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January 19, 2024

Docket # ACF-2023-25038

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Becerra:

The Notice of Proposed Rulemaking (NPRM) entitled “Supporting the Head Start Workforce and Consistent Quality Programming” contains several problematic provisions. High-quality early childhood education plays an important role in the health and success of our nation’s children. Unfortunately, this proposed rule is less about retaining and ensuring “consistent quality programming,” as its title states, and reads more like a collective bargaining agreement.

Rather than support the students and families whom Head Start serves or address persistent program oversight needs, the Department of Health and Human Services (the Department) is choosing to depart from legislative language and congressional intent and push Head Start teachers as union contract employees. This focus is both troubling and inappropriate. Our misgivings about the Office of Head Start’s rulemaking stems from proposals 1) that stipulate onerous and highly prescriptive requirements on a program designed to have local autonomy and that tie those requirements to grant awards; 2) that demonstrate Department overreach by usurping other federal statutes; 3) that favor larger grantees with more resources over smaller providers, including rural and faith-based grantees; and 4) that deflect from improving program quality for students and their families.

We applaud the work and commitment of our nation’s Head Start teachers. Congress has funded the program in a manner that enables Head Start to pay its teachers. Therefore, contrary to the claims of §1302.90(e)(2) of the proposed rule, the Department does not need to establish wage requirements for the program. Head Start grants are constructed such that wages are an individual grantee decision, but the proposed rule undermines local autonomy in this area. Congress has increased regular Head Start appropriations every year since Fiscal Year (FY)

2016. Additionally, each year from FY 2016-2023, regular Head Start appropriations designated a specific amount for cost-of-living adjustments. Moreover, regular Head Start appropriations in FY 2020-2023 each designated a specific amount for program improvement, which requires at least 50 percent to be used for staff compensation. The Department encouraged programs to use these funds for wages and benefits in both FY 2022 and FY 2023 program instructions.¹ In short, Head Start programs have existing flexibility to set teacher wages and/or change compensation during grant renegotiations. Regulating wage scales within the Head Start program as the NPRM proposes is neither necessary nor the appropriate role of the federal government.

Additionally, the proposal's efforts to create pay parity with kindergarten through third grade elementary teachers and set a \$15 minimum wage are misguided. First, pay parity draws inappropriate parallels between the nature and qualification of teachers. Primary education teachers often hold degrees and certifications not required for early childhood instructors. Additionally, the question of schedules must be applied: Head Start programs vary in their duration (e.g., half-day four days-a-week programs versus three full days-a-week programs) unlike primary education school weeks. The proposed rule gives no indication of factoring in these differences. Secondly, the concept of pay parity is not static, and the Department is setting grantees up to fail as they chase a moving target. A Head Start grantee may plausibly match teacher salaries to kindergarten through third grade educators, but when a state or district reevaluates teacher salaries, it is unclear under the regulation whether or not a Head Start grantee would be required to reassess their wage structure. Moreover, the proposed rule gives a seven-year runway to progress toward pay parity, but certainly teacher wages will have surpassed plausible Head Start budgets within that timeframe. The proposed rule does not consider these eventualities and fails to allow Head Start programs to match their individual pay scales to the unique needs of their workforce and student population.

Regarding a minimum pay floor proposed in §1302.90(e)(3), it is inappropriate for the Department to mandate a particular wage above the existing federal minimum wage. Moreover, the ill effects of a \$15 minimum wage have already been recognized by the Congressional Budget Office, who last month estimated that, if enacted, a federally mandated \$15 minimum wage would cause up to 1.4 million job losses.² Mandating such a minimum wage will overly burden Head Start grantees, 43 percent of whom are local non-profit entities, threatening their financial viability and negatively impacting smaller operators in particular, including rural and faith-based programs.

In the background section, this NPRM acknowledges “there will be a substantial cost associated with enacting the proposed [wage] standards at current Head Start funded enrollment levels.”³ But the proposal continues, arguing the policy changes are “necessary” while admitting “that as a result of these necessary reforms, one potential impact could be a reduction in Head Start slots.”⁴

¹ FY 2022 Head Start Funding Increase ACF-PI-HS-22-02, <https://eclkc.ohs.acf.hhs.gov/policy/pi/acf-pi-hs-22-02>; FY 2023 Head Start Funding Increase ACF-PI-HS-23-02, <https://eclkc.ohs.acf.hhs.gov/policy/pi/acf-pi-hs-23-02>.

² CBO, THE BUDGETARY AND ECONOMIC EFFECTS OF S. 2488, THE RAISE THE WAGE ACT OF 2023, at 9 (Dec. 2023), https://www.cbo.gov/system/files/2023-12/The_Budgetary_and_Economic_Effects_of_S.%202488_the_Raise_the_Wage_Act_of_2023_1.pdf.

³ Supporting the Head Start Workforce and Consistent Quality Programming, 88 F.R. 80821 (proposed November 20, 2023)(to be codified at 45 C.F.R. § 1301, 1302, 1303, 1304, and 1305).

⁴ Ibid.

