

Head Start A to Z:

Values, Regulations and Decision-making

Background

Regulatory Process

The regulatory development process is designed as a way to receive input from those whose work or lives will be affected by pending regulation. In the first step of the process, the agency that administers the program prepares a **Notice of Proposed Rulemaking (NPRM)**.

After clearing internal and departmental review, the NPRM is submitted to the Office of Budget and Management (OMB) for review. As the review arm of the Executive Branch of government, the OMB must ensure that the proposed regulation complies with the intent of the public law under which it was prepared and that its implementation will not unfairly burden the public.

Once agreement is reached between the issuing agency and OMB, the NPRM is published in the *Federal Register*, which is the official publication of the federal government for notifying the public of proposed and final regulations. Following publications of the NPRM, interested parties may submit written comments during a “comment period” (which typically lasts 90 days) on the merits of the regulation.

After considering the public comments, the NPRM is modified or changed as deemed necessary by the agency and returned to OMB as the Final Rule. Once approved by OMB, the Final Rule is published in the *Federal Register* and is incorporated as part of the body of the regulations contained in the *Code of Federal Regulations* for the issuing agency. An example of this process is 45 CFR, Part 1307; it begins on page 70,010. The Head Start Program Performance Standards for Part 1307 begin on page 70,029.

Code of Federal Regulations

The *Code of Federal Regulations* (CFR) is a systematic collection of the rules published in the *Federal Register* by the executive departments and agencies of the federal government. The code is divided into 50 titles that represent broad areas of federal regulation. A portion of these are devoted to common regulations that apply across several different departments of the government, such as **Title 5, Administrative Personnel** and **Title 41, Public Contracts and Property Management**. Other titles contain only the regulations of a single department, such as **Title 7, Agriculture; Title 29, Labor; and Title 49, Transportation**.

Some of the regulations pertaining to the Department of Health and Human Services (DHHS) are **Title 21, Food and Drug Administration; Title 42, Public Health Service;** and for Human Services, **Title 45, Public Welfare.** Title 45 is further divided between Subtitle A, “General Administration” and Subtitle B, “Regulations Relating to Public Welfare.” Title 45 contains the regulations governing the Head Start program.

Title 45, Subtitle A. Parts 1 to 199 under Subtitle A contain the department-wide regulations that apply to *all* grants and contracts funded by the Department of Health and Human Services (HHS). Most important among these in terms of the day-to-day operation of a Head Start program are Part 74, “Administration of Grants,” and Part 92, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.” Parts 74 and 92 contain the procedures governing the administration of grants and cooperative agreements issued by HHS. The subparts cover such topics as cash management, financial reports, allowable and unallowable costs, and property and procurement. The agency type (Part 74 for private nonprofit agencies and Part 92 for public agencies) determines which regulation applies. It is important for every Head Start administrator to be familiar with the appropriate regulation and the relationship of the more general set of regulations to the Head Start–specific regulations.

Head Start Program Performance Standards and Other Regulations

In addition to the agency-wide regulations that guide Head Start, 45 CFR contains regulations that apply only to Head Start programs. These regulations are contained in 45 CFR, Chapter 13. Although the Head Start Performance Standards, contained in Part 1304, are the most commonly known of these regulations, the remaining parts (1301, 1302, 1303, 1305, 1306, 1307, 1308, 1309, 1310, and 1311) also hold significant implications for the operation of Head Start programs. When studying the parts of Chapter 13, note that they all follow a similar format:

- Most begin with an introductory section titled “Subpart A—General.”
 - ✓ Although parts 1305 and 1307 do not
- The introductory section begins with a paragraph that explains the purpose and scope of the regulations.
- The introductory section also provides a list of definitions of terms that are contained in the document.

Older, hard-copy versions of the Head Start Program Performance Standards included guidance, which provided illustrations of how the regulations could be implemented. These illustrations have been intentionally eliminated because they created confusion between requirements and flexible options of how the regulations may be implemented. Programs seeking policy guidance should contact their assigned program specialist. Programs seeking support in developing methods of implementation should seek technical assistance from their regional T/TA support.

In the paragraphs that follow, the purpose and scope of Parts 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, and 1311 are provided.

Part 1301

This part establishes regulations applicable to program administration and grants management for all grants under the Head Start Act, including grants for technical assistance and training and for research, demonstration, and pilot projects. In addition to listing the applicable general requirements, this part contains grants administration requirements regarding insurance, bonding, audits, and regulations pertaining to the identification and reporting of child abuse and neglect.

Part 1302

The purpose of this part is to set forth policies and procedures for the selection, initial funding, and refunding of Head Start grantees and for the selection of replacement grantees in the event of the voluntary or involuntary termination, or of denial of refunding, of Head Start programs. As far as Head Start grantees are concerned, these regulations are for informative purposes and have no applicability to day-to-day operations. They are published here rather than in the department-wide regulations because, as required in the Head Start Act, they were developed specifically for the Head Start program.

