

Head Start Enrollment & ELIGIBILITY REQUIREMENTS REFRESHER

By *Chloe Major, CAPLAW*

Eligibility and enrollment requirements have become a hot topic since Head Start grantees received a wake-up call from Government Accountability Office (GAO) congressional testimony released on May 18, 2010 detailing its investigations of allegations of fraud and abuse relating to eligibility and enrollment at several Head Start centers across the country.¹ The Office of Head Start's (OHS) initial response to the GAO testimony was to issue Program Instruction 10-02 (PI) reiterating the Head Start program's eligibility requirements.

That PI was shortly followed by a letter to all Head Start grantees from Kathleen Sibelius, Secretary of the U.S. Department of Health and Human Services (HHS). The letter emphasized the importance of strengthening program integrity and outlined concrete steps to ensure that every Head Start program slot is reserved for an eligible child and that fraudulent activity in the Head Start program is eradicated.²

This article explains the Head Start enrollment and eligibility requirements and recommends actions to take to prevent fraud and ensure that CAAs stay legally compliant. The information in this article is based on the 2007 Head Start Reauthorization Act, Head Start regulations, PIs, Information Memoranduma (IMs) and Policy Clarifications (PCs). It is important to note, that in order of precedence, the Head Start Act is the highest authority as to Head Start issues followed by Head Start regulations that are consistent with the Act. In the hierarchy of PIs, IMs and PCs, PCs are generally considered the least authoritative; however, all of these sources are subject to change and should be revisited on a regular basis.

Enrollment Requirements

Some of the allegedly fraudulent activities brought to light by the GAO testimony included enrolling fictitious children and then counting them to meet enrollment requirements.³ Each Head Start grant specifies the number of children that the grantee is required to serve. If this number (known as the "funded enrollment") is higher than the actual number of children enrolled, and, after the grantee receives technical assistance from HHS, the under-enrollment continues for 12 months, HHS may withhold or recapture a proportionate amount of the grantee's funds.

Eligibility Requirements

The GAO testimony also alleged that to meet enrollment numbers, Head Start staff were intentionally disregarding

eligibility requirements, such as enrolling over-income families and classifying children as disabled when they were not.⁴ Before enrolling a child in either an Early Head Start or Head Start program, staff must assess the following criteria to determine eligibility and priority for enrollment: (1) residency; (2) age; (3) categorical status (i.e. homeless, receiving public assistance, or in foster care); (4) family income; and (5) disability status.⁵ Each of these criteria is discussed in greater detail below.

At least 90 percent of the children who are enrolled in a grantee's Head Start program must be from families whose incomes are below the poverty line and/or who are homeless, receiving public assistance, or are in foster care (i.e., fit within a categorical status), except as noted below with respect to serving families up to 130 percent of the poverty level. Up to 10 percent of the children who are enrolled may be from families that exceed the poverty line but would benefit from the program.⁶ These children are often referred to as "over-income" participants, and, even though no income cap for these children exists, each grantee should develop selection criteria for choosing them based on the grantee's community assessment. If the grantee implements outreach and enrollment policies and procedures to ensure that the needs of children who are below the poverty line and/or who fit within a categorical status are met first, grantees may also fill up to 35 percent of total enrollment with children from families whose income is between the federal poverty line and 130 percent of the poverty line.⁷ Additionally, unless a waiver has been granted by OHS, at least 10 percent of the total number of children enrolled by a grantee must be children with disabilities who are determined to be eligible for special education and related services or early intervention services under the Individuals with Disabilities Education Act (IDEA).⁸

Residency

In assessing eligibility, Head Start staff must first ensure that each child resides within the program's approved service area.⁹ The appropriate placement of a Head Start child should be based solely on where the child lives and grantees may request whatever reasonable documentation is appropriate to confirm that a child considered for Head Start enrollment lives within the grantee's approved service area.¹⁰



(continued on page 12)

Head Start

(continued from page 3)

Age

To be eligible for Head Start services, a child must be at least three years old by the date used to determine eligibility for public schools in the community in which the Head Start program is located. An exception to this age requirement applies where the Head Start program's approved grant provides specific authority to serve younger children.¹¹ If there is a vacancy in the program into which that child can be placed and if such a placement seems appropriate, a program may enroll a child who is not three by the school cut-off date but who has since turned three.¹² Early Head Start participants include pregnant women and children who are between the ages of birth and three years old.¹³

Categorical Status: Homelessness, Public Assistance or Foster Care

If a child meets the residency and age requirements, he or she is automatically eligible for enrollment if: (1) the child's family is homeless; (2) the child's family is eligible for public assistance; or (3) the child is in foster care.

