



May 28, 2019

**VIA ELECTRONIC SUBMISSION**

Department of Health and Human Services

**Attn:** Director of Policy and Planning, Office of Head Start, Administration of Children and Families  
**Re:** Head Start Service Duration Requirements, 84 Fed. Reg. 11,269 (proposed Mar. 26, 2019)  
**Docket ID:** ACF-2019-0001-0001

The Institute for Policy Integrity at New York University School of Law<sup>1</sup> (“Policy Integrity”) respectfully submits these comments to the Department of Health and Human Services (“HHS” or the “Department”) regarding HHS’s proposal to amend the 2016 Head Start Program Performance Standards (“2016 HSPPS”) by removing a requirement that Head Start programs offer at least 1,020 annual hours of service for every enrolled preschooler (“Proposed Removal”). Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decision-making through scholarship in the fields of administrative law, economics, and public policy.

We write to recommend that HHS provide a more transparent justification for the Proposed Removal. Specifically, HHS should make clear whether its change in course is motivated primarily by funding concerns or by a re-evaluation of the evidence regarding the greater educational benefits of full-time Head Start programs relative to part-time programs.

**I. Background**

Broadly speaking, the aim of Head Start performance standards is to ensure that local Head Start programs deliver services that support school readiness for children from low-income families.<sup>2</sup> Prompted by the Improving Head Start for School Readiness Act of 2007, the 2016 HSPPS sought to “strengthen the outcomes of the children and families Head Start serves.”<sup>3</sup>

To this end, the 2016 HSPPS made various changes to existing performance standards, one of which was to require all Head Start center-based programs to, by August 1, 2021, offer at least 1,020 annual hours of service for all enrolled preschoolers.<sup>4</sup> In effect, this required all Head Start programs to offer full-day, full-year services, instead of part-time services.<sup>5</sup> To justify this full-time service requirement, the 2016 HSPPS cited several empirical studies that, in HHS’s view, “support[ed] the importance of longer preschool duration in achieving meaningful child outcomes and preparing children for success in school.”<sup>6</sup>

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<sup>1</sup> No part of this document purports to present New York University School of Law’s views, if any.

<sup>2</sup> 84 Fed. Reg. 11,269, 11,269 (proposed Mar. 26, 2019).

<sup>3</sup> 81 Fed. Reg. 61,294, 61,294 (Sept. 6, 2016).

<sup>4</sup> *Id.* at 61,322

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 61,304.

HHS now proposes to eliminate the 2016 HSPPS’s full-time service requirement.<sup>7</sup>

## II. HHS Should Provide a Clearer Justification for the Proposed Removal

In its Regulatory Impact Analysis for the Proposed Removal, HHS inconsistently characterizes the “need for regulatory action.”<sup>8</sup> On the one hand, HHS says that “tens of thousands of Head Start slots would need to be cut in order for programs to meet [the full-time service] requirement by the specified deadline,” and that “[t]here is not sufficient evidence to support favoring longer service hours for some children *at the expense of providing no services to others.*”<sup>9</sup> On the other hand, the Department suggests that requiring all center-based programs to offer full-time services “may have been too prescriptive for all communities that Head Start serves,” and that removing the requirement “will restore more local flexibility to grantees and provide them the ability to determine what length of services best meet the unique needs of their communities.”<sup>10</sup> Thus, it is unclear whether HHS’s primary justification for the Proposed Removal is (1) that Congress has not appropriated sufficient funds to implement the full-time requirement without cutting a large number of Head Start slots, or (2) that, even with sufficient funding in place, the full-time service requirement would be undesirable to maintain because it is too prescriptive.

The former justification—insufficient funding—would be consistent with the intent of the 2016 HSPPS, which left the Secretary discretion to lower the percentage of Head Start programs that were required to provide full-time services if he or she determined that doing so was necessary “to avert a substantial reduction in slots.”<sup>11</sup> But if a desire to avoid a substantial reduction in the total number of children served by Head Start *is* HHS’s primary motivation for the Proposed Removal, the Department should say so more clearly; it should also reach an express conclusion as to *why* serving a larger number of children in part-time programs is preferable to serving a smaller number of children in full-time programs. This finding could be grounded in efficiency concerns (i.e., a conclusion that the educational gains to children shifted from part-time programs to full-time programs under the 2016 HSPPS would be outweighed by the educational losses to children shifted from part-time programs to *no* program); distributional concerns (i.e., a conclusion that, whatever the efficiency effects of the 2016 HSPPS, it would be unfair to exclude some children from the Head Start program entirely in order to fund full-time instruction for others); or both.

If, on the other hand, HHS believes it would be justified in eliminating the full-time service requirement regardless of Head Start funding levels, the Department must provide a “reasoned explanation” for disregarding its prior findings on the desirability of full-time instruction.<sup>12</sup> The Proposed Removal notes that the 2016 HSPPS’s duration requirement “was grounded in the latest research on child development and promotion of school readiness for low-income children.”<sup>13</sup> But HHS does not explain whether and why it no longer believes that this research supports requiring all center-based programs to offer full-time services (again, assuming the availability of sufficient funding to support such services without reducing the total number of Head Start slots).

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<sup>7</sup> 84 Fed. Reg. at 11,269.

<sup>8</sup> *Id.* at 11,272.

<sup>9</sup> *Id.* (emphasis added).

<sup>10</sup> *Id.*

<sup>11</sup> 81 Fed. Reg. at 61,305.

<sup>12</sup> *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009) (“a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy”).

<sup>13</sup> 84 Fed. Reg. at 11,269.

Importantly, HHS cannot justify a repeal of the full-time service requirement simply by noting that doing so will restore flexibility to Head Start grantees. Flexibility in and of itself does not constitute a regulatory benefit. Instead, the Office of Management and Budget's Circular A-4 notes that "alternatives that . . . offer increased flexibility are often more cost-effective than more prescriptive approaches."<sup>14</sup> In other words, regulatory flexibility is desirable only when it allows an agency to achieve the same policy goal at a lower cost.

The 2016 HSPPS's full-time service requirement was quite intentionally designed to *reduce* flexibility for grantees, because the Department concluded that programs offering part-time instruction were leading to poorer educational outcomes. If HHS now believes that part-time Head Start programs can provide the same educational benefits as full-time programs (or that the incremental benefits provided by full-time programs do not justify those programs' incremental costs), the Department should say so and explain how that position is supported by the available evidence.

Respectfully,

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<sup>14</sup> OFFICE OF MGMT. & BUDGET, CIRCULAR A-4, at 5 (2003).