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to participate in the hearing, it may request permission to do so from the Departmental Appeals Board.

(4) If the grant recipient fails to appear at the hearing, without good cause, the grant recipient will be deemed to have waived its right to a hearing and consented to have the Departmental Appeals Board make a decision based on the parties' written information and argument.

(5) A grant recipient may waive the hearing and submit written information and argument for the record, within a reasonable period of time to be fixed by the Departmental Appeals Board.

(6) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

(g) *Decision.* The Departmental Appeals Board's decision and any measure the responsible HHS official takes after the decision is fully binding upon the grant recipient and its delegate agencies, whether or not they actually participated in the hearing.

§ 1304.6 Appeal for prospective delegate agencies.

(a) *Appeal.* If a grant recipient denies, or fails to act on, a prospective delegate agency's funding application, the prospective delegate may appeal the grant recipient's decision or inaction.

(b) *Process for prospective delegates.* To appeal, a prospective delegate must:

(1) Submits the appeal, including a copy of the funding application, to the responsible HHS official within 30 days after it receives the grant recipient's decision; or within 30 days after the grant recipient has had 120 days to review but has not notified the applicant of a decision; and,

(2) Provide the grant recipient with a copy of the appeal at the same time the appeal is filed with the responsible HHS official.

(c) *Process for grant recipients.* When an appeal is filed with the responsible HHS official, the grant recipient must respond to the appeal and submit a copy of its response to the responsible HHS official and to the prospective delegate agency within 30 work days.

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(d) *Decision.* (1) The responsible HHS official will sustain the grant recipient's decision, if the official determines the grant recipient did not act arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements.

(2) The responsible HHS official will render a written decision to each party within a reasonable timeframe. The official's decision is final and not subject to further appeal.

(3) If the responsible HHS official finds the grant recipient did act arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements, the grant recipient will be directed to reevaluate their applications.

§ 1304.7 Legal fees.

(a) An agency is not authorized to charge to its grant legal fees or other costs incurred to appeal terminations, reductions of funding, or denials of applications of refunding decisions.

(b) If a program prevails in a termination, reduction, or denial of refunding decision, the responsible HHS official may reimburse the agency for reasonable and customary legal fees, incurred during the appeal, if:

(1) The Departmental Appeals Board overturns the responsible HHS official's decision;

(2) The agency can prove it incurred fees during the appeal; and,

(3) The agency can prove the fees incurred are reasonable and customary.

Subpart B—Designation Renewal

§ 1304.10 Purpose and scope.

The purpose of this subpart is to set forth policies and procedures for the designation renewal of 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 grant recipients be fully protected. The Designation Renewal System is established in this part to determine whether 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) or 645A(b)(12) and (d) of the Head Start Act. A competition to select a new Head Start agency to replace a Head Start agency that has been terminated voluntarily or involuntarily is not part of the Designation Renewal System established in this part, and is subject instead to the requirements of § 1304.20.

[89 FR 67817, Aug. 21, 2024]

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

A 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 de-

velopment, 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 grant recipients' 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

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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 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 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 this part, 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.

[85 FR 53207, Aug. 28, 2020, as amended at 89 FR 67817, Aug. 21, 2024]

§ 1304.12 Grant recipient 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.

[85 FR 53208, Aug. 28, 2020]

§ 1304.13 Requirements to be considered for designation for a five-year period when the existing grant recipient in a community is not determined to be delivering a high-quality and comprehensive Head Start program and is not automatically renewed.

In order to compete for the opportunity to be awarded a five-year grant, an agency must submit an application to the responsible HHS official that demonstrates that it is the most qualified entity to deliver a high-quality and comprehensive Head Start program. The application must address the criteria for selection listed at section 641(d)(2) of the Head Start Act. Any agency that has had its Head Start grant terminated for cause in the preceding five years is excluded from competing in such competition for the next five years. A Head Start agency that has had a denial of refunding, as defined in 45 CFR part 1305, in the preceding five years is also excluded from competing.

