during the relevant time period under § 1304.15, and the revocation has not been overturned or withdrawn before a competition for funding for the next five-year period is announced. A pending challenge to the license revocation or restoration of the license after correction of the violation will not affect application of this requirement after the competition for funding for the next five-year period has been announced.

(e) An agency has been suspended from the Head Start or Early Head Start program by ACF during the relevant time period covered by the responsible HHS official's review under § 1304.15 and the suspension has not been overturned or withdrawn. If the agency did not have an opportunity to show cause as to why the suspension should not have been imposed or why the suspension should have been lifted if it had already been imposed under part 1304, the agency will not be required to compete based on this condition. If an agency has received an opportunity to show cause and the suspension remains in place, the condition will be implemented.

(f) An agency has been debarred from receiving federal or state funds from any federal or state department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP) any time during the relevant time period covered by the responsible HHS official's review under § 1304.15 but has not yet been terminated or denied

refunding by ACF. (A debarred agency will only be eligible to compete for Head Start funding if it receives a waiver described in 2 CFR 180.135.)

(g) An agency meets one of two fiscal criteria, if the agency:

(1) Is at risk of failing to continue functioning as a going concern within the current project period. The final determination is made by the responsible HHS official based on a review of the findings and opinions of an audit conducted in accordance with section 647 of the Act; an audit, review or investigation by a state agency; a review by the National External Audit Review (NEAR) Center; or an audit, investigation or inspection by the Department of Health and Human Services Office of Inspector General; or

(2) Has a total of two or more audit findings of material weakness or questioned costs associated with its Head Start funds in audit reports submitted to the Federal Audit Clearinghouse (in accordance with section 647 of the Act) for a financial period within the current project period.

■ 3. Revise § 1304.12 to read as follows:

**§ 1304.12 Grantee reporting requirements concerning certain conditions.**

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

(a) The agency has had a revocation of a license to operate a center by a state or local licensing entity.

(b) The agency has filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement.

(c) The agency has been debarred from receiving federal or state funds from any federal or state department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP).

(d) The agency has received an audit, audit review, investigation or inspection report from the agency's auditor, a state agency, or the cognizant federal audit agency containing a determination that the agency is at risk of ceasing to be a going concern.

■ 4. Revise § 1304.15 to read as follows:

**§ 1304.15 Designation request, review and notification process.**

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

five year grant period or by such time as required by the Secretary.

(b) ACF will review the relevant data to determine if one or more of the conditions under § 1304.11 were met by the Head Start and Early Head Start agency during the current project period.

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

(1) The Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions under § 1304.11 were met by the agency's program during the relevant time period described in paragraph (b) of this section, identifying the conditions ACF found, and summarizing the basis for the finding; or

(2) That such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF finds that none of the conditions under § 1304.11 have been met during the relevant time period described in paragraph (b) of this section. If prior to the award of that grant, ACF determines that the grantee has met one of the conditions under § 1304.11 during the relevant time period described in paragraph (b) of this section, this determination will change and the grantee will receive notice under paragraph (c)(1) of this section that it will be required to compete for funding for an additional five-year period.

## PART 1305—DEFINITIONS

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

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

■ 6. Amend § 1305.2 by adding, in alphabetical order, the definition "Denial of Refunding" to read as follows:

### § 1305.2 Terms.

\* \* \* \* \*

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

\* \* \* \* \*

[FR Doc. 2020-17746 Filed 8-27-20; 8:45 am]

BILLING CODE 4184-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 96

[AU Docket No. 20-25; FCC 20-110]

### Auction of Flexible-Use Service Licenses in the 3.7–3.98 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 107

**AGENCY:** Federal Communications Commission.

**ACTION:** Final action; requirements and procedures.

**SUMMARY:** This document summarizes the procedures and deadlines for the upcoming auction of 3.7 GHz Service Licenses in the 3.7–3.98 GHz Band. The *Auction 107 Procedures Public Notice* summarized here is intended to familiarize applicants with the procedures and other requirements governing participation in Auction 107 by providing details regarding the procedures, terms, conditions, dates, and deadlines, as well as an overview of the post-auction application and payment processes.

**DATES:** Applications to participate in Auction 107 must be submitted prior to 6 p.m. ET on September 22, 2020. Upfront payments for Auction 107 must be received by 6 p.m. ET on November 2, 2020. Bidding in Auction 107 is scheduled to begin on December 8, 2020.

**FOR FURTHER INFORMATION CONTACT:** For auction legal questions, Erik Beith or Daniel Habif in the Auctions Division of the Office of Economics and Analytics at (202) 418-0660. For general auction questions, the Auctions Hotline at (717) 338-2868. For 3.7 GHz Service questions, Anna Gentry in the Mobility Division of the Wireless Telecommunications Bureau at (202) 418-1991.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 107 Procedures Public Notice*, AU Docket No. 20-25, FCC 20-110, adopted on August 6, 2020, and released on August 7, 2020. The complete text of the public notice, including attachments and any related documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, located in Room CY-A257, of the FCC Headquarters, 445 12th Street SW, Washington, DC 20554, except when Commission Headquarters

is otherwise closed to visitors. See *Public Notice, Restrictions on Visitors to FCC Facilities*, March 12, 2020. The complete text of the *Auction 107 Procedures Public Notice* is also available on the Commission's website at [www.fcc.gov/auction/107](http://www.fcc.gov/auction/107). To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## I. General Information

### A. Introduction

1. With the *Auction 107 Procedures Public Notice*, the Commission established the procedures to be used for Auction 107, the auction of new flexible-use overlay licenses in the 3.7–3.98 GHz band (the 3.7 GHz Service).

2. The bidding for new licenses in Auction 107 is scheduled to commence on December 8, 2020. The *Auction 107 Procedures Public Notice* provides details regarding the procedures, terms, conditions, dates, and deadlines governing participation in Auction 107 bidding, as well as an overview of the post-auction application and payment processes.

### B. Background and Relevant Authority

3. In the *3.7 GHz Report and Order*, 85 FR 31705, May 27, 2020, the Commission made available 280 megahertz of spectrum in the 3.7–3.98 GHz band for licensed use. In that Order, the Commission proposed to modify the licenses and market access authorizations of incumbent Fixed Satellite Service (FSS) operators, transmit receive earth station licensees, and Fixed Service (FS) licensees to clear the 3.7–4.0 GHz band for new flexible-use terrestrial operations in the contiguous United States. Among other things, the Commission authorized both fixed and mobile operations in the 3.7–3.98 GHz band using geographic area licensing, established licensing and operating rules for the new 3.7 GHz Service, and decided to use its competitive bidding rules to assign 3.7 GHz Service licenses.

4. On March 3, 2020, in accordance with section 309(j)(3) of the Communications Act of 1934, as amended, the Commission released the *Auction 107 Comment Public Notice*, 85 FR 23287, April 27, 2020, seeking comment on certain competitive bidding procedures and various other procedures to be used in Auction 107. The Commission received comments from seven parties in response to the