Part 1303

Part 1303 contains the appeals procedures for grantees and delegate agencies in cases of intended or actual termination or suspension of funding. In the event of an adverse action by the Administration for Children and Families (ACF) against a grantee, or by a grantee against a delegate agency, these rules are designed to protect the rights of both parties and have applicability only to such situations.

Part 1304

Part 1304 contains the Head Start Performance Standards. These standards became effective on January 1, 1998, and apply to the operation of all Early Head Start and Head Start services. In addition to the introductory sub-part that contains the purpose, scope, and definitions, they contain three other major subparts and a small subpart on Implementation and Enforcement. See the expanded discussion of the Head Start Performance Standards in the section that follows titled “Focus on Part 1304: The Head Start Program Performance Standards.”

Part 1305

This part prescribes requirements for determining community needs and recruitment areas. It contains requirements and procedures for the eligibility determination, recruitment, selection, enrollment, and attendance of children in Head Start programs and explains the policy concerning the charging of fees by Head Start programs.

Part 1306

This part sets forth requirements for Early Head Start and Head Start program staffing and program options that all Early Head Start and Head Start grantee and delegate agencies

must meet. These requirements, including those pertaining to staffing patterns, the choice of program options to be implemented, and the acceptable ranges of implementation of these options, have been developed to help maintain and improve the quality of Early Head Start and Head Start and to promote lasting benefits to the children and families being served.

Part 1307

The purpose of this part is to set forth policies and procedures for the designation renewal of Head Start and Early Head Start programs. It is intended that these programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start and Early Head Start grantees be fully protected. The Designation Renewal System is established in this part to determine whether Head Start and Early Head Start agencies deliver high-quality services to meet the educational, health, nutritional, and social needs of the children and families they serve; meet the program and financial requirements and standards described in section 641A(a)(1) of the Head Start Act; and qualify to be designated for funding for five years without competing for such funding, as required under section 641(c) of the Head Start Act with respect to Head Start agencies, and pursuant to section 645A(b)(12) and (d) with respect to Early Head Start agencies.

Part 1308

This rule sets forth the requirements for providing special services for three- through five-year-old children with disabilities enrolled in Head Start programs. The purpose of this part is to ensure that children with disabilities enrolled in Head Start programs receive all the services to which they are entitled under the Head Start Program Performance Standards at 45 CFR, Part 1304, as amended. (**Please note:** requirements for providing disability services for infants and toddlers are contained in 1304.20(f)(2)(I).)

Part 1309

This part describes the procedures for applying for Head Start grant funds to purchase facilities in which to operate Head Start programs; and it describes the conditions under which grant funds may be awarded to purchase facilities. It also specifies the measures that must be taken to protect the federal interest in facilities purchased with Head Start grant funds.

Part 1310

This part sets forth the regulations governing the safety features and safe operation of vehicles used by Head Start agencies in transporting Head Start children.

Part 1311

This part establishes regulations applicable to the administration of the Head Start Fellows Program. The program was designed to enhance the ability of Head Start fellows to make significant contributions to Head Start and other child development and family services

programs. It includes information on the selection, placement, duration, and status of the Head Start Fellow.

FOCUS ON PART 1304: THE HEAD START PROGRAM PERFORMANCE STANDARDS

The Principles Behind the Head Start Program Performance Standards

The founders of the Head Start program recognized from the beginning that to truly foster the social competence of low-income children, it would be essential to acknowledge the integrated nature of cognitive, social, emotional, and physical domains of child development with proper health care, nutrition, and mental health support. They also understood that children develop in the context of their families; that parents are the child's first teachers; and that families exist in the context of neighborhoods and communities. Another early goal of Head Start was to reduce the risk of childhood disability; and, since 1972, the program has had a legislative mandate to make at least 10 percent of its enrollment available to children with disabilities and their families.

The Head Start Program Performance Standards have played a central role in defining quality services for low-income children and their families for almost 30 years. The Performance Standards were created to advance the primary goal of Head Start to increase social competence and school readiness of children. Head Start defines increasing *social competence* as promoting each child's everyday effectiveness in dealing with his or her present environment and later responsibilities when beginning school. Head Start defines school readiness as children possessing the skills, knowledge, and attitudes necessary for success in school and for later learning and life.

These visionary beliefs provided the solid, lasting foundation for the creation and subsequent revisions of the Head Start Program Performance Standards:

- Comprehensive individualized child development services
- Parent and family engagement and a family-centered approach
- Community-based partnerships and community-based services
- Strong, effective management systems and procedures

The Head Start Program Performance Standards were revised in 1998 with the purpose of updating information and establishing regulations for such initiatives as Early Head Start. In an effort to promote a more integrated service delivery approach, the Standards were reorganized into three major content-area sections and one smaller section related to the federal monitoring process:

- Subpart B—Early Childhood Development and Health Services
- Subpart C—Family and Community Partnerships
- Subpart D—Program Design and Management.
- Subpart E—Deficiencies and Quality Improvement Plans

The Standards for Disabilities Services are integrated throughout these three areas as well as in part 1308, described above. The standards also incorporate the expectations for parent involvement (parent and family engagement) in each of the major content areas.

