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October 6, 2026

Assistant Secretary Alex J. Adams
Administration for Children and Families
The Honorable Robert F. Kennedy, Jr.
Secretary of United States Department of Health and Human Services
Washington, D.C. 20528

RE: Comment Regarding Notice of Proposed Rulemaking, Reducing Federal Burden for Head Start Programs, 91 Fed. Reg. 51,248 (Aug. 7, 2026), HHS-2026-0595, RIN 0970-AD30

Dear Assistant Secretary Adams:

We, the Attorneys General of New Mexico, California, Arizona, Colorado, Connecticut, Delaware, Hawai'i, the District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Nevada, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, Wisconsin, and the Governor of Kentucky (the "States"), submit these comments in opposition to the proposed changes to the Head Start Program Performance Standards introduced in the Department of Health and Human Services' (HHS) and the Administration for Children and Families' (ACF) Notice of Proposed Rulemaking: Reducing Federal Burden for Head Start Programs, 91 Fed. Reg. 51,248 (Aug. 7, 2026), HHS-2026-0595, RIN 0970-AD30 (the "Proposed Rule").

The Proposed Rule would gut long-standing and evidence-backed Head Start Program Performance Standards ("Performance Standards"), impose an English-only mandate, and revise the cap on allowable administrative and development costs from fifteen percent to five percent, while adding other burdensome requirements. If finalized, it would fundamentally alter how Head Start programs are administered in the States, destabilizing the early childhood education systems that the States have carefully developed over decades in reliance on the Performance Standards. The rule, as even HHS acknowledges, will lead to larger class sizes; fewer teachers, coaches, and home visitors; shorter program days; and reduced health, dental, and mental health care, home visits, and other services. This will lead, in turn, to poorer educational outcomes, jeopardizing our States' public health and welfare systems, and creating a substantial burden on the States.

HHS seeks to justify this Proposed Rule by asserting that it "restores flexibility to programs to meet local needs, reduces regulatory burden and administrative costs, and aims to increase

available slots and services for families.”¹ But these purported justifications ring hollow. HHS’s proposal would be catastrophic for Head Start and for Americans of all backgrounds. As set forth below, the proposed rule is (i) contrary to law in violation of the Administrative Procedure Act (“APA”), (ii) arbitrary and capricious in violation of the APA, and (iii) *ultra vires*.

First, the Proposed Rule is contrary to law. It violates 42 U.S.C. § 9836a(a)(2)(C) of the Head Start Act (the “Act”), which directs the Secretary to ensure that any revisions to the Performance Standards do not result in the elimination of or any reduction in the “quality, scope, or types of services” required by the Performance Standards in effect beginning December 12, 2007. It violates 42 U.S.C. § 9836a(a)(2)(B) of the Act, which directs the Secretary to take into consideration statutorily specified factors when developing any modifications to the Performance Standards, which HHS failed to do. It also violates 42 U.S.C. 9836a(a)(1) of the Act, as the Secretary has failed to consult with experts and stakeholders to ensure that regulatory changes reflect empirical data and expertise. Given these failures, it is unsurprising that myriad individual changes to the regulations are impossible to reconcile with the Act’s detailed and carefully crafted provisions.

Second, the Proposed Rule is arbitrary and capricious. HHS has failed to adequately consider the harmful effects the Proposed Rule would have on States, children, families, communities, and Head Start programs. HHS has not considered the significant reliance interests of the States, who have rightly oriented their early childhood education systems around the Act’s 2007 Performance Standards and their guaranteed floor of federal services and standards. Among other harms detailed herein, the Proposed Rule would increase education costs for the States, many of which are Head Start grant recipients themselves, and would injure the States’ fisc by further straining already-overburdened early childhood education systems; causing harms to public health, safety, and welfare; and imposing long-term costs due to the failure to provide the very early intervention services to vulnerable youth that Head Start is designed to facilitate.

Given the absence of supporting evidence for the massive changes in the Proposed Rule, and the potential for major negative impacts on states, providers, children and families, it is evident that HHS has not done a rigorous and rational cost-benefit analysis of the Proposed Rule, nor has it adequately considered viable alternatives or the confusion that would result from this drastic change. HHS’s limited justifications for the Proposed Rule are poorly reasoned and contrary to the evidence: HHS asserts that the Performance Standards are largely unnecessary and duplicative of statutory requirements, and that rescission will increase flexibility and reduce administrative burdens for programs. But the Proposed Rule would actually result in increased administrative burdens and costs for Head Start programs and participants and further constrain program staff and families, while removing safeguards that ensure high-quality, uniform services nationwide.

Third, the Proposed Rule makes drastic changes to existing regulations, which exceeds the scope of HHS’s authority. Each of these changes will eliminate or reduce the existing quality, scope, and type of services provided under Head Start. Over time, these changes will contribute to classroom closures, site consolidations, reduced enrollment opportunities, and in some cases, program closures. Moreover, each of the Performance Standards proposed for deletion reflect

¹ Press Release, Admin. For Children & Families, “HHS Unveils Proposed Head Start Reforms to Expand Access and Empower Parents,” (Aug. 6, 2026), <https://www.hhs.gov/press-room/acf-proposes-head-start-reforms-expand-access.html> [<https://perma.cc/G9ZM-PYYX>].

science-backed best practices and years of stakeholder and practitioner input; their wholesale elimination is *ultra vires*, and contrary to all evidence before HHS.

The undersigned States strongly oppose the Proposed Rule and urge HHS to immediately withdraw it.

This comment includes numerous citations to supporting research and relevant documents, which have direct permalinks for the benefit of HHS's long-term access and review. We request that the full text of each of the documents cited, along with the full text of this comment, be considered part of the administrative record in this matter for purposes of the Administrative Procedure Act. Because certain referenced articles are not accessible through publicly available means, we have enclosed printed copies with this submission to ensure the full text is available for review. The full copies of the articles and an index are attached to this letter as an Appendix.

I. Head Start Provides Critical Benefits to the States and Their Residents

In 1965, the Office of Economic Opportunity launched Project Head Start as an eight-week summer pilot program as a prospective centerpiece of President Lyndon B. Johnson's War on Poverty. Motivated by "considerable evidence that the early years of childhood are the most critical point in the poverty cycle," and that only "comprehensive" intervention could break that cycle, Head Start incorporated a network of emotional, social, health, nutritional, and psychological services for low-income children and their families.² Head Start was enthusiastically received by educators, child development specialists, community leaders, and parents across the Nation, resulting in the enactment of the Act in 1966. In enacting the program, Congress responded to evidence that particularized yet comprehensive support helps ensure equal opportunity for children from low-income families. Based on this evidence, Head Start agencies provide a broad package of services, including curricula that specifically foster children's skills in language, literacy, mathematics, science, and creative arts, along with their social, emotional, and physical skills. 42 U.S.C. §§ 9835(o), 9836A(a)(1)(B). Head Start programs also support parents' full partnership in their children's education through family literacy instruction, parenting skills training, substance abuse counseling, and related programming. 42 U.S.C. § 9837(b)(3)-(5). The Act was last amended in December 2007, when President George W. Bush signed Public Law 110-134 "Improving Head Start for School Readiness Act of 2007," reauthorizing the Head Start program and enshrining a comprehensive yet flexible set of minimum standards.

Today, the 60-year-old Head Start program is among the most successful and popular federal initiatives. For decades, research has shown that public investment in preschool is one of the most cost-effective uses of public funds, producing significant economic gains through a more productive populace, lower special education placement rates, reduced grade repetition, decreased

² U.S. DEP'T OF HEALTH, EDUC., & WELFARE, OFF. OF CHILD DEV., IMPROVING THE OPPORTUNITIES AND ACHIEVEMENTS OF THE CHILDREN OF THE POOR, RECOMMENDATIONS FOR A HEAD START PROGRAM (1965), <https://headstart.gov/sites/default/files/pdf/cooke-report.pdf> [<https://perma.cc/P4JP-H742>].

welfare dependency, and fewer costs for the criminal justice system.³ High-quality early education produces myriad positive outcomes in children, such as higher competency in language, literacy, and math. These benefits persist across lifetimes, strongly associated with better health, college completion, and earnings outcomes. High-quality early education helps all who receive it, but the far-reaching societal benefits attributable to expanded access makes early childhood education a public good, not a private one. Early childhood programs more than pay for themselves, with high returns on investment. Unsurprisingly, eighty-seven percent of all voters (ninety-four percent of Democratic voters and eighty-four percent of Republican voters) support Head Start.⁴

Head Start is the most important early childhood education program, due in large part to the federal government’s leadership, expertise, and resources. While education of our nation’s youth is typically entrusted to state and local governments, we have the federal government to thank for early childhood education programs. The federal government created and administered the national Head Start program decades before most states began supporting and regulating preschool programs. And Head Start’s national, research-based standards have helped to stitch together a national identity, closing regional gaps in economic, political, and social outcomes. Decades of experience have proven that Head Start’s resounding success has depended on the federal government’s leadership and expertise.

Today, Head Start provides crucial services to over 750,000 children nationwide.⁵ Head Start is particularly crucial in rural areas. In Alaska, Louisiana, Mississippi, Oregon, and West Virginia, Head Start comprises nearly a quarter of rural childcare services.⁶ And Head Start is critical for children who are frequently turned away from or otherwise cannot access quality early education, such as children with disabilities, children experiencing homelessness, migrant children, children learning English, and children from low-income households.⁷ The lasting

³ See, e.g., Martha J. Bailey et al., *Prep School for Poor Kids: The Long Run Impacts of Head Start on Human Capital and Economic Self-Sufficiency*, 111 AM. ECON. REV. 3963, 3965 (2021), [<https://perma.cc/HA9U-52VG>] (“Using only savings on public assistance expenditures and increases in tax revenue due to higher wage earnings, we find that the public internal rate of return of putting one child through Head Start ranges from 5.4 to 9.1 percent.”); Rucker C. Johnson & Kirabo Jackson, *Reducing Inequality Through Dynamic Complementarity: Evidence from Head Start and Public School Spending*, 11 AM. ECON. J.: ECON. POL’Y 310 (2019), [https://gsppi.berkeley.edu/~ruckerj/RJabstract_LRHeadStartSchoolQuality.pdf] [<https://perma.cc/S98M-NC7K>].

⁴ *Head Start Polling Highlights 2025-26*, FIRST FIVE YEARS FUND (Aug. 9, 2026), [<https://www.ffyf.org/2026/08/05/head-start-polling-highlights-2025-26/>] [<https://perma.cc/U6Y9-QK9S>].

⁵ U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAM., OFF. OF HEAD START, HEAD START PROGRAM FACTS: FISCAL YEAR 2024 (2025), [<https://headstart.gov/program-data/article/head-start-program-facts-fiscal-year-2024>] [<https://perma.cc/VQ7K-SCR5>].

⁶ CHILD CARE TRUST, HEAD START’S IMPACT ON THE CHILD CARE GAP 11 (2026), [<https://www.childcaretrust.org/resources/head-starts-impact-on-the-child-care-gap>] [<https://perma.cc/DA7C-S69V>].

⁷ See, e.g., Schoch et al., *Children’s Learning and Development Benefits from High-Quality Early Care and Education: A Summary of the Evidence*, U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAM., OFF. OF HEAD START, OFF. OF PLAN., RESCH., & EVALUATION (2023), [<https://acf.gov/sites/default/files/documents/opre/%232023-226%20Benefits%20from%20ECE%20Highlight%20508.pdf>] [<https://perma.cc/VXE3-SCPR>] (discussing the distinct benefits of early childhood education for children with disabilities, English language learners, and those from low-income households).

benefits of Head Start’s quality education and comprehensive family health and social services for these children are only possible due to the long-term investment of federal expertise and resources.

II. The Proposed Rule is Unlawful Under the APA and is *Ultra Vires*

As described in more detail below, the Proposed Rule exceeds HHS’s lawful rulemaking authority, contravenes myriad express statutory requirements, is *ultra vires*, and is arbitrary and capricious in violation of the Administrative Procedures Act.

A. The Proposed Rule is Contrary to Law and Exceeds Statutory Authority, and is *Ultra Vires*

The Proposed Rule as a whole, and a significant number of its component parts, are contrary to law, exceed HHS’s statutory authority, and are *ultra vires*, in at least five ways.

First, the standards that HHS now proposes to put in place are so limited that they are, on their face, a violation of the Secretary’s responsibility to issue Performance Standards “with respect to services required to be provided [by the Act], including health, parental involvement, nutritional, and social services, transition activities described in section 642A, and other services.” 42 U.S.C. § 9836A(a)(1)(A). The Proposed Rule eliminates and does not replace regulations in areas where the Secretary is required by the Act to regulate, in violation of the Act.⁸

Moreover, the Proposed Rule violates the Act’s prohibition on any reduction of the “quality, scope, or type” of services required in the Performance Standards below the level required by the 2007 Performance Standards. 42 U.S.C. § 9836A(a)(2)(C) (referring to *Program Performance Standards for the Operation of Head Start Programs by Grantee and Delegate Agencies*, promulgated under the Head Start Act (42 U.S.C. § 9801 et seq.) and codified at 45 C.F.R. part § 1304 (2007)).⁹ The Act requires that the HHS Secretary “ensure that any . . . revisions in the Standards will not result in the elimination of or any reduction in quality, scope, or types of health, educational, parental involvement, nutritional, social, or other services required to be provided under such Standards as in effect on December 12, 2007.” *Id.*

The Proposed Rule eliminates or reduces the quality, scope, or types of virtually each and every service required under the 2007 Performance Standards, in violation of the Act. For instance, the 2007 Performance Standards implemented requirements for strict group size and staff-child ratio requirements for infants and toddlers, 45 C.F.R. § 1304.52(g) (2007); child abuse prevention and reporting, *id.* §§ 1301.32(b)-(e), 1304.52(k); communications with parents in their language of understanding, *id.* §§ 1304.51(c)(2), 1308.19(j)(3)-(4); staffing to ensure that staff speak the language spoken by the majority of children in the class, *id.* § 1304.42(g)(2); provision of services to expectant parents, *id.* § 1304.40(c); agencies to work collaboratively with parents on issues related to their children’s mental health, *id.* § 1304.24; parental involvement, including parent

⁸ As one example, HHS violates its mandate to “establish standards for training, qualifications, and the conduct of home visits for home visitor staff in Early Head Start programs,” 42 U.S.C. § 9840a, by cutting caseload and service duration requirements for home visits, 45 C.F.R. § 1302.22(b)-(c), and home visitor qualifications, *id.* § 1302.91, without any standards replacing them, *see* 91 Fed. Reg. 51291.

