



**Notice Of Proposed Rule
Making on a System for
Designation Renewal**

November 4, 2010

Your Speakers Today

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NATIONAL HEAD START ASSOCIATION

Overview of Presentation

- **Background** on the proposed system
- **Process** for the implementation of the proposed regulation
- **Summary** of the Notice of Proposed Rule Making (NPRM)
- **How** to get engaged and submit your own comments
- **NHSA's Timeline** for collecting and submitting comments
- **Why** your involvement is vital



Background on Re-Competition

- Stems from *Improving Head Start for School Readiness Act of 2007*
 - The Act required HHS to develop a regulation for system of Designation Renewal “Re-Competition”.
- Goes into effect 12 months from date of publication of final rule.
 - At that time, agencies will begin to receive 5-year grants, instead of indefinite grants.
- When grantees are determined NOT to be providing “high quality and comprehensive services,” there will be an open competition in that service area for their grant.
 - Essentially, the system would “weed-out” underperforming and poor performing programs.



Background on NPRM

- On September 22, 2010, ACF announced the Notice of Proposed Rule Making (NPRM) for re-competition.
- The announcement began a 90 day public comment period, ending on December 21, 2010.
- Keep in mind...
 - This is a proposal, not a final regulation.
 - Legal process requires the opportunity for the public, especially the Head Start community, can give written input on the proposal.
 - You should comment on it!



NPRM - Process

- Head Start Act (COMPLETE)
 - Authorizes HHS to re-compete Head Start grants and create a Designation Renewal System (DRS)
- Secretary's Advisory Committee (COMPLETE)
 - Made recommendations in a 2008 report of the Secretary's Advisory Committee on the DRS (available on ECLKC)
- Notice of Proposed Rule Making (COMPLETE)
 - Outlines the proposal for the new system
- 90 Day Comment Period (ENDS on DECEMBER 21, 2010)
 - Anyone can comment and make suggestions on the NPRM
- Analysis and Consideration of Comments (FUTURE)
 - HHS legally must read all comments and consider making changes to proposal
- Final Rule/Regulation Published (FUTURE)



Broad Overview of NPRM

- Applies to Head Start and Early Head Start
- Proposes that **at least 25 percent** of all Head start and Early Head Start grantees reviewed in a year will be re-competed.
- The 25 percent pool is determined by seven specific performance conditions and criteria (“triggers”) in three categories.
 - Quality, Licensing and Operation, Fiscal and Internal Controls
- If a program has any or more of the triggers, its grant would automatically be re-competed.
- If the seven triggers capture less than 25 percent of all grants to be competed, OHS plans to use additional, un-clarified triggers.



7 Triggers for Re-Competition: QUALITY

1. A determination by ACF that the agency has **one or more deficiencies** during a single monitoring review

Deficiency is defined under the Head Start Act as:

“(A) A **systemic or substantial failure** of an agency in an area of performance such that the Secretary determines involves:

- (i) A threat to the health, safety, or civil rights of children or staff;
- (ii) A denial to parents of the exercise of their full roles and responsibilities related to program operations;



Trigger 1, Continued

- (iii) A failure to comply with standards related to early childhood development and health services, family and community partnerships, or program design and management;
 - (iv) The misuse of funds received under this subchapter;
 - (v) Loss of legal status (as determined by the Secretary) or financial viability, loss of permits, debarment from receiving Federal grants or contracts, or the improper use of Federal funds; or
 - (vi) Failure to meet any other Federal or State requirements that the agency has shown an unwillingness or inability to correct after notice from the Secretary, within the period specified;
- B. Systemic or material failure of the governing body of an agency to fully exercise its legal and fiduciary responsibilities; or
- C. An unresolved area of noncompliance.”



7 Triggers: QUALITY

2. “A determination by ACF that an Agency has **not established and taken steps to achieve its goals for improving school-readiness and has not analyzed individual child-level assessment data** in accordance with the Head Start Child Outcomes Framework or the Child Competencies in the Early Head Start Performance Measures Framework”



Trigger 2, Continued

This means:

- Head Start Act requires agencies to establish goals for improving the school readiness of children in their programs
- OHS will monitor the creation and implementation for these goals
- Grantees will need to use assessments to improve classroom practice and support each child's progress as well as achieve better outcomes program-wide



7 Triggers: QUALITY

3. Low scores on the Classroom Assessment Scoring System: Pre-K (“CLASS: Pre-K”)

- CLASS is an observational instrument examining and measuring classroom interactions between children and teachers based on three domains:
 - Emotional Support, Classroom Organization, Instructional Support
- Based on a seven point scale, with Low (1-2), Mid (3-5), and High (6-7) ratings
- Take average of scores from observed classrooms within an agency to calculate scores.



Trigger 3: Continued

Additional information on the use of CLASS:

- During the “transitional period,” any agency that has a **score of 1 on any domain** on the CLASS on the two most recent observations will be re-competed
- After the transition period, any agency with any **score of below a 3 on any domain** on each of its last two CLASS observations will be re-competed
- CLASS: Pre-K will NOT be used in Early Head Start or Home-based programs
 - OHS is currently investigating a valid and reliable measure to evaluate quality interactions for EHS and Home-based services
 - Once such a measure is identified, it will become part of the Re-Competition through a subsequent rulemaking process.