Subpart B—Early Childhood Development and Health Services. This subpart defines the expectations for services to children participating in Head Start and Early Head Start. The regulations provide direction to programs in the areas of health, education, safety, nutrition, and mental health. Special considerations for pregnant women enrolled in Early Head Start are also described in this subpart.

Subpart C—Family and Community Partnerships. In this subpart, the Office of Head Start outlines its expectations for a program’s relationships with families and the communities it serves. Family and Community Partnerships has adopted a new title of Parent and Family Engagement.

Subpart D—Program Design and Management. When the Performance Standards were originally written in the 1970s, the founders did not articulate standards for management. However, as Head Start grew in size and complexity, it became clear how critical management systems were to successful program operations. In this new section of the Standards, the OHS spells out its requirements for program governance; cohesive management systems; human resource management; and facilities, materials, and equipment.

Subpart E—Deficiencies and Quality Improvement Plans. In this very short subpart, the OHS describes the requirements for programs that have been identified as having deficiencies in their services as the result of an onsite program review.

Regulations and Statutes

Improving Head Start for School Readiness Act of 2007

As with all programs of the federal government, Head Start owes its existence to a public law passed by the U.S. Congress and signed into law by the president. The Head Start Act, as it is commonly referred to, authorizes the appropriation of funds at specific levels and prescribes the methodologies for allotment of funds to the various functions of the program and the methods for the distribution of the funds nationally and locally to Head Start agencies. The Head Start Act spells out the intent of Congress in terms of the purpose of the program, the types of services to be provided, the populations to be served, reporting and evaluation requirements, and a variety of administrative requirements.

It is important for administrators to be familiar with those sections of the Act that have relevance to day-to-day operations. For example, the change in composition of the governing body/Tribal Council, and the 10 percent of enrollment slots to be reserved for services to children with disabilities are specifically delineated in the Act.

Throughout, the Act directs the Secretary of Health and Human Services to develop regulations to guide the implementation of the program.

Given that the *Improving Head Start for School Readiness Act of 2007* was enacted in 2007 and the last substantial revisions of the Head Start regulations were promulgated in 1998, it is important to be mindful that in most cases the *Head Start Act of 2007* takes precedence over what is stated in the regulations; and in the absence of **clear** change or changes with accompanying official guidance, provisions of the Performance Standards are still in force.

Once developed, these regulations become a part of the *Code of Federal Regulations*. Since regulations have their basis in public law, they have the force of law for programs funded by the issuing agency, which in this case is the Office of Head Start.

The Relationship Between the Performance Standards and the Federal Monitoring Process

Each Head Start grantee is held accountable for ensuring that the Performance Standards are fully implemented in its program. A monitoring team, which is made up primarily of non-federal staff, conducts a thorough review of each grantee every 3 years to determine its compliance with the Performance Standards and other regulations. Currently, reviewers use an instrument called the Office of Head Start Monitoring Protocol. The Protocol has been revised for FY 2013 to place a greater emphasis on the systems that Head Start and Early Head Start programs have in place to enhance the quality of the delivery and management of program services.

The focus of the Protocol is on making connections between program systems and on collecting data for critical indicators of success in promoting school readiness.

The Protocol organizes elements of the Performance Standards, the *Head Start Act*, and other regulations into seven sections against which compliance is monitored:

1. Program Governance (GOV)
2. Management Systems (SYS)
3. Fiscal Integrity (FIS)
4. Eligibility, Recruitment, Selection, Enrollment, Attendance (ERSEA)
5. Child Health and Safety (CHS)
6. Family and Community Engagement (FCE)
7. Child Development and Education (CDE)

Head Start Policies

The Head Start Act and regulations represent the first two levels of rule-making. The third level of rule-making is referred to as policy. As regulations are developed to define a requirement in the Head Start Act, policies are likewise developed to guide the implementation of a regulation. Generally, OHS develops new policies and refines existing policies in response to changes in the body of knowledge or concerns about best practice, or because of consistent misinterpretation of the meaning of a regulatory requirement.

Policy issuances have the force of regulations, since compliance with the regulation cannot be achieved without adherence to the policy.

Policies are often issued in the form of an Information Memorandum (IM) or a Program Instruction (PI) that is sent to every Head Start program. Wise program leaders maintain a file of all IMs and PIs that they and their staff can refer to as needed. Programs can obtain copies of IMs that are still in force on the Early Childhood Learning Center (ECLKC)