⁹ 45 C.F.R. part § 1304 (2007), available at <https://www.govinfo.gov/content/pkg/CFR-2007-title45-vol4/pdf/CFR-2007-title45-vol4-subtitleB-chapXIII-subchapB.pdf> [<https://perma.cc/S899-VES7>].

committees, *id.* § 1304.50(a)(iii); nutrition programs requiring breakfast, snacks, and calorically appropriate foods, *id.* § 1304.23(b); medical, dental, and mental health education programs (as well as nutrition programs) for parents and families of enrolled children, *id.* § 1304.40(f); developmental, vision, and hearing screening within 45 days, *id.* § 1304.20(b); health screening within 90 days, *id.* § 1304.20(a); screening, assessment, and follow-up for children with disabilities and developmental delays, *id.* § 1304.20(a)-(f); and practices for dental hygiene, *id.* § 1304.23(b)(3), among others. The Proposed Rule would eliminate all of these standards. Despite the congressional mandate to measure any future changes to the Performance Standards against the 2007 version, HHS's Proposed Rule neither compares regulatory requirements in place in 2007 with those that would exist under the Proposed Rule, nor explains how the Proposed Rule, if finalized, would avoid eliminating or reducing the quality, scope, or types of services required in the 2007 Performance Standards.

Second, when developing modifications to the Performance Standards, the Secretary is required under the Act to take into consideration several detailed factors. 42 U.S.C. § 9836A(a)(2)(B). HHS failed to do so. For example, HHS did not consider “mechanisms to ensure that children participating in Head Start programs make a successful transition to the schools that the children will be attending,” *id.* § 9836A(a)(2)(B)(viii), as demonstrated by the fact that the Proposed Rule would delete, with no replacement, important guidance regarding transitions from Early Head Start to Preschool, 45 C.F.R. § 1302.70, transitions from Head Start Preschool to Kindergarten, *id.* § 1302.71, and transitions between programs, *id.* § 1302.72. HHS did not consider “the need for Head Start agencies to maintain regular communications with parents, including conducting periodic meetings to discuss the progress of individual children in Head Start programs,” 42 U.S.C. § 9836A(a)(2)(B)(ix), as demonstrated by the fact that the Proposed Rule deletes the requirements for two home visits and two parent teacher conferences per program year, informing parents about their children’s progress and the results of screening and assessments, and using “accessible communication methods and modalities that meet the needs of the community when engaging with prospective and enrolled families.”¹⁰ 45 C.F.R. § 1302.34(b). HHS also did not consider “changes in the population and number of such children who are in foster care or are homeless children,” 42 U.S.C. § 9836A(a)(2)(B)(vii), as evidenced by the removal of the self-attestation requirement, which has been to the benefit of homeless families who are unable to document the absence of income, and HHS’s clear indifference to the “approximately eight percent of children [who] may currently be enrolled in Head Start that would otherwise no longer be eligible for enrollment under this proposed policy change.” 91 Fed. Reg. 51307. Finally, HHS did not consider “the unique challenges faced by individual programs, including those programs that are seasonal or short term and those programs that serve rural populations,” 42 U.S.C. § 9836A(a)(2)(B)(x), as it eliminated enrollment and eligibility requirements that have historically disproportionately supported rural and migrant populations. While Congress delegated certain rulemaking authority to HHS, the Act constrains such rulemaking by requiring consideration of these substantive factors. HHS has failed to do so, in violation of the Act.

¹⁰ The Proposed Rule would also delete regulations detailing family engagement practices, 45 C.F.R. §§ 1302.34, 1302.50-53; parent committees that advise on the development and implementation of “local program policies, activities, and services,” *id.* § 1301.4; policy councils, *id.* §§ 1301.1-.3,.5; and collaboration with parents of children with disabilities, *id.* § 1302.62.

Third, the Act includes detailed statutory prescriptions that promote, and must be construed in light of, the Act's objective "to promote the school readiness of low-income children...through the provision to low-income children and their families of health, educational, nutritional, social, and other services that are determined, based on family needs assessments, to be necessary." 42 U.S.C. § 9831. To achieve this objective, Congress has carefully balanced local autonomy with uniform standards, requiring Head Start agencies to meet the "diverse needs of the population served," *id.* § 9836(d)(2)(L), while requiring HHS to implement "scientifically based and developmentally appropriate education performance standards related to school readiness that are based on the Head Start Child Outcomes Framework," *id.* § 9836A(a)(1)(B). The Proposed Rule would increase class sizes, decrease hours of operation, reduce the qualifications, competencies, support, and coaching of teachers and staff, eliminate requirements for effective teaching and learning environments, home visiting, parental involvement, health services, and safety. These changes, collectively and individually, would violate HHS's mandate to implement appropriate education performance standards and would subvert the very purpose of the Act.

Fourth, the Act requires the Secretary to set Performance Standards in consultation with experts in the fields of child development, early childhood education, child health care, family services (including linguistically and culturally appropriate services for non-English speaking children and their families), administration, and financial management, and with persons with experience in the operation of Head Start programs. 42 U.S.C. § 9836A(a)(2)(A). HHS has apparently failed to do so here.¹¹ Making such far-reaching changes to the Head Start program without adequately consulting with Head Start families, program leaders, state and local governments, or experts demonstrates complete disregard for the people who depend on Head Start and is not in accordance with the Act's requirements.

Fifth, the Proposed Rule violates the Treasury and General Government Appropriations Act of 1999 because the Secretary failed to (i) submit written certifications to the Director of the Office of Management and Budget (OMB) and to Congress that the proposed regulations were assessed as to whether they "may affect family well-being" or to (ii) provide an adequate rationale for any policy that would have a negative impact. 5 U.S.C. § 601. The changes are likely to affect the well-being of impacted families, *see infra* Section III. The Secretary was required to evaluate these impacts and submit a written explanation to OMB and Congress. Because it did not, the Proposed Rule should be withdrawn.

B. The Proposed Rule is Arbitrary and Capricious

The APA requires federal agencies to "engage in reasoned decisionmaking." *Nat'l Urban League v. Ross*, 977 F.3d 770, 778-779 (9th Cir. 2020). "An agency may not . . . depart from a prior policy sub silentio or simply disregard rules that are still on the books." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (citation omitted). "And of course the agency must show that there are good reasons for the new policy." *Id.* Agencies seeking to change existing policies must give "a reasoned explanation for the change, display awareness that they are changing

¹¹ In section "Expert and Stakeholder Consultation," HHS states that "ACF has received feedback that the Performance Standards are overly prescriptive, constrain flexibility, and impede coordination with State and local requirements." 91 Fed. Reg. 51248. HHS does not mention any past or planned consultative process about any specific rule change apart from the rulemaking comment window itself, or any explanation of the source of this "feedback." *Id.* at 51249.

position, and consider serious reliance interests.” *FDA v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 568 (2025) (quotation marks and citations omitted). An agency acts arbitrarily and capriciously when it offers an explanation for its decision that “runs counter to the evidence before the agency” or “is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

The Performance Standards that HHS seeks to roll back are the result of years of research on best practices, stakeholder feedback, and practitioner experience. The Proposed Rule would eliminate these carefully considered standards with only cursory justification and without consideration of the significant harms to the States and their resident families and children, the States’ reliance interests, or the economic impact of the changes. Nor has HHS considered other viable alternatives to achieve its purported aims. For all of these reasons, the Proposed Rule is arbitrary and capricious.

1. HHS Has Not Sufficiently Considered the Harmful Impacts on the States and Their Residents

The Proposed Rule would be arbitrary and capricious because HHS has failed to consider important aspects of the problem, namely, how the Proposed Rule would harm the States and their residents in multiple ways. *See Lands Council v. Powell*, 395 F.3d 1019, 1026 (9th Cir. 2005) (citing *State Farm*, 463 U.S. at 43). First, HHS has not considered the States’ reliance interests as States have structured their own Early Care and Education¹² (“ECE”) programs and regulations in reliance on the Performance Standards. Second, HHS has not considered the harms to the States and their residents that will result from the reduced availability of Head Start program spaces if the Proposed Rule is enacted. Third, HHS has not considered the impact on the States as Head Start grant recipients due to a dramatically increasing administrative burden. Finally, HHS has not considered the costs to the States to support vulnerable children who will suffer both health and educational impacts as a result of the Proposed Rule, now and throughout their lives.

a. HHS Has Not Sufficiently Considered Harms to the States’ ECE Systems That Were Designed in Reliance on Head Start

The States rely on Head Start as a critical partner in delivering quality ECE services. The States’ own ECE programs have been developed over decades to complement Head Start as it has long existed and in particular since the 2007 Performance Standards. However, if the Proposed Rule takes effect, these complementary programs will no longer work as intended, and the States will be unable to meet the needs of children and families through other existing state programs.

Like Head Start, state-administered ECE programs provide quality free or subsidized ECE for low-income and other vulnerable children. Because in many cases, no single source of funding is sufficient to cover all costs, local ECE agencies often “blend” or “braid” Head Start funds with

¹² “Early Care and Education” refers to the formal teaching and care of young children by individuals or professionals other than their family or in settings outside the child’s home.

funds from state ECE programs, leveraging both sources to meet program needs.¹³ In California, for example, more than seventy percent of Head Start programs are also state-funded child care contractors for the California State Preschool Program (CSPP).¹⁴ The way programs combine funds can vary; some use state funds for educational programs and Head Start funds for comprehensive services, while others cover the mornings with one source of funds and the afternoons with another, or serve different classrooms with different sources of funding.¹⁵ Combining Head Start funds with other ECE funding sources creates efficiencies, makes both federal and state dollars go further, and makes it easier for families to navigate the complex ECE landscape.¹⁶

To support this efficiency and reduce administrative burdens for families and ECE providers, the States have created regulations and guidance that rely on Head Start in its current form as part of a comprehensive strategy to serve children and families.¹⁷ This reliance on Head Start and the Performance Standards is reasonable given the longstanding partnership between State ECE systems and Head Start, as well as the statutory requirement that any revisions to the Performance Standards not result in the elimination of or any reduction in the “quality, scope, or types of services” required by the Performance Standards in effect on December 7, 2007. 42 U.S.C. § 9836A(a)(2)(C)(ii). And indeed, HHS has encouraged states in creating “mixed delivery” ECE systems and has historically provided technical assistance and guidance to facilitate “blending” and “braiding” funds to serve more children.¹⁸ Yet by now slashing the Performance Standards without consultation or regard for the state ECE programs that rely on Head Start, HHS will upend state ECE systems.

If the proposed Performance Standards are put in place, the ECE systems that have been carefully structured to meet community needs will need to be re-designed, and many will likely be unable to provide the same scope of services previously offered. Local agencies that previously

¹³ See Katie Gonzalez & Pia Caronongan, *Braiding Federal Funding to Expand Access to Quality Early Care and Education and Early Childhood Supports and Services: A Tool for States and Local Communities*, MATHEMATICA, SUBMITTED TO: U.S. DEP’T OF HEALTH & HUM. SERVS., OFF. OF THE ASSISTANT SEC’Y FOR PLAN. AND EVALUATION, (Aug. 16, 2021), https://aspe.hhs.gov/sites/default/files/2021-08/EC_Braiding_Toolkit.pdf [<https://perma.cc/3DA6-QLMZ>].

¹⁴ See HEAD START CALIFORNIA, CALIFORNIA HEAD START MAP (Mar. 8, 2026), <https://www.headstartca.org/map> [<https://perma.cc/4SNV-4C5Q>] (showing 98 of 137 Head Start program in California are California State Preschool Programs). California’s Department of Education estimates that thirty-three percent of children enrolled in community-based CSPP programs are also enrolled in Head Start.

¹⁵ See, e.g., Sarah Jackson, *Barely Hanging On: The Acrobatics of Funding High Quality Care for Young Children*, NEW AM. FOUND. (Nov. 8, 2016), <https://www.newamerica.org/insights/barely-hanging-acrobatics-funding-high-quality-care-young-children/> [<https://perma.cc/T78P-D4RZ>].

¹⁶ See *id.* (describing, for example, how some programs have developed single applications to allow families to apply to Head Start and state programs simultaneously).

¹⁷ For example, California’s state subsidized childcare statutes and regulations regarding enrollment priorities reference Head Start, Cal. Welf. & Inst. Code § 10271(a)(1)(A) and § 10271.7, CAL. CODE REGS. tit. 5, § 17748, and contractors may use Head Start self-evaluations in lieu of certain program-required self-evaluations, *id.* § 17709(c)).

¹⁸ See, e.g., U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAM., OFF. OF EARLY CHILDHOOD DEV., ECE MIXED DELIVERY TECHNICAL ASSISTANCE, <https://acf.gov/ece/mixed-delivery-technical-assistance> [<https://perma.cc/2HKU-PYMD>].

relied on Head Start funds to provide comprehensive services, such as family health education, that benefited all children served may need to stop offering them, resulting in a decline in quality for all children in their programs, not only those enrolled in Head Start. Agencies that used Head Start funds to cover certain classrooms or certain care hours may see a disparity in standards and quality among children served.¹⁹ The States will need to expend considerable resources assessing how to ensure that local agencies are still meeting state standards after carefully constructed programs are dismantled.²⁰ To analyze and address the extent to which the Proposed Rule will lead to gaps in services or safety or render state regulations that refer to prior Performance Standards meaningless or insufficient, the States will also have to review existing regulations and potentially adopt new ones. This will require significant State resources and staffing and impose a massive administrative burden over several years.²¹

b. HHS Has Not Sufficiently Considered the Harms to the States Due to the Reduced Availability of ECE for Children and Families

The proposed changes to the Performance Standards will likely reduce the availability of Head Start in the States both by reducing the number of Head Start agencies in operation and by reducing program availability for specific groups of vulnerable children. This will place an even greater burden on families in the States to find quality, affordable early education, or, in many cases, any childcare at all. This will also cost the States in terms of Head Start jobs and labor market productivity.

Contrary to HHS's assertion that "reductions in program expenditures may translate into increases in funded slots," 91 Fed. Reg. 51250, the Proposed Rule's changes would actually reduce opportunities for children to attend Head Start because many agencies will not be able to operate under the new rules. Most significantly, the dramatic reduction in the allowable administrative cost cap from 15 percent to 5 percent will likely result in programs closing. *See infra* Section III(A). Even most for-profit childcare providers operate with less than a one percent profit margin, and

¹⁹ Many state standards closely track the existing Performance Standards, ensuring that children and families can expect the same treatment and quality care throughout the day or between different classrooms at the same facility. *Compare, e.g.,* 42 C.F.R. § 1302.17 with Cal. Dep't. Ed., *Management Bulletin 23-08: Suspension and Expulsion in the California State Preschool Program* (Sept. 2023), <https://www.cde.ca.gov/sp/cd/ci/mb2308.asp> [<https://perma.cc/8FXA-UHC8>] (aligning CSPP suspension and expulsion policy with Performance Standards); CAL. CODE REGS. tit. 5, § 18273 with 42 C.F.R. § 1304.52(5)(h)(i)(iv) (children's rights).