7 Triggers: LICENSING AND OPERATIONS

4. **Revocation of an agency's license** to operate by a state or local licensing agency
 - If a challenge to a license revocation is pending, grantee would still be required to re-compete
 - If challenge results in overturning or withdrawal by agency of revocation, then decision not used in re-competition

5. **Suspension** by ACF of an agency to operate a Head Start and Early Head Start program
 - “temporary withdrawal of the grantee’s authority to obligate grant funds pending corrective action by the grantee”
 - and the suspension has not been overturned or withdrawn



7 Triggers: FISCAL AND INTERNAL CONTROLS

- 6. Debarment** by any federal or state agency from receiving federal or state funds or if the agency is disqualified from the Child and Adult Care Food Program (CACFP)



7 Triggers: FISCAL AND INTERNAL CONTROLS

7. A determination by an independent auditor, a state agency, the National External Audit Review Center, or the HHS Office of Inspector General that the agency has one or more “**material weaknesses**” or is determined to be unable to ensure that it can continue as a “**going concern**”



Trigger 7, Continued

- **Material weakness** is defined in the NPRM as:
 - “A weakness or combination of weaknesses, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the grantee’s annual or interim financial statements will not be prevented or detected on a timely basis.”
- **Going concern** means:
 - An agency that “operates without the threat of liquidation for the foreseeable future, a period of at least 12 months”



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If 25% Not Met, What Happens?

If the seven triggers would result in fewer than 25 percent of grantees being re-competed, then **additional triggers would be established by OHS**. (See page 57707 of NPRM)

OHS is considering:

- A complex **non-compliance index and ranking system** of all programs reviewed in a given year; and
- The **use of additional evidence-based assessment measures**, such as the Early Childhood Environmental Rating Scale, the Infant Toddler environmental rating Scale, and the Family Child Care Environment rating Scale.



Additional Reporting Requirements

- Agencies will be required to notify ACF within 10 days if any of the following occurring:
 - License Revocation
 - Filing for bankruptcy or agreeing to a reorganization plan as a part of a bankruptcy settlement
 - Debarment from receipt of Federal or State funds or disqualification from CACFP
 - Receipt of an audit, audit review, investigation or inspection report with one or more findings of material weaknesses or organization is at risk for ceasing to function as a going concern



Tribal Government Consultation

- American Indian/Alaskan Native (AI/AN) grantees are subject to the re-competition process, but the HS Act and NPRM outline a tribal government consultation process with HHS before a competition would take place.
 - If an AI/AN grantee is determined to need to re-compete, HHS would engage in a consultation with the tribal government to develop a quality improvement plan.
 - The plan must be created and implemented within 6 months of the re-competition determination.
 - Within 6 months after that, OHS would reevaluate the performance of the grantee.
 - If the grantee is still not meeting the re-competition standards, then OHS would conduct a open competition for the grant (as described in Head Start Act).



Process for Requesting Designation and Review

- Agencies wishing to be renewed for a 5 year grant period without re-competition must request that status from ACF
- ACF will provide preliminary notice to each grantee of its designation review results at least 12 months before the expiration of its current grant
- ACF will provide final notice about a grantee's designation decision at least 6 months prior to the grant's expiration
- An agency that has had its grant terminated in the previous 5 years will be excluded from re-competition for a five year period



What are the costs?

OHS estimates that the burden to HS/EHS programs **will not be significant.** It estimates:

- About \$1500 to each of the competing grantees in any year
- One hour or less for a grantee to request to have its grant renewed without competition
- One hour or less for each agency to meet other reporting requirements, such as whether its license has been revoked



What to Do Now (Part 1)

- Read the actual text of the NPRM
- Hold discussion groups in your program or community using questions distributed by NHSA in Toolkit
 - Include your Policy Councils and other community partners to gather their insights
 - Remember: the more, the merrier on this process
- Participate in NHSA Events outlined in the following timetable
- Email your questions/suggestions to NHSA:
yourvoiceonrecompetition@nhsa.org



What to Do Now (Part 2)

Submit your own written comments to OHS by December 21, 2010

- Identify areas of concern
- Develop a comment for your concern
 - Each concern should be a separate part of your overall comment
- Each comment should include:
 - A citation to the section of the regulation
 - Why the section causes concern to you or your program/community
 - An example from your community about why this poses a problem
 - A suggestion on how to improve it
- Encourage your staff, Policy Council, and community partners to submit their own comments as well



Where to Submit your Comments

- Submit your comments individually using the Internet at <http://www.regulations.gov> or via mail addressed to:
Attn: Colleen Rathgeb
Office of Head Start
1250 Maryland Ave SW
Washington, DC 20024
- **After submitting comments to OHS**, please email a copy of them to NHSA at yourvoiceonrecompetition@nhsa.org
- **SUBMIT ALL COMMENTS TO OHS BY DECEMBER 21, 2010**



NHSA Re-Competition Timeline

Event

Date

NHSA Conference Call to Brief Affiliates

October 8, 2010

NHSA National Webinar

October 13, 2010

NHSA Supergrantee Webinar

October 14, 2010

NHSA Board Government Affairs Subcommittee Check-In Meeting

TBD

NHSA's DRAFT Comments Released

November 5, 2010

NHSA Conference Call Check-in with Affiliates

November 9, 2010

Deadline for Head Start Community to Submit Feedback to NHSA on NHSA's Draft Comments

December 1, 2010

NHSA Submits Its Final Comments to OHS

December 9, 2010

27th Annual Head Start Parent Training Conference in Virginia Beach, VA and

Week of Dec. 10, 2010

Official Deadline for Public Comments to OHS

December 21, 2010



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YOUR VOICE IS VITAL

- This proposal is just that -- a proposal; we must help improve it.
 - Without comments, the proposal will become the final regulation.
- This is the opportunity to tailor the regulation to the Head Start and Early Head Start community's needs.
- Engage your parents and staff!
- Legally, OHS must respond to comments it receives and indicate in the preamble to the final rule what actions it took in response to the comments



• **The opportunity is now!**



Remember:

Submit your questions on the process to
yourvoiceonrecompetition@nhsa.org

Submit your final written comments to
<http://www.regulations.gov>

Now on to Q and A...