[89 FR 67817, Aug. 21, 2024]

§ 1304.14 Tribal government consultation under the Designation Renewal System for when an Indian Head Start grant is being considered for competition.

(a) In the case of an Indian Head Start agency determined not to be delivering a high-quality and comprehensive Head Start program, the responsible HHS official will engage in government-to-government consultation with the appropriate Tribal government or governments for the purpose of establishing a plan to improve the quality of the Head Start program operated by the Indian Head Start agency.

(1) The plan will be established and implemented within six months after the responsible HHS official's determination.

(2) Not more than six months after the implementation of that plan, the responsible HHS official will reevaluate the performance of the Indian Head Start agency.

(3) If the Indian Head Start agency is still not delivering a high-quality and comprehensive Head Start program, the responsible HHS official will con-

duct an open competition to select a grant recipient to provide services for the community currently being served by the Indian Head Start agency.

(b) A non-Indian Head Start agency will not be eligible to receive a grant to carry out an Indian Head Start program, unless there is no Indian Head Start agency available for designation to carry out an Indian Head Start program.

(c) A non-Indian Head Start agency may receive a grant to carry out an Indian Head Start program only until such time as an Indian Head Start agency in such community becomes available and is designated pursuant to this part.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67817, Aug. 21, 2024]

§ 1304.15 Designation request, review and notification process.

(a) A grant recipient must apply to be considered for Designation Renewal. A Head Start agency wishing to be considered to have its designation as a 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 agency during the current project period.

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

(1) The 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

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§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 grant recipient 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 grant recipient 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.

[85 FR 53208, Aug. 28, 2020, as amended at 89 FR 67818, Aug. 21, 2024]

§ 1304.16 Use of CLASS: Pre-K instrument in the Designation Renewal System.

Except when all children are served in a single classroom, ACF will conduct observations of multiple classes operated by the grant recipient based on a random sample of all classes and rate the conduct of the classes observed using the CLASS: Pre-K instrument. When the grant recipient serves children in its program in a single class, that class will be observed and rated using the CLASS: Pre-K instrument. The domain scores for that class will be the domain scores for the grant recipient for that observation. After the observations are completed, ACF will report to the grant recipient the scores of the classes observed during the CLASS: Pre-K observations in each of the domains covered by the CLASS: Pre-K instrument. ACF will average CLASS: Pre-K instrument scores in each domain for the classes operated by the agency that ACF observed to determine the agency's score in each domain.

§ 1304.17 Flexibility for Head Start Designation Renewal Determinations in Certain Emergencies.

(a) In reviewing the relevant data as described in §1304.15(b), if ACF determines that one or more data elements described in the conditions in section §1304.11 is not available due to an emergency described in paragraph (b) of this section, ACF may make a designation renewal determination based on the data elements that are available.

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(b) The emergencies are:

(1) A major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(2) An emergency declared by the President under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191).

(3) A public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d).

[85 FR 78792, Dec. 7, 2020]

Subpart C—Selection of Grant Recipients Through Competition

§ 1304.20 Selection among applicants.

(a) In selecting an agency to be designated to provide Head Start Preschool, Early Head Start, Migrant or Seasonal Head Start or Tribal Head Start Preschool or Early Head Start services, the responsible HHS official will consider the applicable criteria at section 641(d) of the Head Start Act and any other criteria outlined in the funding opportunity announcement.

(b) In competitions to replace or potentially replace a grant recipient the responsible HHS official will also consider the extent to which the applicant supports continuity for participating children, the community and the continued employment of effective, well qualified personnel.

(c) In competitions to replace or potentially replace a current grant recipient, the responsible HHS official will give priority to applicants that have demonstrated capacity in providing effective, comprehensive, and well-coordinated early childhood education and development services and programs to children and their families.

[81 FR 61412, Sept. 6, 2016, as amended at 89 FR 67818, Aug. 21, 2024]