The Department owes a reasoned explanation why a higher taxpayer-funded program would result in reduced program reach, and this flippant attitude toward the use of taxpayer dollars does an injustice to the program and erodes public trust. This NPRM's affirmation that "high wages and benefits are a key driver of quality in early childhood"⁵ betrays the Department's ignorance about high quality education and underscores the administration's intent to put teachers' financial interests above low-income students. In contrast, a GAO report on workforce quality states that "salaries [of early child care and education workers] do not necessarily increase worker quality."⁶

The proposed rule also includes a litany of various benefit provisions aimed at "attracting and retaining skilled staff" and helping Head Start teacher roles be "competitive with other jobs." Several of these benefits are a concerning overreach and stack the deck against smaller Head Start operators. First, the Bureau of Labor Statistics defines full-time workers as "those who usually work 35 or more hours per week."⁷ Many Head Start programs currently designate 35 hour per week as a full-time position. It is alarming that, for proposed staff benefit requirements outlined in §1302.90, the Department will define full-time staff as those working 30 hours per week or more. This not only dispenses with the flexibility and autonomy regularly given to Head Start grantees, but it also undercuts a basic federal understanding of the workforce.

Second, §1302.90(f)(1)(i) unnecessarily requires mandated provision of health insurance. As you may be aware, employers with over 50 employees are already mandated to provide health insurance to their workforce. Additionally, the *Fair Labor Standards Act* already requires employers to inform all new employees of health insurance options in the Healthcare.gov Marketplace. The NPRM's stipulation that grant recipients adhere to this mandate is duplicative, and its tying of further grant funding to these mandates is inappropriate. This section should be removed. The provision goes on to "encourage" grant recipients choosing to offer employer-sponsored coverage to provide insurance plans similar to silver, gold, or platinum plans in the Marketplace. Such alignment fundamentally removes choice and flexibility for workers and removes the autonomy local Head Start operators have in creating health insurance options that might best meet their community's needs. It would be highly suspect if such "encouragement" was tied in any way to grant funding.

Third, §1302.90(f)(1)(ii) proposes paid sick leave to full-time staff. While we are glad the proposal allows grantees the flexibility to craft a policy themselves, we strongly oppose any effort to set an overly rigid national standard, as it would be an added burden, particularly to smaller operators. Fourth, §1302.90(f)(1)(iii) proposes requirements for programs to offer job-protected periods of paid family leave to employees consistent with eligibility for and protections in the *Family and Medical Leave Act (FMLA) of 1993*. But the Department's intent for this requirement to apply to all programs, "even those who are not covered by FMLA due to employer size,"⁸ is inappropriate and violates FMLA statute. Once again, these changes stack the deck in favor of larger grantees that can more easily accommodate employee absences.

⁵ Ibid.

⁶ GAO-12-248, Published: February 15, 2012, p. 19.

⁷ <https://www.bls.gov/cps/definitions.htm#fullparttime>

⁸ 88 F.R. 80834

Fifth, Article V, “Regulatory Impact Analysis, Section K, Alternative Policy Scenario: Required Retirement,” requests comment on requiring retirement benefits. Creating a mandate within an administrative regulation and circumventing the appropriate legislative process is wholly inappropriate. Mandating federal funds be used for retirement benefits limits local program autonomy and may create significant burdens that only favor larger grantees.

We also raise the concern that this proposed rule creates a contradiction about the desired relationship between parents and teachers. Section 1302.34(b) goes out of its way to describe parent and family engagement in Head Start services. In fact, the proposed subparagraph (9) explicitly aims to ensure “programs are consulting and engaging with current parents and families to be involved in the methods the program uses.” At the same time, according to the NPRM the Department plans to strike §1302.44(a)(3) from the current regulations, which requires parental consent for mental health consultation. These provisions of Head Start Program Performance Standards (HSPPS) are at odds with one another. We trust this will be remedied to ensure parents are granted their rights and promote parent-teacher partnerships.

Finally, we wish to address the autonomy and local management that Head Start operators have used to create high-quality early childhood education programs. HSPPS §1302.100 states “a program must provide management and a process of ongoing monitoring and continuous improvement for achieving program goals that ensures child safety and the delivery of effective, high-quality program services.” While these performance standards recognize local autonomy in creating a program to best further their community’s goal and sustain operational effectiveness, several provisions in the NPRM do the opposite and restrict the very autonomy the HSPPS purposes. We draw attention to the proposal details stipulating regular five-minute breaks (§1302.93(c)(4)) and access to adult-sized furniture in classrooms (§1302.93(d)). Both of these proposals run counter to existing federal regulation and also jeopardize the health and safety standards of Head Start programs. Requiring regular five-minute breaks burdens programs, particularly small and rural ones, as they also strive to maintain appropriate teacher to child ratios. The addition of adult-sized furniture in early childhood classrooms is generally not appropriate due to concerns about student safety. Certainly, Head Start grantees can be trusted to continue adjudicating these needs at the local level, empowering staff and management to make decisions that are in the best interest of their particular program.

It should go without saying that Head Start has ongoing oversight and program quality needs that must be addressed. This has been demonstrated and documented in both a Government Accountability Report, “Head Start: Action Needed to Enhance Program Oversight and Mitigate Significant Fraud and Improper Payment Risks”⁹, and an HHS OIG report, “ACF Should Improve Oversight of Head Start To Better Protect Children's Safety.”¹⁰ However, rather than taking this opportunity to provide long overdue program quality enhancements for students and their parents, the Department has chosen to put its own unjustified policy preferences over low-income families’ access to education. You need to reevaluate these program changes and instead support a grant-run program that ensures high quality instruction in a safe environment that parents and communities can respect.

⁹ GAO-19-519, Published: Sep 13, 2019. Publicly Released: Oct 02, 2019.

¹⁰ OEI-BL-19-00560, September 28, 2022.

Sincerely,



Virginia Foxx
Chairwoman
Committee on Education and the Workforce



Aaron Bean
Chairman
Subcommittee on Early Childhood, Elementary and Secondary Education
Committee on Education and the Workforce