The 2007 reauthorization of the Head Start program required homeless children to be given enrollment priority. To be considered homeless, a child must meet the definition included in the McKinney-Vento Homeless Assistance Act of 2001, which identifies homeless children as individuals who lack a fixed, regular, and adequate nighttime residence, which may include:

- sharing housing or living in motels, camping grounds, transitional or emergency housing;
- being abandoned at hospitals or awaiting foster care placement;
- having a primary nighttime residence that is public or private place not designated for ordinary use as a sleeping accommodation; or
- living in cars, parks or other public spaces.¹⁴

To make the appropriate determination regarding a child or family's status as homeless, Head Start staff must gather and analyze information from the family and possibly other sources on a case-by-case basis because the circumstances of homelessness vary with each family's situation.¹⁵ In determining whether a child is living in "substandard housing," Head Start staff should evaluate whether the child's housing situation falls short of community standards or is of lower quality than the law prescribes. Staff should consider factors such as whether there are health and safety concerns related to the housing; the number of occupants per square foot; the age(s) of the occupants; and whether the housing meets state or local building codes.¹⁶

Families receiving Temporary Assistance to Needy Families (TANF) or Supplemental Security Income (SSI) benefits will qualify for Head Start services under the categorical status of receiving public assistance. TANF and SSI are the only two

programs which qualify as public assistance for determining Head Start eligibility.¹⁷ If anyone in a prospective Head Start child's family is receiving SSI, that child is considered income-eligible for Head Start, irrespective of the child's family's income. Family members include the child, the child's parent(s) or guardian(s) and any other person living in the child's household who is supported by the income of the child's parent(s) or guardian(s) and is related to the child's parent(s) or guardian(s) by blood, marriage or adoption.¹⁸ Also, if a child's parents are divorced and share joint custody, the child is eligible for a Head Start program if either parent receives public assistance.¹⁹ Children who are in foster care are categorically eligible for Head Start, regardless of their foster family's income.²⁰

Income Status

If a categorical status does not apply, then the grantee must determine that the child or family meets the program's income guidelines. To qualify, the sum of certain types of family income ("counted income") must not exceed 100 percent of the Federal Poverty Guidelines (FPG), unless the needs of all families below the 100 percent mark are met, then grantees may fill up to 35 percent of total enrollment with children whose family income is up to 130 percent of the FPG. The FPG are issued each year in the *Federal Register* by HHS, and are available on the HHS website.

To establish a family's income, Head Start staff must determine which income to count and calculate that income using either (1) the 12 months preceding the month in which an application is submitted; (2) the 12 months during the calendar year preceding the calendar year in which an application is submitted; or (3) whatever way more accurately reflects the needs of the family at the time of application.²¹ Thus, if neither the last 12 months nor the preceding calendar year accurately represents the family's current situation (perhaps, for example, because the parent is now unemployed), the Head Start program should use its judgment in deciding if it seems likely that the current situation more accurately reflects the family's likely economic status during the period of the child's Head Start enrollment.²²



Income Source

Income from all parents or legal guardians living at the same residence must be counted. However, the income of other family members sharing the same residence is not included.²³ In the case of divorced parents, if either parent receives child support, the annual income of the parent that receives child support should be used to determine income eligibility. If neither parent provides child support to the child, half of each parent's income is added together to determine the total income for the family.²⁴ If a child is being raised by his or her grandparents, staff should gather as much information as possible about the family situation. Staff should determine if they believe the current arrangement will be temporary or long-term and if a conversation with the child's parents would be both possible and beneficial. If staff determines that the child is, for all intents and purposes, being

raised by the child's grandparent(s) the Head Start program should consider the income of the grandparent(s) when determining income eligibility.²⁵

Counted Income

A family's income is calculated by adding up all of the "counted" sources of income, which include:

- Wages and salaries before deductions
- Unemployment compensation
- Public assistance, including SSI and TANF payments
- Alimony and child support
- Insurance or annuity payments
- Rental and royalty income
- Net gambling or lottery winnings
- Income from self-employment
- Workers compensation
- Pensions, scholarships, and fellowships
- Interest and dividends
- Periodic receipts from estates or trusts.²⁶