²⁰ In California, for example, state ECE programs are subject to both state licensing rules, CAL. CODE REGS. tit. 22, and educational quality standards, CAL. CODE REGS. tit. 5. However, HHS does not make it clear whether they will hold Head Start agencies accountable to meeting only state licensing rules or all state regulations that may apply, or how HHS will determine which regulations it believes apply. *See, e.g.,* 91 Fed. Reg. 51270 ("Programs must continue to meet applicable state and local licensing and other regulatory standards . . .").

²¹ For example, in California, CSPP and Child Care and Development contractors that also operate Head Start programs may rely on Head Start ratios rather than Title 5 ratios (which, due to the program's educational purpose and increased support needs of participants, are higher than state licensing standards). *See* 5 CAL. CODE REGS. §§ 17713, 17741, and 18290. If Head Start ratios default to state licensing standards as proposed in the Proposed Rule, California may need to revise its regulations to clarify what ratios are permitted for CSPPs and Child Care and Development programs.

programs that serve children receiving assistance have even more challenges.²² ECE budgets often cannot absorb the shock of significant market or regulatory changes,²³ and cutting up to an additional ten percent from program budgets while maintaining statutory requirements simply will not be possible for many agencies.

Moreover, under the Proposed Rule, the most vulnerable children—the groups for whom quality ECE is most linked to improved educational outcomes—will increasingly be locked out of Head Start. As discussed throughout this comment, it is these children who will be most impacted by the proposed changes. For example, the changes regarding eligibility will limit access for families experiencing homelessness, children of teen parents, and families engaged in seasonal or otherwise precarious employment. *See infra* Section III(C). The elimination of the service duration requirement will make programs inaccessible for families that work non-traditional hours. *See infra* Section III(I). The changes regarding expulsions and suspensions will impact those groups of children disproportionately targeted for discipline. *See infra* Section III(F). Eliminating requirements related to health care services and screenings will impact children who lack access to health insurance or regular primary care. *See infra* Section III(D). And cutting rules related to supporting children with disabilities will impact a group of children who have fewer options for ECE programs that can accommodate them.²⁴ *See infra* Section III(E). The changes will also allow programs to hire teachers with less education or training and reduce parents' roles in program decisions. *See infra* Section III(P) and III(K). Overall, this reduction in the number of childcare spaces and the reduced access for the most vulnerable children will create additional harm to both families and the States.

The States are already facing a national shortage of childcare. Nationwide, between 1.2 and 1.5 million workers are already affected by inadequate childcare options each month.²⁵ The Child Care Trust estimates a national childcare gap (across the 50 states and the District of Columbia) of 28.2% of the potential need.²⁶ The long term economic impact of this gap is between \$216.4 and \$329.4 billion.²⁷ Without Head Start, the childcare gap would increase to 32.7 percent, representing an additional 654,500 children and their families without access to

²² *See* Rebecca Daugherty, *The Child Care Business Model, Explained*, BIPARTISAN POLICY CTR. (Apr. 1, 2026), <https://bipartisanpolicy.org/explainer/the-child-care-business-model-explained/> [<https://perma.cc/4689-UGKL>].

²³ *See id.*

²⁴ *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-24-106843, *Child Care Accessibility: Agencies Can Further Coordinate to Better Serve Families with Disabilities* (2024), <https://www.gao.gov/assets/880/871279.pdf> [<https://perma.cc/PEB9-5ZXB>]; Cristina Novoa, *The Child Care Crisis Disproportionately Affects Children With Disabilities*, CTR. FOR AM. PROGRESS (Jan. 29, 2020), <https://www.americanprogress.org/article/child-care-crisis-disproportionately-affects-children-disabilities> [<https://perma.cc/4JWG-3LEX>].

²⁵ Matthew Nestler, *The parental work disruption index: A new measure of the childcare crisis*, KPMG (Sept. 30, 2024), <https://kpmg.com/us/en/articles/2024/september-2024-the-parental-work-disruption-index> [<https://perma.cc/8QRZ-RPH6>].

²⁶ CHILD CARE TRUST, *Child Care Gap Assessment: Role of Head Start*, <https://childcaregap.org/> [<https://perma.cc/UX9P-AUS4>].

²⁷ CHILD CARE TRUST, *Head Start's Impact on the Child Care Gap* 11 (2026), https://3957809.hs-sites.com/hubfs/Head%20Start%20Gap%20Report_FINAL_6.30.26.pdf?hsCtaAttrib=215196396178 [<https://perma.cc/E4SR-XVUY>].

childcare.²⁸ This equates to a 15.6% increase in unmet need nationwide. If Head Start were terminated or even substantially reduced, 19 states would see childcare gaps increase by twenty percent or more, with Mississippi, West Virginia, Texas, Ohio, and New Mexico among the most impacted. Rural communities would face disproportionate harm, with gaps increasing by eighteen percent in rural areas compared to fifteen percent in urban areas.²⁹ Any reduction in Head Start availability will only exacerbate this shortage and place an economic burden on individual families, their employers, and the tax base and economies of the States.

For individual families, losing access to quality, reliable childcare means lost earnings from lower productivity, losing jobs or being forced to quit, and diminished career opportunities, with lower pay due to less work experience and fewer skills.³⁰ Parents currently lose out on about \$30-35 billion in potential income because inaccessible ECE forces many parents to leave the paid labor force or reduce paid work hours to care for their children.³¹ Women, who currently spend twice as much time on child care and household duties as men on average, are likely to bear a disproportionate share of this burden.³² Six hours of lost childcare per week results in a substantial loss of income, ranging from \$4,680 to \$9,026 annually for individual workers.³³ For low-income households, reduced earnings can translate into a range of harms to children, including the well-documented effects of hunger and instability, leading to wider educational disparities that they may not catch up from.³⁴

These costs do not stop with the families themselves. Employers lose \$38 billion in revenue annually from lower output, extra costs due to absenteeism, disruptions, and rehiring.³⁵ Taxpayers lose \$37 billion each year in lower state and federal revenue.³⁶ And states incur costs due to lower tax revenues and families' decreased consumption of taxed goods.³⁷ Exacerbating the child care crisis of today, reduced childcare access associated with the loss of Head Start would result in an estimated additional \$32.8–\$49.9 billion in economic losses over the next 10 years, driven by lower workforce participation, reduced productivity, and declining tax revenues.³⁸

²⁸ *Id.* at 9.

²⁹ *Id.* at 4.

³⁰ ReadyNation, *The Child Care Crisis Costs the U.S. Economy \$172 Billion Each Year* 5-7 (Feb. 2026), attached in Appendix.

³¹ Elise Gould & Hunter Blair, *Who's Paying Now? The Explicit and Implicit Costs of the Current Early Care and Education System*, CTR. FOR THE STUDY OF CHILD CARE EMP'T (Jan. 14, 2020), <https://cscce.berkeley.edu/publications/report/whos-paying-now-the-explicit-and-implicit-costs-of-the-current-early-care-and-education-system/> [<https://perma.cc/CFW5-PL8L>].

³² Natalie Vega Varela & Leyly Moridi, *The Free-Time Gender Gap: How Unpaid Care and Household Labor Reinforces Women's Inequality*, GENDER EQUITY POL'Y INSTITUTE (Oct. 2024), <https://thegepi.org/free-time-gender-gap/> [<https://perma.cc/4BCJ-BX73>].

³³ Nestler, *supra* note 25.

³⁴ *Id.*

³⁵ ReadyNation, *supra* note 30, at 5; Nestler, *supra* note 25.

³⁶ ReadyNation, *supra* note 30, at 5.

³⁷ Nestler, *supra* note 25.

³⁸ CHILD CARE TRUST, *Head Start's Impact on the Child Care Gap*, *supra* note 27, at 12.

c. HHS Has Not Sufficiently Considered Harms to the States as Head Start Grant Recipients

Many States are Head Start grant recipients, and operate Head Start programs either independently or through partnerships with other public and private entities. For example, in California, the California Department of Education operates its Early Head Start/Child Care Partnership Grant across ten rural sites in northern California.

States face the same challenges as other grant recipients as set forth in Section III below. Specifically, the States anticipate an increase in administrative costs and burden as a result of the Proposed Rule. Most significantly, States face the increased cost pressure due to the proposed change of the administrative costs cap from fifteen percent to five percent. *See infra* Section III(A). For example, California Department of Education's Early Head Start-Child Care Partnership program, which supports services to rural counties in Northern California, had an administrative cost rate of 5.80% in Fiscal Year 2025. The proposed five percent cap would decrease overall funding for this critical program and require the program to absorb or reallocate approximately 0.80% of its necessary administrative expenditures to other funding sources or reduce administrative capacity. This will limit resources available for fiscal oversight, grant management, compliance, monitoring, and other functions necessary to effectively administer the EHS-CCP program, and because the program is fully federally funded, there are no other resources to rely on to absorb the costs.

d. HHS Has Not Sufficiently Considered Harms to the States Resulting from Children Losing Early Intervention and Support

The lower standards and reduced services at Head Start agencies that will result from the Proposed Rule will impose significant costs on the States and our residents because children will lose vital services and support, costs that HHS has failed to adequately consider. Under the Proposed Rule, many Head Start programs will be unable to provide the same services or meet the same standards previously offered. Even if HHS continues to approve their program activities, which the Proposed Rule leaves in doubt, many will not be able to afford the same activities they currently offer under the new administrative cost cap. Others may voluntarily reduce their standards and services when no longer required by regulation. Without the early intervention, screening, and support previously provided through Head Start, vulnerable children will be at greater risk of a range of health and education challenges. As a consequence, the States will need to provide more, and far more expensive, support to children throughout their lives.

i. Harms to Children and Families Who Receive Less Early Intervention and Support from Head Start

Under the Proposed Rule, many Head Start programs will no longer be able to provide comprehensive services or meet prior educational, safety, and program quality standards, which will harm children and families in the States. Despite HHS's claims that programs "may choose"

to continue offering their current level of service,³⁹ HHS will have unprecedented discretion over whether to fund a program and what services to fund for each program, and services that exceed what HHS deems as necessary to meet standards may be rejected even when children and families rely on them. *See infra* Section II(B)(3)(a). Given that ambiguity and the high administrative costs of planning and hiring for programs that may not be approved, other programs may opt to preemptively drop services and staffing to ensure compliance and continuity, despite the predictable harms that will follow. And many agencies will likely have to cut services and staffing significantly, regardless of any purported “flexibility,” in response to the extreme reduction in allowable administrative costs. *See infra* Section III(A).

The result of Head Start programs dropping carefully crafted, evidence-based standards and services is predictable: children’s education and welfare will suffer. Throughout the remainder of this Comment, the States point to the vast body of evidence regarding the critical importance of each of the Performance Standards and the likely harms of removing them. Under the Proposed Rule, fewer children with disabilities or who are English learners will achieve school readiness. Fewer children will receive developmental screenings and preventative health care, leading to delayed diagnoses and support. Preventable accidents will occur due to the absence of safety standards for facilities and transportation. More children will attend lower quality Head Start programs due to the absence of standards around curricula, staff qualifications and professional development, and other core aspects of educational programming, leading to lower school readiness and poorer outcomes. And fewer vulnerable children will be able to enroll in Head Start in the first place, due to changes in eligibility and verification.

ii. Harms to the States Due to the Cost of Supporting Vulnerable Children Who Missed Necessary Early Intervention and Support Through Head Start

These harms outlined above, and discussed in further detail below, will be felt most acutely, and painfully, by children and their families. But as the States race to address them before they become lifelong challenges, they will also impose significant costs on state programs and services. And when, inevitably, fewer children receive necessary intervention and support during the critical window of early childhood, the States will also pay significant costs in the decades to come.

In the short term, children in Head Start programs will require more health care and educational support from the States. HHS estimates a cut of up to \$167 million in health care expenditures for Head Start children and families, reflecting a seventy-five percent spending reduction and reduction in services provided through Head Start programs. 91 Fed. Reg. 51293. This reduction in services would force Head Start families to seek alternative and emergency health, mental health, and dental support and to assume the associated travel costs. This is particularly concerning for our States’ rural areas where families are often unable to find adequate medical and dental care. Without the timely provision of comprehensive health services, the States will need to find other ways to ensure that vulnerable children are accessing health insurance, primary care, screenings, vaccinations, mental health care, disability services, and other critical health care support. This will increase costs on already overburdened state agencies and programs

³⁹ *See, e.g.*, 91 Fed. Reg. 51293 (“If they choose, programs may maintain health and mental health services as currently implemented in their programs, if this best fits the needs of their families and communities.”).

that serve low-income children and families. And for those children who are no longer enrolled in Head Start due to reductions in available slots, the States may struggle to connect with the families to provide such services. Head Start is a trusted resource for many families who otherwise may hesitate to engage with public health care resources, including those experiencing homelessness; States may face difficulties in connecting with these families by other means.⁴⁰

Similarly, when fewer children achieve school readiness due to the reduced services provided through Head Start, the States will incur costs related to additional support in school. For example, children with disabilities who no longer receive early intervention through Head Start will require increased educational support throughout their schooling.⁴¹ And, due to the proposed English-only requirement, more children will remain English language learners into grade school from the cutting of research-backed bilingual education (*see infra* Section III(B)), so States will have to allocate additional support to help them learn English.⁴²

Further, the States will not be able to simply absorb children into state-subsidized programs to avoid the predictable drop in educational and health outcomes that would result from the Proposed Rule. First, state-administered ECE programs often cannot meet existing demand for ECE today, evidenced by their waitlists of eligible families.⁴³ Even for those already enrolled, state-administered ECE programs do not provide all services currently provided through Head Start.⁴⁴

⁴⁰ See, e.g., Daniela Gorsky et al., *Barriers to and facilitators of healthcare access among people experiencing homelessness: a systematic scoping review*, INT’L J. EQUITY & HEALTH (Apr. 2026), <https://link.springer.com/article/10.1186/s12939-026-02840-z> [<https://perma.cc/UN23-6Y35>] (finding that people experiencing homelessness face stigma accessing health care and social care services, which limits engagement and outcomes).

⁴¹ See Jeanette Stingone, *Support Services for Children With Disabilities Linked to Improved Academic Outcomes*, COLUM. MAILMAN SCH. PUB. HEALTH (Mar. 2, 2026), <https://www.publichealth.columbia.edu/news/support-services-children-disabilities-linked-improved-academic-outcomes> [<https://perma.cc/YW44-W7PJ>]. In California, Head Start serves 8,306 children with individualized education programs (IEPs) and 6,162 with individualized family service plans (IFSPs). See Office of Head Start Program Information Report (PIR) State Level-California 2025 (attached in Appendix).

⁴² See Alyssa Evans, Eric Syverson & Lauren Freemire, *How States Allocate Funding for English Language Learners*, ED. COMM’N OF THE STATES (Jan. 21, 2020), <https://www.ecs.org/how-states-allocate-funding-for-english-language-learners/> [<https://perma.cc/37KA-V4N3>]. In California, there were 83,216 English learners in kindergarten in 2025-26; the California Department of Education projects additional state costs as more children enter kindergarten as English learners.

⁴³ See Rachel Wessler, *No Time to Wait: How Child Care Funding Uncertainty and the Reemergence of Waitlists are Shaping Families’ Futures*, CHILDCARE AWARE OF AM. (Nov. 7, 2025), <https://info.childcareaware.org/blog/no-time-to-wait-how-child-care-funding-uncertainty-and-the-reemergence-of-waitlists-are-shaping-families-futures> [<https://perma.cc/2QXR-T566>]; U.S. GOV’T ACCOUNTABILITY OFF., GAO-21-245, CHILD CARE: SUBSIDY ELIGIBILITY AND RECEIPT, AND WAIT LISTS, (2021), <https://www.gao.gov/products/gao-21-245r> [<https://perma.cc/47CW-UKJ8>] (reviewing subsidies and eligibility for the federal Childcare and Development Fund, which contributes funding to many state-administered ECE programs).

⁴⁴ For example, these programs do not offer the full range of family engagement or health care services offered by Head Start. Some cannot provide for bilingual education, and in some cases, they cannot mandate the same ratios between children and teachers or limits on group sizes.

The reduced quality of Head Start programs will have trickle down effects across state economies. Children with better early care and educational opportunities draw on fewer government resources throughout their lives, as well as earn higher compensation as adult workers—which creates additional tax revenues long-term.⁴⁵ High quality ECE is linked to a lifetime of improved health, including with respect to cancer, heart disease, stroke, and mortality.⁴⁶ It also reduces interactions with the criminal justice system across a child’s lifetime.⁴⁷ Lowering the quality of Head Start thus translates to a greater burden on state resources. The States can expect to pay for the loss in quality ECE resulting from the Proposed Rule not only now, but for decades to come.

2. HHS Relies on Flawed Economic Assumptions and Fails to Account for Indirect Costs

In its RIA, HHS estimates that the Proposed Rule will result in annual cost reductions of approximately \$2.2 billion at full implementation in 2031 primarily due to “lower expenditures to serve the same number of children with fewer staff.” 91 Fed. Reg. 51301. What HHS fails to account for is that those savings are achievable only if programs do less for the children they serve, including larger class sizes, fewer teachers, fewer health services, shorter program days and years, lower staff qualifications, less compensation for staff, and fewer safety protections, and a two-thirds reduction in the administrative resources that programs may use to operate. Nor does the estimate account for the realities faced by local programs, which include more children with undiagnosed disabilities and higher needs in the classroom, facilities and maintenance costs associated with outdated infrastructure, increased uncertainty in budgeting and compliance, and ongoing staff shortages.⁴⁸ Nor does cutting services and quality standards align with Head Start’s purpose of preparing low-income children for success in school by addressing their educational, health, dental, nutritional, family support, and socio-emotional needs. Moreover, the RIA includes new mandates that would increase program costs, including a requirement that all instruction occur

⁴⁵ See Gould & Blair, *supra* at 31.

⁴⁶ Jorge Luis García & James J. Heckman, *Early Childhood Education and Life-Cycle Health*, NAT’L BUREAU OF ECON. RSCH., WORKING PAPER NO. 26880 (2020), https://www.nber.org/system/files/working_papers/w26880/w26880.pdf [<https://perma.cc/9TDP-SJF5>].

⁴⁷ Jorge Luis Garcia, et al., *Quantifying the Life-Cycle Benefits of an Influential Early-Childhood Program*, 128 J. Pol. ECON. 2502-2541 (2020), attached in Appendix; Jorge Luis Garcia, et al., *Early Childhood Education and Crime*, 40 INFANT MENTAL HEALTH J. 1, 141-151 (2019), attached in Appendix; Natasha O’Dell Archer, *Crime, Early Childhood Education and*, THE SAGE ENCYCLOPEDIA OF CONTEMPORARY EARLY CHILDHOOD EDUC. (2016), attached in Appendix.

⁴⁸ *Addressing Head Start Facilities and Infrastructure Needs*, NAT’L HEAD START ASS’N, <https://nhsa.org/resource/addressing-head-start-facilities-and-infrastructure-needs/> [<https://perma.cc/H5RQ-52LB>] (citing a survey finding that “61% of Head Start centers evaluated ... were identified as needing improvement to their physical infrastructure ... fifty percent of the centers assessed were 50 years of age or older”); *January 2025 Update on Head Start’s Ongoing Workforce Challenges*, NAT’L HEAD START ASS’N, <https://nhsa.org/resource/january-2025-update-on-head-starts-ongoing-workforce-challenges/> [<https://perma.cc/AN4N-L75W>] (finding nine percent of staff positions vacant in January 2025, with staff vacancies accounting for seventy-one percent of classroom closures).

in English that would necessitate new instructional materials in more than 18,000 classrooms. *See* 91 Fed. Reg. 51287.

HHS quantifies the financial impact of the removal of certain requirements, *see, e.g.*, 91 Fed. Reg. 51293 (removing class sizes and group ratios and lowering the administrative cost cap), but does not consider or quantify any downstream costs, direct or indirect, from eliminating provision of previously required services. HHS does not consider or account for the reality that many of these costs will be borne by the States (*see supra* Section II(B)(1)) or will add to program costs because children will no longer receive earlier intervention and support. HHS explicitly acknowledges that the Proposed Rule has “non-quantified impacts” and that there are “additional effects on program implementation and service delivery that are not captured in the quantified estimates in this RIA.” 91 Fed. Reg. 51307. Nor does HHS account for the increased administrative costs programs will face as they navigate complex statutory obligations after most regulatory guidance has been eliminated. In failing to calculate costs and benefits for the vast majority of Performance Standards that are slated for elimination, HHS has not conducted a complete and rigorous cost-benefit analysis for a systemic gutting of this scale.

Additionally, HHS’s cost estimates appear internally contradictory. For example, HHS asserts that the cost of changes regarding family support services “have not been quantified in this RIA because [HHS] assumes many programs may continue aligning with current practice and therefore the rescission of these policies would not bear a significant cost to programs.” 91 Fed. Reg. 51312. Yet, HHS separately recognizes that “reductions in program-facilitated services could have implications for families, depending on the availability of alternative health services.” *Id.* As another example, the estimated financial impact of eliminating “health contractual services . . . and [personnel] costs for health and mental health services” appears to assume that programs can continue to provide statutorily required services and necessary or appropriate services without incurring costs. *See* 91 Fed. Reg. 51293. Yet, the RIA nonetheless assumes that between twenty-five and seventy-five percent of current expenditures can be eliminated, *id.* (Table 9), making it virtually impossible to continue the same level of services and effectively assuming that services will inevitably be cut.

Similarly, HHS did not make reasoned economic assumptions in reducing the administrative costs cap from fifteen percent to five percent. HHS assumes that “several proposed regulatory revisions are expected to affect administrative processes and workload requirements,” such as “align[ing] attendance accountability practices more closely with state licensing standards, . . . continue maintaining waitlists, . . . continue to provide trainings, . . .” 91 Fed. Reg. 51299. Yet, HHS dismisses these anticipated costs outright saying that “their impacts are considered individually modest.” *See* 91 Fed. Reg. 51299. HHS has not explained what it considers modest, whether any analysis went into making that determination, how many “modest” costs there will be, or how great those costs will be in the aggregate. Thus, HHS underestimates the potential impact on administrative costs. Indeed, most of these changes will result in short-term increases in administrative costs as Head Start programs scramble to understand and attempt to comply with the new standards. Nor did HHS consider the likelihood that many programs simply cannot reduce administrative costs by such a significant percentage without cutting statutorily mandated services, and that some may be forced to close.

The lack of a considered economic analysis of major changes to the Head Start program and the internal inconsistency as to whether the removal of requirements would or would not have

an impact on the provision of services is indicative of arbitrary and capricious rulemaking, and a failure to actually analyze and assess the impact of a proposed change.

3. HHS Fails to Give a Reasoned Explanation for Its Changes

HHS offers very little explanation for most of the changes in the Proposed Rule, despite their magnitude. Indeed, for many changes, there is no justification offered whatsoever.⁴⁹ In spite of HHS's statutory mandate to consult with stakeholders and experts when modifying standards, 42 U.S.C. § 9836A(a)(2)(A), and its past practice of doing so,⁵⁰ HHS here relies on a few purported rationales that gloss over the magnitude of the changes outlined in the Proposed Rule. *See* 91 Fed. Reg. 51249. Even these purported rationales—that the changes would increase flexibility for programs, families and states, return authority back to parents, reduce unnecessary burden and duplication, and reinforce state and local authority—stand in stark contrast with the Proposed Rule's substance and real-world impacts.

a. The Proposed Rule Does Not Restore Authority to the States

HHS states that the Proposed Rule will “return primary authority over areas traditionally within state and local purview.” 91 Fed. Reg. 51249. To that end, the Proposed Rule would allow “programs to defer to state licensing laws . . . and state and local requirements . . . that are best for their communities.” *Id.* at 51266. This rests upon the premise that Head Start's standards are interchangeable with state licensing rules. But this premise is false. First, as HHS acknowledges, state licensing standards do not always apply to all settings where Head Start operates, and therefore some Head Start programs would be operating under effectively no standards at all under the Proposed Rule.⁵¹ Second, state and local licensing rules are typically geared towards safety, not performance, and reflect the *minimum* standards needed to mitigate dangers to participating children.⁵² Head Start Performance Standards encompass not just safety but also research-backed

⁴⁹ *See, e.g.*, 45 C.F.R. §§ 1301.2, 1301.3, 1301.5, and 1301.6 (deleting policy councils and impasse procedures for policy councils with no explanation and without addressing how the Secretary will develop and promulgate policies, procedures, and guidance on this topic, as required under the Act).

⁵⁰ For example, in creating the family-based Head Start Preschool and Early Head Start options, HHS convened, over several years, “several groups of representatives from a cross-section of for-profit and non-profit family child care programs, other organizations and agencies, experts, and parents to advise the Office of Head Start regarding various aspects of family child care programming.” 73 Fed. Reg. 1287 (Jan 8, 2008). These groups advised on a number of regulations now deleted with far less consideration, including staff-child ratios and staff qualifications. *Id.*

⁵¹ Although HHS asserts that “[p]rograms will continue to be subject to applicable state and local licensing requirements . . . which provide ongoing safeguards for health and safety,” 91 Fed. Reg. 51310, HHS acknowledges that “approximately 26 percent of Head Start service locations are not licensed under state child care licensing requirements,” including “home-based, home visiting, or other non-center-based service models.” 91 Fed. Reg. 51312.

⁵² Shantel Meek, et al., *Lowering the Bar: An Analysis of How Replacing Head Start Standards with State Child Care Licensing Weakens Early Learning Across the United States*, THE CHILDREN'S EQUITY PROJECT AT ARIZ. STATE UNIV., 4-6 (Aug. 2026), <https://cep.asu.edu/sites/g/files/litvpz916/files/2026-10/Lowering%20the%20Bar%20An%20Analysis%20of%20How%20Replacing%20Head%20Start%20S>

best practices to promote child health and school readiness in partnership with parent empowerment and involvement. Not a single state in the country has licensing standards that match the breadth and empirical rigor of Head Start’s standards.⁵³ In part, this is because Head Start was designed as an anti-poverty program to leverage public funds on behalf of the most vulnerable children, for whom research has shown that early intervention and quality ECE are most necessary and transformative.⁵⁴ Substituting state and local licensing rules for Head Start program standards is tantamount to lowering the minimum “floor” for Head Start programs across the country, placing the Act’s objectives further out of reach of the most disadvantaged families.

Nor is it realistic for states to impose the Performance Standards through state licensing regulations. If Head Start standards were imposed on all licensees, without significant additional public investment, most small providers simply would not be able to operate, and their closure would dramatically worsen the nation’s childcare availability gap. Moreover, state licensing agencies lack the resources to ensure compliance with the complex Head Start Performance Standards for all licensees. These agencies have the expertise and resources to monitor providers for compliance with existing regulations related to safe facilities and staffing. Expanding their enforcement capacity to ensure compliance with the range of standards encompassed by the Head Start program would be a significant financial and administrative burden for the States.

HHS further justifies its elimination of prior regulations with the rationale of restoring flexibility to the States and local programs. Flexibility is also a false promise under the new rules. Under existing Performance Standards, funding for each Head Start program is based on the “approved costs of the assisted program or activities.” 42 U.S.C. § 9835(b). These “approved costs” are presently the costs incurred in the provision of “program component services . . . as set forth and described in the Head Start Program Performance Standards.” 45 C.F.R. § 1305.2 (emphasis added). However, the proposed § 1301.20 removes all definition of what program component services includes. Therefore, it appears that under the proposal, HHS has discretion over whether to fund a program and what services to fund for each program.⁵⁵ Although HHS repeatedly states that programs may choose to provide services that the Standards would no longer require, *see, e.g.*, 91 Fed. Reg 51268 (“ACF anticipates that many will choose to continue to offer longer hours of operation”), *id.* at 51314 (“programs may choose to continue such practices where feasible”), nothing in the Proposed Rule would *require* HHS to continue to fund services. Because there is no guarantee that services not required by the Standards will continue to be funded, Head Start programs may be unable to continue services that are currently provided, even if they believe that those services should continue. On top of that, some programs will face challenges meeting the prior standards due to the lower administrative cost cap, and some may be forced to close

[tandards%20with%20State%20Child%20Care%20Licensing%20Weakens%20Early%20Learning%20Across%20the%20United%20States%20%20%2814%29.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/12/quality-early-childhood-education_3cbd69b7/cd5ca149-en) [https://perma.cc/DD6R-J7EA].

⁵³ *Id.* at 5.

⁵⁴ *See* 42 U.S.C. § 9831; OECD, QUALITY EARLY CHILDHOOD EDUCATION: THE KEY TO PROSPERITY AND WELL-BEING (2025), https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/12/quality-early-childhood-education_3cbd69b7/cd5ca149-en [https://perma.cc/4TQ8-H5TL].

⁵⁵ Program funding is based on the “approved cost” of the program or activities. 42 U.S.C. § 9835(b). According to the proposed regulation, the Secretary may terminate, suspend, or reduce funding to a Head Start agency in specific circumstances, such as an agency’s failure to meet performance standards. Proposed § 1301.16.

entirely. Thus, for many States, programs will not in fact have the flexibility to continue serving children and families at the current levels and will be forced to default to the bare minimum requirements of the Proposed Rule to stay operational and maintain their Head Start funding. In fact, the RIA, which gives a good indication of the funding cuts that programs can expect, assumes that up to seventy-five percent of Head Start programs will change their staffing and programming in response to the proposed changes. *See* 91 Fed. Reg. 51291.

b. The Proposed Rule Does Not Reduce Unnecessary Burden or Duplication

HHS states that the proposed changes will “rescind more than 1,400 highly detailed regulatory provisions” and replace them with a “simplified” framework that will reduce unnecessary burden on Head Start programs. 91 Fed. Reg. 51249. To the contrary, the blanket elimination of regulatory guidance leaves Head Start programs with the far greater burden and risk of having to determine how to comply with their obligations with much less information or certainty.

The lack of standards introduces considerable uncertainty into program planning and budgeting, adding to the overall cost of developing programs. Relatedly, removing the provision regarding what constitutes an “administrative” cost, 45 C.F.R. § 1305.2, while cutting the allowable rate for administrative costs from fifteen percent to five percent, adds significant uncertainty about the financial viability of Head Start programs. Effective budgeting and management require predictable accreditation and renewal standards: local Head Start programs need to be able to objectively evaluate their compliance with mandatory standards in order to reasonably approximate whether their funding will be renewed, eliminated, or reduced. Moreover, grant recipients may be penalized for non-compliance based on criteria that are unclear or inconsistent. And future administrations may monitor Head Start grant recipients on the basis of completely different policy priorities—without any change in regulation or related notice of rulemaking—introducing long-term uncertainty for grant recipients and compounding the administrative burden on the States.

This burden will fall on the States as well. In addition to acting as grant recipients operating Head Start programs themselves, the States are also Head Start grant recipients through their operation of Head Start Collaboration Offices (HSCOs), which are statutorily mandated to facilitate collaboration and assist Head Start agencies in meeting their obligations in a number of ways. *See* 42 U.S.C. § 9837b(a)(2)(B), (3)-(4). Local Head Start agencies often first seek guidance from their state HSCOs, which in turn rely heavily on federal standards and resources. The States anticipate an increased administrative burden on HSCOs and their partners within relevant state agencies as they seek to provide guidance to the Head Start agencies in their states. Without regulatory guidance, HSCOs and grant recipients will now need to expend additional administrative resources to reference both the Performance Standards and the Act, as well as any forthcoming sub-regulatory guidance, to understand their obligations.⁵⁶ This results in a significant administrative burden to the States.

⁵⁶ *See, e.g.*, elimination of § 1303.10 and § 1303.11 regarding Program Expectations. Although the requirements do appear in the Act, instead of having two regulations to review for these propositions, Head

HHS further complains that existing Performance Standards are “overly prescriptive” and argues that many of its regulatory changes remove “duplication” with requirements already in the Act. 91 Fed. Reg. 91249. However, in many cases, the Act includes only a broad goal statement, whereas the Performance Standards provide Head Start grant recipients with non-duplicative specific, actionable strategies and timelines to comply with that statutory requirement. For instance, the Act establishes the overarching framework for disability services and collaboration, while the Performance Standards—which HHS proposes to remove—impose granular requirements for screening, accommodating, and integrating children into least restrictive environments. *See infra* Section III(E). HHS also proposes eliminating definitive compliance benchmarks around curricula, behavioral supports, and health screenings, including specific timeframes for screenings and assessments within 45-days or 90-days of enrollment, which are not specified in the Act. *See infra* Section III(D). In several instances, HHS even notes that not all regulations are entirely duplicated in the Act, but proceeds with the elimination anyway, leaving the states and agencies to figure it out in the name of “flexibility.” Far from being duplicative, these standards have historically bolstered compliance and preserved the high quality of comprehensive services delivered to vulnerable children.

c. The Proposed Rule Does Not Return Authority Back to Parents

HHS claims that the proposed changes will return authority to the parents. 91 Fed. Reg. 51249. However, the Proposed Rule will reduce parental engagement with their child’s education and health, by taking away points of contact with the Head Start programs and eliminating many ways in which parents were collaborators in their children’s education. *See infra* Section III(K). Additionally, the Proposed Rule eliminates the mandate for parent committees, which will diminish parents’ voices in shaping local program decisions, building community connections, and supporting their children’s early educational development. *See id.* Additionally, due to the reduction in service duration, reduction in hours of operation will also constrain parents’ and families’ ability to participate in the workforce, thus depriving them of financial autonomy and agency. *See infra* Section III(I). While HHS claims the Proposed Rule “strengthens opportunities for families to make meaningful decisions regarding their children’s education and development,” and “ensures that family engagement is grounded in partnership and shared responsibility,” 91 Fed. Reg. 51249, it actually will lessen such opportunities by removing existing structures and requirements that allow for meaningful parental involvement. As such, the changes are contrary to the stated goal of these proposed regulations.

d. The Proposed Rule Will Make It More Challenging for States to Maintain Accountability

HHS claims that all statutory requirements continued in the Head Start Act remain fully in effect, and that nothing in the Proposed Rule alters or waives statutory obligations. 91 Fed. Reg. 51249-51250. On the contrary, the Proposed Rule fails to appreciate that detailed Performance

Start programs—including small programs that cannot spread their administrative costs over multiple sites—will now need to identify and navigate six sections of the Act to find and comply with these requirements. *See*, 42 U.S.C. § 9839(e) [union neutrality]; § 9839(g)(3) [paying local prevailing wages]; 9848 [paying local prevailing wages]; § 9849 [nondiscrimination on protected statuses]; § 9850 [“unlawful demonstration, rioting, or civil disturbance”]; § 9851 [political activity]; § 9582a [parental consent].

Standards have, for decades, facilitated compliance with statutory requirements. By establishing clear, uniform standards for quality, scope, and types of services provided in Head Start, the Performance Standards allow for mechanisms through which States and programs will be held accountable for meeting these requirements. Clarity and uniformity of the standards are important to establish program quality, address state-to-state disparities, and develop standards for early childhood education overall. Rather than maintain statutory accountability, the proposed rescission of more than 1,400 regulatory requirements threatens to dismantle decades of documented success and exacerbate the core inequities that the Head Start Act was designed to eliminate. Maintaining statutory accountability is thus not a reasoned justification for the proposed change.

To make matters more confusing, HHS promises to issue sub-regulatory guidance on several key regulations at some unspecified future date. *See, e.g.*, 91 Fed. Reg. 51279 (“ACF will provide additional information for recipients on procedures for termination and denial of funding, appeals for prospective delegate agencies, and legal fees in forthcoming sub-regulatory guidance.”); 91 Fed. Reg. 51314 (“ACF intends to issue additional guidance in the future [relating to written personnel policies, background checks, and standards of conduct]”); 91 Fed. Reg. 51316 (“ACF intends to issue sub-regulatory guidance to clarify the relationship between statutory requirements and the proposed regulatory framework”); 91 Fed. Reg. 51271 (“[I]f this proposed rule becomes final, the Secretary would issue policies and procedures to ensure [the Act’s] requirements [to establish policies and procedures that will ensure recipients provide early support services (educational and behavioral) to children who may have disabilities, before a formal IDEA eligibility determination is made and promptly refer children to the appropriate state or local IDEA agency and collaborate to coordinate services for children with special needs] are met.”). This only adds to the uncertainty and confusion faced by Head Start programs, which will impact their ability to comply with the Act. Moreover, it is improper for HHS to use sub-regulatory guidance to effectively amend or replace a legislative rule without notice and comment, especially if the sub-regulatory guidance or policies and procedures that follow the final rule will change Head Start programs’ substantive legal rights or obligations.

For all of these justifications, HHS has failed to give a reasoned explanation for dismantling the fundamental quality protections that have defined Head Start for more than 60 years.

4. The Proposed Rule is Contrary to the Evidence

While HHS frames the elimination of these 1,400 Performance Standards as a measure to “reduce regulations,” early childhood education data suggests that these regulations are the baseline guarantors of service quality. For instance, eliminating federal limits on class sizes, removing mental health consultations, and forcing an English-only curriculum actively ignores a vast consensus of peer-reviewed research detailing the necessity of bilingual support and low-ratio classrooms. *See generally, infra*, Section III. Proceeding with this Proposed Rule means consciously discarding an evidence-based model in favor of an untested, deregulatory framework that places child outcomes at severe risk.

For the above reasons, and for reasons set forth separately below in Section III *infra*, the Proposed Rule is arbitrary and capricious in violation of the APA.

III. Each of the Proposed Changes to the Performance Standards is Unlawful

HHS has proposed to eliminate, with little or no explanation or justification and contrary to science-backed best practices, over 1,400 Performance Standards that the States and Head Start programs throughout the country have relied on in developing services and supports for vulnerable children. These changes will harm children, families, and communities, and, over time, will contribute to classroom closures, site consolidations, reduced enrollment opportunities, and program closures. Because HHS has failed to consider these harms and because many of these changes directly contradict statutory mandates, the proposed changes are unlawful.

A. The Proposed Rule Would Drastically Cut Allowable Administrative Costs and Threatens the Viability of Head Start in the States (Proposed § 1301.14)

Proposed § 1301.14 risks shutting down many Head Start agencies and forcing others to reduce their services by drastically lowering the cap on administrative costs. Under the new rule, “[a]llowable costs to develop and administer a Head Start program cannot exceed 5 percent of the total approved program costs, which includes both Federal costs and non-Federal match,” 91 Fed. Reg. 51320, a reduction from the fifteen percent cap in current 45 C.F.R. § 1303.5(a)(1) authorized by the Act. 42 U.S.C. § 9839. Given that HHS itself found that fewer than one in twenty-five Head Start programs currently operates within this limitation, the new rule is likely to cause many Head Start grant recipients to face significant financial headwinds or even to close, particularly small agencies that cannot spread administrative costs over multiple sites.⁵⁷ This change would be catastrophic for individual Head Start grant recipients, including State grant recipients, and for the viability and success of the Head Start program as a whole.

The administrative cost cap reduction will not “ensure[] that more Federal dollars reach children and families in communities throughout America.” 91 Fed. Reg. 51275. Administrative costs support the infrastructure needed to ensure that Head Start programs can provide vital services to children in a safe environment.⁵⁸ Programs cannot operate without administrative staff to hire teachers, facilitate background checks, ensure compliance with safety standards, and manage finances. Head Start programs already operate on tight budgets and likely will be unable to absorb these costs.⁵⁹ Moreover, the proposed elimination of staff requirements—discussed below in Section III.P—will increase administrative costs as less-qualified staff require more administrative support for training and development. The only way most grant recipients will be able to continue operating under the reduced cap is to dramatically slash services and staffing,

⁵⁷ 91 Fed. Reg. 51298. By HHS’s own analysis, less than one-third of Head Start programs currently operate with an administrative cost below ten percent, and only “[a]pproximately 3.7 percent of Head Start grants currently operate at or below a five percent administrative cost threshold.” 91 Fed. Reg. 51285. Nationwide, the average administrative cost is 11.2%. 91 Fed. Reg. 51298.

⁵⁸ Administrative costs for State Head Start grant recipients include, but are not limited to, Head Start programs’ financial management, grants administration, human resources, information technology, executive oversight, internal controls, procurement, audit support, compliance monitoring, and governance. Administrative costs also include fixed facility costs, communications, displays, technical services, document management software, background checks, consulting, and other professional services.

⁵⁹ See U.S. DEP’T OF TREASURY, THE ECONOMICS OF CHILD CARE IN THE UNITED STATES 15 (Sept. 2021), <https://home.treasury.gov/system/files/136/The-Economics-of-Childcare-Supply-09-14-final.pdf> [<https://perma.cc/3NMX-DQM7>] (noting the razor-thin margins of childcare facilities).

threatening their core mission and ability to maintain statutory compliance. And if programs are unable to restructure their operations or absorb the costs in excess of 5 percent, they face non-renewal of federal funding or, worse, closure of their program and the loss of ECE spaces in the States, as well as lost funding and fewer jobs in the States.

HHS considered a ten percent administrative cost cap, but its analysis was superficial and inadequate. 91 Fed. Reg. 51285. Despite recognizing that “many programs currently operate below the 15 percent cap and closer to the 10 percent level” (*id.*) and that only “3.7 percent of grants currently operate at or below a 5 percent administrative cost threshold . . . 7.9 percent of grants currently operate between 5 percent and 7.5 percent administrative costs, and approximately 19.8 percent operate between 7.5 percent and 10 percent,” HHS did not adopt a ten percent administrative cost cap, which still would harm two-thirds of programs but would allow nearly a third of existing Head Start programs to continue at their current levels without disruption, without an explanation. *Id.*

HHS also considered an exemption for agencies that serve 200 or fewer children but failed to incorporate it into its Proposed Rule. 91 Fed. Reg. 51285. HHS notes that “about half of Head Start grants (about 50 percent) serve 200 or fewer children, representing smaller-scale operations that may have more limited ability to distribute fixed administrative costs across multiple sites or funding streams.” *Id.* Lowering the administrative rate cap could be particularly difficult for rural and geographically isolated Head Start programs, as these agencies may have fewer community resources to draw from and fewer opportunities to consolidate administrative functions. *See* 91 Fed. Reg. 51298-99. Despite recognizing the harms of the five percent administrative costs rate on smaller providers, 91 Fed. Reg. 51285, and having authority from Congress to “establish special or simplified requirements for smaller agencies or agencies operating in rural areas,” 42 U.S.C. § 9839(c), HHS did not adopt alternatives that would be less burdensome, such as exemption of small entities from the new cap, without any explanation. 91 Fed. Reg. 51285.

B. The Proposed Rule’s English-Only Mandate is Contrary to Law, Arbitrary and Capricious, and Harmful to Children (Proposed § 1301.04)

The Proposed Rule sets forth an English-only mandate for instruction and removes longstanding requirements that Head Start programs “recognize bilingualism and biliteracy as strengths and implement research-based teaching practices” that support the development of dual language learners. *See* proposed § 1301.04(a); 45 CFR § 1302.31(b)(2).⁶⁰ Proposed § 1301.04(a) aims to end the ability of Head Start providers to support children in the language they actually understand, requiring infants and children with limited English proficiency to be educated in an English-only environment. *See* 91 Fed. Reg. 51265-51266. The proposed regulation further requires that “[i]f a child’s native language is not English, and does not speak English, a program must prioritize teaching English to the child.” *See* proposed § 1301.04(a)(1). For the reasons set forth below, HHS’s proposed changes would be both contrary to the Act itself and arbitrary and

⁶⁰ HHS also proposes to cut requirements at § 1302.90 (requirements that program staff can effectively communicate with dual language learners). Proposed § 1301.04(a) would require all programs to “conduct all education to children in English,” except for Tribal Head Start programs that educate children in their tribal languages. Proposed § 1301.04(a).

capricious, especially in light of the evidence that bilingual instruction is more effective than English-only instruction for children learning English.

1. The English-Only Mandate is Contrary to Law

The proposed English-only regulation is contrary to law because it is incompatible with the Act's strong support of bilingual education. As even HHS recognizes, the Act itself contains numerous requirements "aimed at supporting children and families with limited English proficiency (LEP)," as defined in 42 U.S.C. § 9832(15), and "Head Start programs will continue to be required to continue to comply with all [statutory] language requirements, for LEP children and their parents." 91 Fed. Reg. 51265.⁶¹ The Act requires HHS to modify, as necessary, standards for LEP children that must include progress toward the acquisition of the English language while also making meaningful progress in broader domains such as language, literacy and math, "including progress made through the use of culturally and linguistically appropriate instructional services." *See* 42 U.S.C. § 9836A(a)(1)(B)(x).⁶² HHS nowhere explains how its proposed requirement to "conduct all education to children in English" would support LEP children "making meaningful progress" in those domains, given the well-understood benefits of bilingual education for LEP children. 42 U.S.C. § 9836A(a)(1)(B)(x). It will not be possible for Head Start programs to provide English-only instruction while also complying with the Act's mandate for culturally and linguistically appropriate education that ensures progress across multiple domains for LEP children.

Further, the Act explicitly requires that certain funds appropriated under the Act "shall be used" to improve the compensation of certain Head Start staff, "in the manner *determined by the Head Start agencies* (including Early Head Start agencies)," such as to "improv[e] the qualifications and skills of educational personnel to become certified and licensed as bilingual education teachers or as teachers of English as a second language." 42 U.S.C. § 9835(a)(5)(A) (emphasis added). This funding mandate requires HHS to approve funding in response to Head Start programs' own determination that bilingual education is the best use of their educational resources. The proposed English-only mandate is incompatible with this statutory requirement.

The English-only mandate is also incompatible with the Act's family engagement mandate and the requirement to provide services in the languages understood by parents of Head Start

⁶¹ HHS further acknowledges, for example, the Act's requirements that programs ensure that assessments are valid, reliable, and appropriately administered for LEP children, with necessary accommodations (42 U.S.C. § 9836A(b)(2)); provide outreach and information to parents of LEP children in a language they can understand, to the extent practicable (42 U.S.C. § 9837(b)(11)); develop procedures to identify LEP children and inform parents about instructional services, including English acquisition (42 U.S.C. 9837(f)(10)), and build workforce capacity through training and technical assistance. *See* 91 Fed. Reg. 51265. In addition, the Act requires all recipients to establish goals and measurable objectives for educational services (42 U.S.C. 9837(f)(10)). *Id.*

⁶² Further, the proposed change is inconsistent with the objective of the Act "to promote the school readiness of low-income children" by enhancing their cognitive, social, and emotional development "in a learning environment that supports children's growth in language, literacy, mathematics, science, social and emotional functioning, creative arts, physical skills, and approaches to learning." 42 U.S.C. § 9831. These educational requirements do not prioritize any particular subject but instead require a broad, holistic, education. Mandating English-only instruction, as proposed in § 1301.04(a)(1), thus conflicts with the purpose of the Act.

children. The Act requires that Head Start agencies “will provide for direct participation of the parents . . . in the development, conduct, and overall program direction at the local level,” 42 U.S.C. § 9833, and provide “family needs assessment[s] . . . in such a manner and language that such parents can understand (to the extent practicable).” 42 U.S.C. § 9837(b)(7). The Act also requires family literacy services, family skills training, substance abuse counseling, and help for parents of limited English proficient children with preparations to transitioning to K-12 education.⁶³ The English-only mandate will threaten Head Start agencies’ ability to effectively provide any of these services to families that do not speak English.⁶⁴

The primary justification HHS advances for the proposed change to English-only instruction is to achieve compliance with Executive Order No. 14224, *Designating English as the Official Language of the United States*, 90 Fed. Reg. 11363 (Mar. 1, 2025) (EO 14224). See 91 Fed. Reg. 51265. But EO 14224 does not mandate the English-only requirement. Instead, EO 14224 instructs that federal agencies are “not required to amend, remove, or otherwise stop production of documents, products, or other services prepared or offered in languages other than English.” 90 Fed. Reg. 11363.

The proposed English-only mandate also places Head Start programs, state agency grant recipients, and school districts that run Head Start programs in the position of being subject to claims for potentially violating other federal laws. For example, under the Equal Educational Opportunities Act of 1974 (EEOA), state and local education agencies must take “appropriate action to overcome language barriers that impede equal participation by students in [their] instructional programs.” 20 U.S.C. § 1703(f). In addition, Head Start grant recipients and programs receive federal funds, so they may have to expend resources to defend against potential claims for discrimination under Title VI of the Civil Rights Act of 1964, which mandates that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. See also *Lau v. Nichols*, 414 U.S. 563, 568 (1974). Imposing the English-only mandate on Head Start programs may also create conflicts with obligations under state laws.⁶⁵ HHS failed to consider harms to states’ sovereign interests in the laws they have enacted for the benefit of their residents.

⁶³ See 42 U.S.C. § 9837(b)(4)-(5) (programs must offer “family literacy services,” “parenting skills training,” and “substance abuse counseling”); 42 U.S.C. § 9837a(a)(7) (programs must “help[] parents of [LEP] children understand the instructional and other services provided by the school in which such child will enroll after participation in Head Start.”).

⁶⁴ When families from language backgrounds other than English encounter language barriers in communications with schools about their children, this undermines their engagement in their children’s learning. See, e.g., Gillian Baxter & Anna Kilderry, “*We are not able to speak English, so we don’t know what is happening:*” *Missed Opportunities for Families’ Engagement in Their Children’s Learning*, 152 TEACHING AND TCHR. EDUC. 104784, 5-8 (2024), <https://www.sciencedirect.com/science/article/pii/S0742051X24003172> [<https://perma.cc/4VV5-5MXH>].

⁶⁵ California, for example, has numerous laws that address discrimination and/or access for non-English speakers. See, e.g., CAL. GOV’T CODE §§ 7292-7293 (every state and local agency that serves a substantial number of non-English speakers must “employ a sufficient number of qualified bilingual persons” to “ensure provision of information and services in the language of the non-English-speaking person”); CAL. EDUC. CODE §§ 220, 210.3 (public and private preschools that receive state funding or enroll

2. The English-Only Mandate is Arbitrary and Capricious

In addition to being incompatible with the Act's requirements, the Proposed Rule is also arbitrary and capricious because HHS has failed to consider (1) the enormous and disruptive impact of the rule, given the large proportion of LEP children in the Head Start program; (2) the extensive research demonstrating the benefits of bilingualism; (3) the extensive research showing that dual language instruction is more effective than English-only instruction for language learners; and (4) the full costs of the changes that would be required to comply with the new English-only mandate.

First, HHS has failed to consider how the English-only mandate would dramatically upend Head Start programs due to the large proportion of LEP children in Head Start. Approximately one-third of Head Start locations serve primarily dual language learners.⁶⁶ Nationally, one-third of children under the age of five are dual language learners, and dual language learners account for an even higher percentage of children in Head Start Preschool (thirty-six percent) and Early Head Start (forty percent).⁶⁷ In California, for example, in 2024-25, Early Head Start, Head Start Preschool, and Migrant and Seasonal programs served over 55,417 dual language learners out of 84,023 total children served. *See* Office of Head Start Program Information Report (PIR) State Level-California 2025. Approximately sixty-five percent of Head Start agencies in California serve primarily dual language learners, and sixty-six percent of children in California Head Start programs are dual language learners. *See* PIR 2024-25. Despite the volume of children and programs that would be impacted, HHS makes no mention of consulting with stakeholders,

students who receive state financial aid may not discriminate on the basis of an individual's immigration status, nationality, race, or ethnicity, among other categories); CAL. CIV. CODE § 51 (businesses in California may not discriminate on the basis of citizenship, immigration status, race, ancestry and national origin, primary language, or any other categories); CAL. GOV'T CODE § 11135(a) and CAL. CODE REGS. TIT. 2, § 14101, subd. (a)(1) (any programs that receive state funding may not discriminate on the basis of actual or perceived ancestry, ethnic group identification, race, or national origin, including a person's primary language or accent, among other categories). Similarly, under New York's Education Law, LEP students "shall receive a program of bilingual education or English as a second language in accordance with standards established by the commissioner." N.Y. Educ. Law § 3204(3); *see also id.* 3204(2), (2-a) (requiring provision of at least three years of instruction to meet needs of LEP students "to enable them to develop academically while achieving competence in the English language"). Moreover, the Education Article of the New York State Constitution guarantees the right to a sound basic education, which has been interpreted by New York's highest court to include ESL programming. N.Y. Const. art. XI, § 1 ("The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."); *Aristy-Farer v. State*, 29 N.Y.3d 501, 514-15 (2017) (allowing claim for violation of art. XI, § 1 based on unsuccessful ESL programs"). Numerous other states also have various laws regarding language access. *See, e.g.,* Hawaii (Haw Rev. Stat. § 321C); Maryland (Maryland Equal Access to Public Services Act, MD. CODE. ANN., STATE GOV'T §§ 10-1101 – 10-1106 (2002)); Minnesota (MINN. STAT. § 15.441).

⁶⁶ *See* 91 Fed. Reg. 51287 ("We estimate that 33.4 percent of non-tribal Head Start service locations ... are operated by programs that primarily serve dual language learners (i.e., at least 50 percent of children in the program speak or are learning a language other than English at home) or where the reported primary language of instruction is not English.").

⁶⁷ Alexandra Figueras-Daniel & Christina Stephens, *An English-Only Mandate for Head Start Will Harm Children*, NAT'L INST. FOR EARLY EDUC. RSCH. 1 (2026), https://nieer.org/sites/default/files/2026-08/head_start_deregulation_brief_dlls [<https://perma.cc/B3CP-N9SU>].

program administrators, or experts in dual language learning to address the upheaval that would result from a dramatic change in educational policy. In addition, the English-only rule would heavily impact Migrant and Seasonal Head Start children, who frequently live in predominantly Spanish-speaking or indigenous language agricultural communities across the United States.⁶⁸

Second, HHS has failed to consider the volume of research confirming the benefits of bilingualism in education. “Bilingualism is associated with a host of positive outcomes—cognitive outcomes in early childhood, academic outcomes during the school years, employment outcomes in adulthood, and even health related outcomes in the later years.”⁶⁹ As the Office of Head Start itself has explained in outlining the “Benefits of Being Bilingual,” “[s]chool readiness and success for children who are dual language learners (DLLs) is tied directly to mastery of their home language,” with bilingual children “develop[ing] more flexible approaches to thinking through problems,” bilingualism “promot[ing] higher levels of abstract thought, which is critically important in learning,” and bilingual children being “better at ignoring irrelevant information, a benefit that seems to exist as early as seven months of age.”⁷⁰ Furthermore, as established by

⁶⁸ Ruth Cosse, *Migrant and Seasonal Head Start Participants, Programs, Families, and Staff in 2016*, CLASP (2017), https://www.clasp.org/wp-content/uploads/2022/01/2017_Head-Start-Fact-Sheet.pdf [<https://perma.cc/ELT7-8B47>].

⁶⁹ Xigrid Soto-Boykin, et al., *Preserving Access and Opportunity in Head Start for Dual Language Learners: A Review of the Science, Legislative Mandates, and Regulatory Requirements*, THE CHILDREN’S EQUITY PROJECT AT ARIZ. STATE UNIV. 1, 3 (Aug. 2026), <https://cep.asu.edu/sites/g/files/litvpz916/files/2026-08/Preserving%20Access%20and%20Opportunity%20in%20Head%20Start%20for%20Children%20Dual%20Language%20Learners%20%20A%20Review%20of%20the%20Science%2C%20Legislative%20Mandates%2C%20and%20Regulatory%20Requirements%20%2811%29.pdf> [<https://perma.cc/A2NR-Q4G4>]; see also Emily J. Serafini, et al., *Academic and English Language Outcomes for DLLs as a Function of School Bilingual Education Model: The Role of Two-Way Immersion and Home Language Support*, 25, no. 2 INT’L J. OF BILINGUAL EDUC. & BILINGUALISM, 552–570 (2022), attached in Appendix; Ilana M. Umansky & Sean F. Reardon, *Reclassification Patterns among Latino English Learner Students in Bilingual, Dual Immersion, and English Immersion Classrooms*, 51(5) AM. EDUC. RSCH. J. 879–912 (2014), attached in Appendix; Jennifer L. Steele, et al., *Effects of Dual-Language Immersion Programs on Student Achievement: Evidence from Lottery Data*, 54(1) AM. EDUC. RSCH. J. 282S–306S (2017), <https://files.eric.ed.gov/fulltext/ED577026.pdf> [<https://perma.cc/EN8Y-468N>]; Ellen Bialystock, *Bilingualism and the Development of Executive Function: The Role of Attention*, 9(2) CHILD DEV. PERS., 117, 117–121 (2015), attached in Appendix.

⁷⁰ U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAMS., OFF. OF HEAD START, NAT’L CTR. ON CULTURAL AND LINGUISTIC RESPONSIVENESS, *The Benefits of Being Bilingual, Planned Language Approaching*, <https://headstart.gov/sites/default/files/pdf/benefits-of-being-bilingual.pdf> [<https://perma.cc/V54L-DFR3>], citing Nancy Zelasko & Beth Antunez, *If Your Child Learns in Two Languages*, NAT’L CLEARINGHOUSE FOR BILINGUAL EDUC. (2000), <https://files.eric.ed.gov/fulltext/ED447713.pdf> [<https://perma.cc/X7WT-PP8A>]; Rafael M. Diaz, *The Intellectual Power of Bilingualism*, SW. HISP. RSCH. INST. AT UNIV. OF N.M. (1984), https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1016&context=shri_publications [<https://perma.cc/6HBX-N6B5>]; Agnes Melinda Kovács & Jacques Mehler, *Cognitive Gains in 7-Month-Old Bilingual Infants*, 106(16) PROCEEDINGS OF THE NAT’L ACAD. OF SCI., 6556–6560 (2009), <https://www.pnas.org/doi/10.1073/pnas.0811323106> [<https://perma.cc/YK36-GSM2>].

“recent research ... children raised in bilingual households show better self-control ... which is a key indicator of school success.”⁷¹

Third, HHS has failed to consider the plentiful evidence that LEP children learn best when they are supported in their language of origin. LEP children who receive high quality instruction in both their home language and English outperform their LEP peers who receive English-only instruction across a number of domains, including scores in math and reading, and have better English-language acquisition trajectories than their counterparts.⁷² Thus, the “best way to capture and optimize the asset of bilingualism is through access to dual language education, where children receive instruction and exposure to their home language, alongside English.”⁷³ Further, based on its extensive research regarding state funded preschool programs and its review of other studies and evidence, the National Institute for Early Education Research (NIEER) has concluded that if Head Start mandates English-only instruction and removes supports for bilingual children, it “will become less effective with a population for which it has produced especially strong results in the past.”⁷⁴

In proposing to cut current regulations requiring research-based support for bilingualism and home-language learning alongside English acquisition, HHS fails to acknowledge the research regarding the educational benefits of bilingualism or to cite to any research to support monolingual education for LEP children.⁷⁵ See 91 Fed. Reg. 51265-51266. This failure is not only irrational—it is also in contravention of the Act itself, which requires Head Start programs to “implement a research-based early childhood curriculum” that is “based on scientifically valid research.” See 42 U.S.C. § 9837(f)(3).

Finally, HHS’s estimations of the one-time financial costs associated with the requirement for English-only education both appear too low and reflect an expected purge of educational materials and staff that is inconsistent with the Act’s requirements “aimed at supporting children and families with limited English proficiency (LEP).” 91 Fed. Reg. 51265. The RIA reveals a wasteful and detrimental elimination of bilingual materials and educators that is contrary to the Act’s support for bilingual education as well as the best interests of the children and families served by Head Start. The RIA calculates that 18,767 classrooms would spend approximately \$2,500 each to replace educational curricular and educational toys and books “that have words” in non-English languages to comply with the English-only requirement. See 91 Fed. Reg. 51287. Read holistically, the descriptions of expected one-time costs suggest a purge of curricula and educational materials in languages other than English, along with a purge of educators capable of supporting learning and communications in languages other than English. However, HHS’s estimates of the financial

⁷¹ *Id.*, citing Kovács & Mehler, *supra*, note 70, at 6556–6560.

⁷² Meek, et. al., *supra* note 52; Steele, et al., *supra*, note 70.

⁷³ Soto-Boykin, et al., *supra*, note 69, at 3; Natalie L. Bohlmann, et al., *Academic Outcomes of English Learners in Monolingual and Dual Language Programs*, 101 J. OF APPLIED DEV. PSYCH. (2025), attached in Appendix.

⁷⁴ Figueras-Daniel & Stephens, *supra*, note 67, at 1-2.

⁷⁵ Consistent with the extensive research and studies, the current regulations require programs to “recognize bilingualism and biliteracy as strengths and implement research-based teaching practices that support their development,” with requirements to support both “the development of the home language” and English-language exposure, for infants and toddlers, and to follow “teaching practices that focus on both English language acquisition and the continued development of the home language,” for preschool age dual language learners.” § 1302.31(b)(2).

costs are too low as these figures only include classrooms where at least half of enrollees are dual language learners. *Id.*

The RIA further estimates that a third of teachers are in classrooms serving a significant population of English language learners,⁷⁶ and fifty percent of those teachers will require either retraining or replacement. *Id.* The RIA acknowledges that “some programs may need to make significant changes to classroom staffing to comply with this proposed requirement” for English-only instruction. *Id.* HHS estimates it will cost \$3,000 per teacher for retraining or recruitment. *Id.*⁷⁷ But HHS does not attempt to calculate the full cost of the English-only requirement on children’s outcomes or welfare: “HHS recognizes that English-only instruction may result in additional costs or burden not described here for programs serving dual language learners or operating in predominantly non-English-speaking communities.” 91 Fed. Reg. 51288. HHS further acknowledges that “reduced language capacity” from not hiring staff that speak languages other than English “may negatively affect communication with non-English speaking families and weaken family engagement.” 91 Fed. Reg. 51314.⁷⁸

Congress’s own mandate, along with decades of research on language learning, support Head Start’s current bilingual education policies. Directing grant recipients to cease the educational practices that best support children’s learning is both contrary to law and arbitrary and capricious.

C. The Proposed Rule Will Limit Eligibility, Enrollment, and Attendance for Vulnerable Children and Families, Placing Pressure on State Resources and Education Systems (Proposed 34 C.F.R. §§ 1302.02, 1302.03)

The changes to Head Start eligibility determinations contained in proposed § 1302.02 and attendance and enrollment rules at proposed § 1302.03 will unnecessarily limit families’ ability to participate in Head Start and will particularly impact families and children who are most in need and would benefit most from the program, including children experiencing homelessness or who are in foster care, children in rural communities, and children of families engaged in migrant or seasonal agricultural labor. When these children lose out on early education and intervention

⁷⁶ See 91 Fed. Reg. 51287 (“[A]n estimated 34,464 [out of 103,186] teachers and assistant teachers are in potentially affected classrooms.”).

⁷⁷ HHS assumes “a per-teacher retraining or recruitment cost of \$3,000 reflecting moderate targeted professional development (e.g., English-language instruction training and support), or recruitment process expenditures (e.g., job board posting, screenings and interviews, onboarding, overhead).” *Id.* While the Centers for Medicare & Medicaid Services (CMS), “assumed recruitment and hiring costs of approximately \$5,000 per worker” based on “estimates of direct hiring costs and recruitment expenditures,” HHS stated that it used a reduced estimate because “the proposed rule anticipates that some affected teachers would be retained and retrained rather than replaced.” *Id.*

⁷⁸ HHS considered the alternative of delaying the compliance timeline by five years for “provisions that may prompt substantial transition costs,” including the English-only instruction requirement, but failed to incorporate it in its Proposed Rule. 91 Fed. Reg. 51304-51305. This rule should not go into effect at all, but if it does, there is little reason to command compliance with the English-only mandate immediately, especially since it will be so burdensome and detrimental to programs. In fact, HHS’s own reasoning supports a delayed compliance timeline, as it acknowledges that “[u]nder this alternative, affected programs would have additional time to adjust staffing, curriculum, and administrative structures prior to compliance.” *Id.* at 51305.

services that would have been provided by Head Start, the States will have increasing costs over time due to the need to increase state childcare and health resources, manage undiagnosed disabilities and health issues, and catch children up in school.

1. Income Eligibility and Self-Attestation

Proposed regulation § 1301.02 would eliminate the option for “self-attestation” when families cannot provide tax forms, pay stubs, or other proof of income to verify Head Start eligibility. Currently, approximately eight percent of children enrolled in Head Start nationally have self-attested to eligibility.⁷⁹ The families most impacted by this rule change will be among the most vulnerable children and families participating in Head Start, including those with informal or no employment, those who are homeless and lack a mailing address or easy access to records, and those whose employment is seasonal or precarious or who have reason to hesitate to ask their employers to confirm income. Without the flexibility to self-attest to income, many of these families will lose access to Head Start.⁸⁰ HHS argues that this change would “strengthen risk reduction strategies and mitigate the misuse of funds.” 91 Fed. Reg. 51262. But HHS presents no evidence that any funds have been misused as a result of the self-attestation rule, which also requires agency staff to make and document efforts to verify income, nor that false attestations are a significant enough problem to justify eliminating up to eight percent of children enrolled in the program.⁸¹ As a result, many such children whose caregivers cannot provide appropriate documentation will be shifted into state childcare systems or will miss out on such care altogether, likely adding to the States’ costs over their lifetime due to the absence of early intervention and support.

Proposed regulation § 1301.02 would also remove the allowance for programs to adjust the income calculations for families who spend more than thirty percent monthly income on housing. The high cost of housing is a growing problem for American families.⁸² If families that spend disproportionately on housing can no longer account for the portion of their household budget that housing costs carve away each month, vulnerable children whose families are functionally low-

⁷⁹ 91 Fed. Reg. 51307.

⁸⁰ The agency “acknowledges that some families, such as those experiencing homelessness, may have a more challenging time providing such documentation, and programs may have to support such families more closely through the enrollment process.” 91 Fed. Reg. 51307. As discussed further below, this acknowledgment does not meet the Head Start Act’s requirement to set regulations that ensure homeless children can enroll in Head Start while families obtain documents, or, for public agencies subject to the McKinney-Vento Act, that children can enroll “immediately.”

⁸¹ The agency states that approximately 7.6% of child files reviewed documented “self-declared income or declaration of zero income, signed by family,” but that monitoring data did “not indicate what portion of these files are false attestations in which a family or staff member intentionally violated Head Start eligibility requirements.” 91 Fed. Reg. 51307. The agency therefore assumes “that approximately eight percent of children may currently be enrolled in Head Start would otherwise no longer be eligible for enrollment under this proposed policy change, unless their family can submit alternative acceptable documentation to demonstrate they meet an allowable eligibility criterion.” *Id.*

⁸² Peyton Whitney, *Housing Unaffordability Soared to New Highs in 2024*, JOINT CTR. FOR HOUS. STUD. AT HARVARD UNIV. (Feb. 4, 2026), <https://www.jchs.harvard.edu/blog/housing-unaffordability-soared-new-highs-2024> [<https://perma.cc/8BJ8-J5PH>].

income because of their housing burden⁸³ will be rendered ineligible for Head Start. Eliminating the previous guidance will be a particular burden for families such as those in California and Hawai'i, who struggle under the burden of housing costs much higher than the national average.⁸⁴ This, too, might shift children in high cost of living areas into state childcare systems at great cost to the States, or force parents out of the workforce, impacting state economies and tax revenues.

2. Verifying Homelessness

HHS eliminates the standard at 45 C.F.R. § 1302.12(i)(3) outlining the methods agencies may use to document whether a family is homeless, including self-attestation. 91 Fed. Reg. 51319.⁸⁵ HHS explains that this “would allow programs flexibility in documenting homelessness, but self-attestation would no longer meet eligibility requirements.” 91 Fed. Reg. 51262. But proposing simply to treat children experiencing homelessness “in accordance with the Act,” *id.* at 51319, while prohibiting self-attestation, fails to meet the requirement in the Act to *issue rules that remove barriers* to the enrollment and participation of homeless children, 42 U.S.C. § 9835(m), including with respect to participating while documents are being obtained.⁸⁶ Instead, the Proposed Rule would leave programs to fend for themselves in making this determination, which will likely erect—not remove—barriers to homeless children attempting to access Head Start. That will result in homeless children increasingly being pushed into state childcare systems at great cost to the States or missing critical windows for early education and intervention, again increasing the cost to the States.

⁸³ Whitney Airgood-Obrycki, et al., *The Rent Eats More: Residual Income Housing Cost Burdens from 2019–2023*, JOINT CTR. FOR HOUS. STUD. AT HARVARD UNIV. (2025), https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_airgood-obrycki_et_al_renter_residual_income_2025.pdf [<https://perma.cc/A278-3SS8>].

⁸⁴ *How Many Households in California Spend Too Much on Housing?*, USA FACTS (June 11, 2026), <https://usafacts.org/answers/how-many-households-in-the-united-states-spend-too-much-on-housing/state/california/> [<https://perma.cc/N6XW-MF76>]; *How Many Households in Hawaii Spend Too Much on Housing?*, USA FACTS (June 11, 2026), <https://usafacts.org/answers/how-many-households-in-the-united-states-spend-too-much-on-housing/state/hawaii/> [<https://perma.cc/HP3F-34G2>].

⁸⁵ The Proposed Rule does not clarify whether agencies may still use the other methods to verify homelessness that would now be cut from existing regulations, creating confusion for Head Start grant recipients. *See* 45 C.F.R. § 1302.12(i)(3). Similarly, the Proposed Rule eliminates the definition of homeless children (previously defined to comport with the McKinney-Vento Act). *See id.* §§ 1305.2, 1302.12(c)(iii). It is not clear how Head Start agencies should now define homelessness.

⁸⁶ Head Start agencies are required to “implement policies and procedures to ensure that homeless children are identified and prioritized for enrollment” and “allow families of homeless children to apply to, enroll in, and attend Head Start programs while required documents, such as proof of residency, immunization and other medical records, birth certificates, and other documents, are obtained within a reasonable time frame.” 42 U.S.C. § 9835(m). Relatedly, the McKinney-Vento Act requires ECE programs administered by local educational agencies (LEAs) receiving funds to enroll homeless children immediately, even if they lack documents typically required for enrollment, including birth certificates, health records, and proof of residency. 42 U.S.C. § 11432(g)(3)(C). As written, the proposed eligibility rules appear to require Head Start agencies covered under the McKinney-Vento Act to violate their statutory obligation to immediately enroll children experiencing homelessness.

The need for a flexible approach to verifying eligibility for homeless participants in federally funded programs is well understood in federal policy.⁸⁷ This is particularly crucial for young children, as homelessness during infancy and early childhood has been linked to longer term delays and achievement gaps related to social-emotional skills, academic achievement, and engagement.⁸⁸ In California, Head Start and Early Head Start programs served 8,847 children and pregnant women experiencing homelessness.⁸⁹ Quality ECE, including the full range of comprehensive services that have been the hallmark of Head Start, is critical for this population, and the barriers to participation the Proposed Rule would erect are both contrary to law and harmful to children, families, and the States.

3. Attendance and Enrollment

Under proposed § 1301.03, programs would no longer be allowed to reserve a seat for a homeless child or a child in foster care or guarantee that a child experiencing homelessness or in foster care can remain enrolled in Head Start if they move and can no longer explicitly permit homeless children to attend for 90 days without required records.⁹⁰ See 91 Fed. Reg. 51319; 45 C.F.R. § 1302.15(b)(3). HHS contends that the proposed requirements of § 1301.03 “would *reduce* the current burden on enrollment and attendance,” 91 Fed. Reg. 51263 (emphasis added), but eliminating these flexibilities for homeless children is likely to *increase* the burden for such children to enroll in and attend Head Start. Parents of homeless children are likely to experience challenges obtaining documentation of immunization and other required records. No longer permitting such children to retain their seats or continue attending while records are obtained is likely to result in such children losing access to Head Start, with all the attendant harms resulting therefrom. HHS’s failure to acknowledge the expected burden on homeless families is arbitrary and capricious and not otherwise explained. This will result in homeless and foster children pushed into state childcare systems at great cost to the States or will leave children without quality childcare or early intervention and increase States’ costs for their education and health care over time.

⁸⁷ See, e.g., U.S. GOV’T ACCOUNTABILITY OFF., GAO-24-105435, HOMELESSNESS: BARRIERS TO OBTAINING ID AND ASSISTANCE PROVIDED TO HELP GAIN ACCESS (2024), <https://www.gao.gov/products/gao-24-105435> [<https://perma.cc/HC56-WHFX>] (explaining that “[h]omeless individuals often lack a reliably safe place to store IDs and other important personal documents, making these items subject to loss, destruction by the elements, and theft. . . . Once [] documents are lost, replacing them can be especially difficult.”)

⁸⁸ Benjamin Brumley et al., *The Unique Relations Between Early Homelessness and Educational Well-Being: An Empirical Test of the Continuum of Risk Hypothesis*, 48 CHILD. & YOUTH SERVS. REV. 31, 31–33 (2015), attached in Appendix; Mary E. Haskett, Jenna Montgomery Armstrong & Jennifer Tisdale, *Developmental Status and Social-Emotional Functioning of Young Children Experiencing Homelessness*, 44 EARLY CHILDHOOD EDUC. J. 119 (2015), attached in Appendix.

⁸⁹ Office of Head Start Program Information Report (PIR) State Level-California 2025 (attached in Appendix).

⁹⁰ Proposed § 1301.03 omits the current requirements for supporting attendance of homeless children, including permitting a “child to attend for up to 90 days or as long as allowed under state licensing requirements, without immunization and other records, to give the family reasonable time to present these documents” or obtain immunization in compliance with state requirements. See 45 C.F.R. § 1302.16(c).

4. Age Verification

Proposed § 1301.02 eliminates the current rule that a program’s policies and procedures cannot require documentation to confirm a child’s age if doing so creates a barrier for the family to enroll the child. 91 Fed. Reg. 51263; *see* 45 C.F.R. § 1302.12(h). HHS acknowledges that it lacks data on children currently enrolled without such documentation, but “expects important benefits” from the proposed change, namely, “strengthen[ed] program integrity.” 91 Fed. Reg. 51308. HHS offers no evidence that *any* Head Start programs anywhere have enrolled children who do not meet statutory age requirements, much less at a level that justifies the removal of flexibility needed for families who lack ready access to birth certificates and other documentation, including those experiencing homelessness. As with self-attestation and homelessness verification, this change will harm the most vulnerable families and violates the Act’s requirement to remove barriers to enrollment and participation of homeless children, and, for relevant public agencies, conflicts with requirements under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 *et seq.*⁹¹ This too will result in children increasingly pushed into state childcare systems at great cost to the States, or will leave children without quality early education, resulting in children entering school with less preparation and requiring more state resources.

5. Duration of Eligibility for Infants and Toddlers

Proposed § 1301.02 reduces the duration of eligibility for infants and toddlers in Early Head Start or Migrant and Seasonal Head Start programs by eliminating the provisions that (1) children who are enrolled in Early Head Start remain eligible while they participate in the program, and (2) if a program operates a Migrant and Seasonal Head Start program, children younger than age three participating in the program remain eligible until they turn three years old. *See* 91 Fed. Reg. 51319; 45 C.F.R. §§ 1302.12(j)(2), (5). The agency does not provide a reason for changing its longstanding interpretation that the Act requires additional flexibility for Early Head Start participants.⁹² Nor has HHS weighed the supposed—but unexplained—benefits of requiring reverification twice over the first three years of a child’s life against the likelihood that some eligible families will not be able to complete the requirements and lose access to the program.⁹³ This is of particular concern for the Migrant and Seasonal Head Start programs, which by their very nature serve families that are transient, may lack long-term, formal employment, and may

⁹¹ The McKinney-Vento Homeless Assistance Act mandates all states ensure “equal access to the same free, appropriate . . . public preschool education[] as provided to other children and youths” including by addressing barriers confronting homeless children presented by regulations, policies, or procedures. 42 U.S.C. § 11431.

⁹² For almost thirty years, ACF has interpreted the Act to require additional flexibility for Early Head Start participants. When enacting the current rule, ACF and HHS explained that such children remain eligible “[i]n order to assure continuity of services,” and to meet the intent of section 645A of the Head Start Act. 63 Fed. Reg. 12653, 12656 (Mar. 16, 1998).

⁹³ Even American families with young children who do not experience the challenges that transient migrant and seasonal families face struggle with the “paperwork barrier” that can lock them out of services. *See* Alyssa Rosenberg, *Parents Are Drowning in Paperwork. That’s a Real Problem.*, WASH. POST (Feb. 21, 2024), <https://www.washingtonpost.com/opinions/2024/02/21/parents-children-how-to-reduce-paperwork/> [<https://perma.cc/87UD-3K3F>]; Bianca Vázquez Toness, *These Kids Want to Go to School. The Main Obstacle? Paperwork*, ASSOCIATED PRESS (Dec. 18, 2023), <https://thehill.com/homenews/ap/ap-u-s-news/ap-these-kids-want-to-go-to-school-the-main-obstacle-paperwork/> [<https://perma.cc/7P5Y-6H6M>].

have a harder time accessing necessary records to prove eligibility.⁹⁴ That will result in infants and toddlers increasingly being pushed into state childcare systems at great cost to the States.

6. Blanket Mandate to Report Violations

Proposed § 1301.02(f) would create a new mandate that programs must report *any* staff member who contravenes the prescribed eligibility regulations directly to HHS, replacing the current regulation at 45 C.F.R. § 1302.12(l) requiring programs to develop and implement their own policies and procedures for handling *intentional* violations of program eligibility regulations. *See* 91 Fed. Reg. 51262. This proposal will inevitably increase demands upon the capacity-squeezed HHS administrative structure to investigate alleged violations,⁹⁵ diverting resources from more serious or systemic violations. Despite the Proposed Rule's purported overarching purpose to increase flexibility for programs, the mandate will remove program flexibility in addressing mistakes through supervision and training and might expose programs to the risk of arbitrary enforcement action.

Proposed § 1301.02 would eliminate a number of other eligibility regulations that offered clarity for Head Start programs.⁹⁶ *See* 91 Fed. Reg. 51263. Without these rules, programs will

⁹⁴ *See* Sara Rosenbaum & Peter Shin, *Migrant and Seasonal Farmworkers: Health Insurance Coverage and Access to Care*, THE HENRY J. KAISER FAM. FOUND. (Apr. 2005), <https://www.kff.org/wp-content/uploads/2013/01/migrant-and-seasonal-farmworkers-health-insurance-coverage-and-access-to-care-executive-summary.pdf> [<https://perma.cc/A35Y-9BHN>]; O. Acosta Price, T. Karim & B. Mahtabfar, *Children of Migrant Workers: Supporting the Invisible Student*, CTR. FOR HEALTH & HEALTH CARE IN SCHS. (2024), https://healthinschools.gwu.edu/sites/g/files/zaxdzs6156/files/2024-04/phhs-2324-15-design-of-a-policy-brief_v4b_final.pdf [<https://perma.cc/GK9X-E2RD>]; Camilo Montoya-Galvez et al., *Accounts of Migrants' Documents Being Confiscated by Border Officials Prompt Federal Review*, CBS NEWS (Nov. 7, 2022), <https://www.cbsnews.com/news/immigration-migrants-documents-confiscated-border-officials/> [<https://perma.cc/6RR3-55RR>]; Paula Andalo, *They Harvest the Nation's Food, But a New Rule May Strip Them of Health Insurance*, KFF HEALTH NEWS (July 10, 2026), <https://kffhealthnews.org/insurance/agricultural-workers-medicaid-eligibility-immigration-food-harvest/> [<https://perma.cc/6SEQ-Z6D3>].

⁹⁵ Proposed § 1301.02(f) would require Head Start programs to report any suspected violations to their Office of Head Start Regional Office, which may or may not have capacity to address complaints. *See* Allie Schneider, *Closures of Head Start Regional Offices Jeopardize Critical Services for Children and Families*, CTR. FOR AM. PROGRESS (Apr. 29, 2025), <https://www.americanprogress.org/article/closures-of-head-start-regional-offices-jeopardize-critical-services-for-children-and-families/> [<https://perma.cc/73PT-KRNS>]. If regional offices could not absorb a new stream of (founded and unfounded) complaints, the already-overburdened HHS Office of Inspector General would likely struggle to address them at a national level. *See* U.S. DEP'T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAM., OFF. OF HEAD START, *Navigating Audits and Investigations with the HHS Office of Inspector General* (Dec. 6, 2024), <https://www.headstart.gov/video/navigating-audits-investigations-hhs-office-inspector-general> [<https://perma.cc/2D8T-K3JP>] (“[T]he OIG hotline receives thousands, tens of thousands, sometimes hundreds of thousands of submissions annually. They are required to evaluate each one . . . When they do that, sometimes something may have merit, but they don’t conduct an investigation because just like all of us, they have limited resources, limited staff, limited bandwidth.”).

⁹⁶ Proposed changes include removing the detailed list of records each program should retain to document participant eligibility verification at 45 C.F.R. § 1302.12(k) and replacing it with vague

struggle to understand how HHS will judge their compliance with the Act, and state HSCOs will incur costs in attempting to provide clarity where the Proposed Rule has eliminated it.

D. The Proposed Rule Will Jeopardize Children’s Health Outcomes and Increase the States’ Health Care Costs by Eliminating Standards for Screenings and Family Support Services (Proposed § 1301.08)

HHS proposes to gut detailed guidelines for medical, vision, dental, and developmental screenings for children.⁹⁷ This includes eliminating current requirements for vision, hearing, behavioral, and developmental screenings within the first 45 days of attendance, as well as requirements to assess a child’s medical and dental health status within 90 calendar days of the entry into the program. *See* 91 Fed. Reg. 51269; 45 C.F.R. §§ 1302.33, 1302.42. The Act mandates that Head Start programs “use research-based developmental screening tools,” 42 U.S.C. § 9837(f)(6), and “establish goals and measurable objectives for health . . . services,” *id.* § 9837(f)(9), but without any regulatory standards on timing of these services, such screenings may be conducted too late to provide appropriate intervention and support.⁹⁸

instruction to retain “any documents or official statements that are deemed necessary to verify eligibility”; removing the comprehensive set of provisions for program staff training on eligibility requirements at § 1302.12(m); omitting the eligibility determination process requirements at § 1302.12(a); and removing the word “potentially” from the statutory requirement that children be eligible if families would or, in the absence of child care, would potentially be eligible for public assistance at § 1302.12(c)(iii) and 42 U.S.C. § 9840(a)(1)(B)(i). Some provisions proposed for deletion still exist in statute but now programs must separately reference the statute and regulations, creating additional burden and confusion for resource-strapped grant recipients. *See, e.g.,* 42 U.S.C. § 9840(a)(1)(B)(iii)(I) (flexibility to enroll up to ten percent of children whose family income is over the income threshold); *id.* § 9840(a)(1)(B)(iii)(II) (flexibility to enroll up to thirty-five percent of children whose family income is between 100 and 130% of the federal poverty line); Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, 138 Stat. 460 (2024) (flexibility in eligibility requirements for Indian Tribes and Migrant or Seasonal Head Start); 42 U.S.C. § 9840(a)(2) (flexibility for programs serving communities with 1,000 or fewer individuals to establish their own criteria for eligibility).

⁹⁷ These regulations, *inter alia*, require programs to provide enrolled children with “high-quality health, oral health, mental health, and nutrition services,” 45 C.F.R. § 1302.40(a); determine whether enrolled children have a source of ongoing health care and health insurance, and assist parents in obtaining such for children if not, *id.* § 1302.42(a); use program funds to provide diapers and formula for enrolled children during the program day, thereby ensuring those costs and needs are not a barrier to attendance, *id.* § 1302.42(e); assist children with teeth with daily teeth-brushing, *id.* § 1302.43; and provide support for mental health and well-being of enrolled students, their families, and staff at programs, including on-site mental health consultants, *id.* § 1302.45.

⁹⁸ For example, the American Academy of Pediatrics recommends developmental screenings at 9-month, 18-month, and 30-month well child visits, as well as autism spectrum disorder screenings at 18-month and 24-month visits. *American Academy of Pediatrics: Universal Screening Urged for Developmental Delays*, AM. ACAD. OF PEDIATR. (Dec. 16, 2019), <https://www.healthychildren.org/English/news/Pages/Identifying-Developmental-Disorders-Through-Surveillance-and-Screening.aspx> [<https://perma.cc/U474-LB3Q>]. A child enrolled in Head Start who does not promptly receive screening is more likely to miss these critical milestones and the intervention and support needed to address issues.

In proposed § 1301.08, HHS also eliminates detailed obligations regarding family support services, including medical, oral, and mental health education support services, and the requirement that such support be “understandable to individuals, including individuals with low health literacy.” *See* 45 C.F.R. § 1302.46(a). This includes eliminating, for example, obligations to help families learn about preventative medical and oral care, home hazards such as unsafe sleep and lead exposure, parental mental health, accessing health insurance, understanding diagnoses and treatment plans, and vehicle safety. *Id.* § 1302.46(b). In proposed § 1301.08(a), HHS rejects these in favor of a single prescription that program staff discuss children’s nutritional status, “including the importance of physical activity and healthy eating, and the negative health consequences of sugar-sweetened beverages and grain-based desserts, as well as how to select and prepare nutritious foods that meet the family’s nutrition and food budget needs.” 91 Fed. Reg. 51319. Congress designed Head Start with a strong emphasis on family support services as a core function of Head Start agencies. *See* 42 U.S.C. § 9837(b). HHS fails to explain why it has found preaching avoidance of grain-based dessert more beneficial to families in Head Start than helping them to find preventative health care, access health insurance, avoid lead exposure, or any of the other gutted requirements.⁹⁹ This change will harm children and families and does not align with the 2007 Performance Standards nor with the Act’s emphasis on whole family support as a component of children’s wellbeing. *See supra* