

CAPLAW Head Start Reauthorization Q&A

By: R. Brian Tipton, Esq.
Sasser, Sefton, Connally, Tipton & Davis, P.C.
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CAPLAW has started to prepare questions and answers about the Head Start Act's 2007 reauthorization. Over the coming months, we will include additional questions and answers and update ones already posted when new information becomes available.

1. What is the effective date of the new Head Start Act generally?

Although some provisions of the new Head Start Act (Public Law 110-134) have specific effective dates, the new Act does not contain a "general" effective date. **Therefore, those provisions of the new Act without a specific effective date technically became effective when the new Act was signed into law on December 12, 2007.** However, immediate compliance with many provisions of the new Act is not practical because implementing regulations will need to be promulgated and existing policies and procedures will need to be amended. The Office of Head Start has addressed the issue in an Information Memorandum (ACF-IM-HS-08-04), which states that "[g]rantees are expected to carefully review the new Head Start Act and move forward expeditiously to take those steps necessary to achieve full compliance with these new requirements." Internally, OHS has set October 1, 2008, as the date by which it will complete changes to its own "instruments and procedures" to comply with the requirements of the new Head Start Act.

2. What is the effective date for expanded eligibility?

The new Head Start Act directs the Secretary to promulgate regulations allowing grantees to enroll up to 35% of children from families with incomes from 100% but less than 130% of poverty; the Office of Head Start has issued an Information Memorandum (ACF-IM-HS-08-03) providing that grantees may begin serving these children immediately subject to the 35% limit and other statutory conditions. The other conditions are that grantees must implement outreach and enrollment policies to ensure that the needs of categorically eligible children are met and that selection priority will be given to categorically eligible children through criteria providing that categorically eligible children will be served first. See 42 U.S.C. § 9840(a)(1)(B)(iii)(II) (as amended by P.L. 110-134).

3. What does the new Head Start Act say about adding infants and toddlers to a program that already has both Head Start and Early Head Start?

The new Head Start Act contains a provision authorizing Head Start grantees to apply to the Secretary to use grant funds previously awarded for Head Start to serve infants and toddlers. Although this provision appears addressed to grantees that do not already operate Early Head Start, the new Act does not expressly prohibit grantees that already operate an Early Head Start program as well as a Head Start program from applying to reallocate funding from Head Start to

Early Head Start. However, the new Head Start Act does not expressly allow grantees that operate both programs to apply to reallocate funds either. See 42 U.S.C. § 9840(a)(5) (as amended by P.L. 110-134). The Secretary will need to develop procedures for grantees to apply to reallocate funds; those procedures should clarify this issue. Please note that the new Head Start Act does expressly permit tribal grantees that operate both Head Start and Early Head Start to reallocate funds between Head Start and Early Head Start without the need for an application or prior approval. See 42 U.S.C. § 9840(d)(3) (as amended by P.L. 110-134).

4. Does the calculation of the value of annual and compensatory leave under the new Head Start Act's compensation cap include the value of leave accrued or just leave actually taken?

The new Head Start Act does not discuss how to calculate the value of leave for purposes of the compensation cap. However, the cost principles in OMB Circular A-122 (codified at 2 C.F.R. pt. 230) discuss the allowability of compensation for personal services. "Compensation for personal services" is defined as "all compensation paid currently or accrued by the organization for services of employees rendered during the period of the award," including fringe benefits such as paid leave. 2 C.F.R. pt. 230 app. B ¶ 8(a). The issue of the compensation cap under the new Head Start Act, though, is probably not applicable for the 2008 fiscal year because the appropriations bill that was signed into law on December 26, 2007, retains the language of the prior version of the compensation cap rather than that of the new Head Start Act. Please see the next question for a more detailed explanation.

5. Is the compensation cap in the 2008 fiscal year appropriations bill different from the compensation cap in the new Head Start Act?

The language of the prior version of the compensation cap was left in the 2008 fiscal year appropriations bill, which was signed into law on December 26, 2007, after the new Head Start Act. Section 204 of the "Consolidated Appropriations Act, 2008" (Public Law 110-161) contains the following provision:

None of the funds appropriated in this title for Head Start shall be used to pay the compensation of an individual, either as direct costs or any proration as an indirect cost, at a rate in excess of Executive Level II.

This language probably is less favorable than the compensation cap in the new Head Start Act and, because the appropriations bill was passed after the new Head Start Act, probably controls for the 2008 fiscal year.

6. Is there a financial conflict of interest where a public official board member is an official or an employee of a municipality that grants the Community Action Agency funding (such as CDBG funding)?

CAPLAW believes that this situation does not present a financial conflict of interest under the new Head Start Act's conflict of interest provisions because the public official or employee has no

personal financial interest in the awarding of the funds by the municipality to the Community Action Agency. Furthermore, in passing the new Head Start Act, Congress would have been aware that many Head Start grantees are Community Action Agencies and that municipal officials and employees serve on their boards and that the municipalities frequently provide funding to Community Action Agencies. Therefore, it is unlikely that Congress intended the new Head Start Act's conflict of interest provisions to disrupt these existing practices and so frustrate the basic structure or endanger the non-Head Start funding of Community Action Agencies.

7. Must Head Start grantees meet the new requirement that 10% of children actually enrolled be children with disabilities at the start of the program year, and what are the requirements for a waiver?

The new Head Start Act requires that the Secretary set new policies requiring that at least 10% of each grantee's actual enrollment must be children with disabilities beginning with the 2009 fiscal year. The new Head Start Act does not specify whether the 10% requirement is to be met at the start of the program year, and this will need to be addressed in the implementing policies and procedures. See 42 U.S.C. 9835(d)(1) (as amended by P.L. 110-134). However, in recent years, Head Start has emphasized that grantees are expected to achieve full funded enrollment at the start of the program year. The new Head Start Act also directs the Secretary to issue policies and procedures for agencies to receive waivers of the new 10% requirement for up to 3 years provided that the grantees demonstrate that they are making reasonable efforts to comply with the 10% requirement. See 42 U.S.C. 9835(d)(4) (as amended by P.L. 110-134).

8. Does the new Head Start Act eliminate the term limits for Policy Council members?

The new Head Start Act does not eliminate the three-year term limits for Policy Council members found in the Head Start Performance Standards.

9. Can the governing board consultants allowed under the new Head Start Act be employees of the Community Action Agency?

The new Head Start Act provides that the governing board must have at least one member who has a background and expertise in fiscal management or accounting, at least one member who has a background and expertise in early childhood education and development, and at least one member who is a licensed attorney familiar with issues facing the board; however, if persons meeting these requirements are not available to serve, the board may use a consultant or other person with the relevant knowledge to work directly with the board. See 42 U.S.C. § 9837(d)(1)(B) (as amended by P.L. 110-134). The new Head Start Act also contains a conflict of interest provision requiring that the governing board members "operate as an entity independent of staff employed by the Head Start agency [grantee]." 42 U.S.C. § 9837(d)(1)(C)(iv) (as amended by P.L. 110-134). Because of this conflict of interest provision, CAPLAW believes that agency employees cannot serve as the governing board's consultants.

10. Do consultants have to attend all board meetings?

The new Head Start Act does not require that consultants attend all board meeting; however, consultants are required to work directly with the governing board.

11. Are the immediate family of governing board members allowed to be employed by the Community Action Agency outside of the Head Start program?

The new Head Start Act contains a conflict of interest provision that prohibits the immediate family of governing board members from being employed by the “Head Start agency,” meaning the grantee or Community Action Agency. 42 U.S.C. § 9837(d)(1)(C)(iii) (as amended by P.L. 110-134). However, this provisions has an exception if the board member serves on the board because of holding an elective office or receiving a political appointment that has a concurrent board appointment. In that event, the board member can still serve on the board even though an immediate family member is an agency employee, but the conflict must be reported. See 42 U.S.C. § 9837(d)(1)(D) (as amended by P.L. 110-134).