If a family claims that it received no "counted" forms of income, Head Start staff should discuss with the family their specific situation, including any outside sources of support the family may have. No-income situations could include a single parent living with non-related individuals who are providing support, or a single parent who is living with his or her parents and receiving support.²⁷ If a family is found to have no income, the Head Start program must use its best judgment to verify the accuracy of what the parents report.²⁸

Children with Disabilities

Children with disabilities include children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities who, by reason thereof need special education and related services.²⁹ To be counted toward the 10 percent actual enrollment requirement, a child with disabilities must have been determined to be eligible for special services under the IDEA by the agency providing IDEA services in the community, typically the public schools.³⁰

To request a waiver of the 10 percent enrollment requirement, a Head Start grantee should provide its ACF regional office with:

- a written description of specific steps the grantee has taken to attempt to meet the requirement in the current program year, and an explanation of why, despite these steps, it was unable to meet it;
- written confirmation of the Head Start grantee's efforts to actively collaborate with the local IDEA agency or agencies to promote the enrollment of children with disabilities in the Head Start program, preferably from a local IDEA agency; and
- a written description of the Head Start grantee's proposed approach to improve the enrollment of children with disabilities.

Based on the information provided, the regional office may grant a waiver for a period of up to three years, but in the absence of unusual circumstances, waivers will not be granted for more than a year. If, in the following year, the grantee has not met the 10 percent enrollment rate by the midpoint of its program year, it may submit another waiver request.³¹

Verification and Documentation

One key weakness in the eligibility and enrollment process that the GAO investigation noted is that income documentation is not required to be retained by grantees. Instead, staff is only required to sign a statement identifying which income documentation was examined and stating that the child is eligible to participate in the program.³² In her letter, Secretary Sibelius hints that the current verification and documentation process may be revised in the future to require the retention of income documentation.³³

In the meantime, to verify and document homelessness, public assistance, or foster care status, the federal Office of Head Start (OHS) encourages staff to rely on the family's description of their living situation, and engage with local service providers, such as private and public shelters, and HUD Continuum of Care providers, to confirm an applicant's categorical status.³⁴ Verification of income status must include examination of any of the following documents: IRS Form 1040, W-2 forms, pay stubs, pay envelopes, written statements from employers, or documentation showing current status as recipients of public assistance.³⁵ In a situation where neither the last 12 months nor the preceding calendar year accurately represents the family's current income situation, the file should contain an explanation of what data was used to determine eligibility.³⁶ Moreover, if a family is unable to provide income documentation (for example, when a parent works in jobs in which they are paid "off the books" (e.g. in cash)), the grantee should include a note in the child's file indicating how it reached a finding that the family is low-income.³⁷

In June 2009, OHS created a verification form to assist grantees in documenting eligibility determinations. Although the use of this form is not required, the federal Office of Management and Budget strongly recommends its use as a tool to guide staff and grantees and to properly document income determinations.³⁸

The Bottom Line For Your Head Start Program:

- Expect closer monitoring of eligibility determinations.
- Ensure that your organization's Head Start management staff is familiar with eligibility criteria.
- Review, and if necessary, update staff on procedures for determining and documenting eligibility.
- Train staff on those procedures.
- Remind staff of their legal obligation to perform the required eligibility tests and the consequences if they fail to do so.
- Internally monitor compliance.
- Maintain a culture of compliance.

See article end notes on page 19.

Article End Notes

DAB Examines Grant Termination Resulting from Non-Compliance

1. The complete decision can be found online at <http://www.hhs.gov/dab/decisions/dabdecisions/dab2301.pdf>.
2. 45 C.F.R. § 74.62(a) (3); Renaissance III, DAB No. 2034, at 11 (2003).
3. 42 U.S.C. § 5714-2(a).
4. Tuscarora Tribe of North Carolina, DAB No. 1835 (2002).
5. Tuscarora Tribe of North Carolina, DAB No. 1835 at 13 (2002).
6. Asian Media Access, DAB No. 2301, at 17 (2010).
7. Renaissance III, DAB No. 2034, at 12 (2003).
8. Asian Media Access, DAB No. 2301, at 17 (2010).

DAB Upholds Denial of Continuation Award and Repayment of Disallowed Expenditures

1. The complete decision can be found online at <http://www.hhs.gov/dab/decisions/dabdecisions/dab2306.pdf>.
2. 45 C.F.R. Part 16, App. A, ¶ C. (a)(3).
3. 45 C.F.R. §74.90.
4. Vance-Warren Comprehensive Health Plan, Inc., DAB No. 2180, 2-3.
5. 45 C.F.R. §74.28.
6. 45 C.F.R. §74.21(b)(2).
7. HHS Grants Policy Statement, II-61.
8. 2 C.F.R. Part 230, App. B, ¶ 8.c.
9. Vance-Warren at 16.
10. OMB Circular A-122, App. B, ¶ 12.b(i).

Head Start Enrollment and Eligibility Requirements Refresher

1. U.S. Government Accountability Office Testimony Before the Committee on Education and Labor, House of Representatives, *Head Start Undercover Testing Finds Fraud and Abuse at Selected Head Start Centers*, May 18, 2010, (GAO-10-733T) ("GAO Testimony").
2. Letter from Kathleen Sibelius to the Honorable George Miller, Chairman, Committee on Education and Labor, May 17, 2010 ("Sibelius Letter").
3. GAO Testimony at 6.
4. GAO Testimony at 5.
5. 42 U.S.C. 9836; 645(a)(1)(B), 645A(c).
6. 45 C.F.R. 1305.4; 42 U.S.C. 9840; 645 (a)(1)(B).
7. 42 U.S.C. 9840; 645(a)(1)(B).
8. 42 U.S.C. 9835; 640(d)(1).
9. 45 C.F.R. 1305.3(b), Head Start regulations require that each Head Start grantee have an approved service area and that service area must not overlap the service area of another grantee.
10. Office of Head Start-Policy Clarification-I-043 (OHS-PC).
11. 45 C.F.R. 1305.4.
12. OHS-PC-I-015.
13. 42 U.S.C. 9836; 645A(c)(12). Early Head Start grantees must (1) assist pregnant women to access comprehensive prenatal and postpartum care, (2) provide pregnant women and other family members, as appropriate, with prenatal education on fetal development (including risks from smoking and alcohol), labor and delivery, and postpartum recovery (including maternal depression) and (3) provide information on the benefits of breastfeeding to all pregnant and nursing mothers.
14. OHS-PC-I-080.
15. OHS-PC-I-086.
16. Id.
17. OHS-PC-I-002.
18. OHS-PC-I-016.
19. OHS-PC-I-005.
20. OHS-PC-I-020.
21. 42 U.S.C. 9840; 645(a)(1)(C); OHS-PC-I-008.
22. OHS-PC-I-008.
23. OHS-PC-I-011.
24. OHS-PC-I-005.
25. OHS-PC-I-034.
26. Attachment to Administration for Children and Families-Information Memorandum-HS-07-05 (ACF-IM).
27. OHS-PC-I-006.
28. OHS-PC-I-007.
29. 45 CFR 1305.2.
30. Administration for Children and Families-Program Instruction-HS-09-04 (ACF-PI).
31. ACF-PI-HS-09-04.
32. 45 CFR 1305.4; ACF-PI-HS-10-02.
33. Sibelius Letter.
34. OHS-PC-I-085.
35. 45 CFR 1305.4; ACF-PI-HS-10-02.
36. OHS-PC-I-008.
37. OHS-PC-I-007.
38. ACF-PI-HS-10-02; see also Head Start Eligibility Verification form at <http://eclkc.ohs.acf.hhs.gov/hslc/Program%20Design%20and%20Management/Head%20Start%20Requirements/Pls/2010/Head%20Start%20Eligibility%20Verification%20Form,%20expires%2002-28-2013.pdf>.

Mission Possible: Understanding and Developing an Effective Mission Statement

1. Jean Vogt, *Demystifying the Mission Statement*, NONPROFIT WORLD, January/February 1994, at 29, 29, available at <http://www.snpo.org/samples/V120129.pdf> (last visited 04/05/2010); *The Deming System of Profound Knowledge*, The W. Edwards Deming Institute Website, available at <http://deming.org/index.cfm?content=66> (last visited 04/05/2010).
2. Personal communication (November 17, 2009).

What Health Care Reform Means for Community Action Agencies

1. A copy of the Patient Protection and Affordable Care Act (Pub.L. 111-148), as modified by the Health Care and Education Reconciliation Act (Pub.L. 111-152) is available online at <http://docs.house.gov/energycommerce/ppacacon.pdf>. When citing the statutory changes, we have cited to the U.S. Code provisions where the changes will be codified; the easiest way to find these changes is to download the combined document previously mentioned in this endnote and search for the U.S. Code citations.
2. 29 U.S.C. § 207.
3. 75 Fed. Reg. 34,537, 34,558-60, 34,562-65 (June 17, 2010).
4. Id. at 34,559-60 and 34,564.
5. Id. at 34,558.
6. 42 U.S.C. § 300gg-14.
7. 75 Fed. Reg. 27,122, 27,135-36 (May 13, 2010).
8. IRS Notice 2010-38, 2010-20 I.R.B. 682, available at <http://www.irs.gov/pub/irs-irbs/irbio-20.pdf>.
9. 42 U.S.C. § 300gg-11.
10. 75 Fed. Reg. 37,188, 37,223-24 (June 28, 2010).
11. 42 U.S.C. § 300gg-3.
12. 42 U.S.C. § 18001.
13. 42 U.S.C. § 300gg-12.
14. 75 Fed. Reg. 37,188, 37,225, 37,231.
15. Id. at 37,225; 37,231.
16. 42 U.S.C. § 300gg-11.
17. 42 U.S.C. § 300gg-3.
18. 42 U.S.C. § 300gg-7.
19. 42 U.S.C. § 300gg.
20. 42 U.S.C. § 300gg-16; 26 U.S.C. § 105(h).
21. 42 U.S.C. § 300gg-19.
22. 42 U.S.C. § 300gg-13.
23. 42 U.S.C. § 300gg-19a.
24. Id.
25. 75 Fed. Reg. 37,188, 37,225-27, 37,232-33.
26. Id. at 37,240.
27. 26 U.S.C. §§ 106(f), 220(d)(2)(A), 223(d)(2)(A).
28. 26 U.S.C. §§ 220(f)(4)(A), 223(f)(4)(A).
29. 26 U.S.C. § 125(i).
30. 26 U.S.C. § 6051(a).
31. See IRS webpage "Affordable Care Act Tax Provisions" available at <http://www.irs.gov/newsroom/article/0,,id=220809,00.html?portlet=6>.
32. 42 U.S.C. § 300gg-15.
33. 29 U.S.C. § 218b.
34. 26 U.S.C. § 6055.
35. 26 U.S.C. § 6056.
36. 29 U.S.C. § 218a.
37. 26 U.S.C. § 5000A(f).
38. 26 U.S.C. § 4980H(a).
39. 26 U.S.C. §§ 4980H(b); 36B(c)(2)(C).
40. 42 U.S.C. § 18101.
41. 26 U.S.C. § 4980H.
42. 26 U.S.C. § 4980I.
43. 42 U.S.C. § 13031.
44. 42 U.S.C. § 1302(b).
45. Id. at 13022.
46. 42 U.S.C. § 18022.
47. 42 U.S.C. § 18071.
48. 26 U.S.C. § 36B.
49. 42 U.S.C. § 18071.
50. 42 U.S.C. § 13031.
51. 42 U.S.C. §§ 13031, 18024.
52. 42 U.S.C. § 18032.
53. 42 U.S.C. § 18091.
54. Id.
55. Id.
56. 42 U.S.C. § 1396a.
57. 42 U.S.C. § 1397ee(b).
58. 42 U.S.C. § 1395w-152.
59. 42 U.S.C. §§ 1395w-102, 1395w-114a.

Health Reform Law Expands Form 1099 Reporting

1. See Patient Protection and Affordable Care Act, Pub. L. 111-148, § 9006.
2. See 26 U.S.C. § 6041(a), 26 C.F.R. § 1.6041-1(a)-(b) and 1.6041-3(p), and Instructions to Form 1099-MISC, available at <http://www.irs.gov/pub/irs-pdf/i1099misc.pdf>.
3. See H.R. 5141 and Apr. 26, 2010 press release "Lungren Fights for Small Business" on Rep. Lungren's website <http://lungren.house.gov/index.cfm?sectionid=39&parentid=6§iontree=6,39&itemid=544>.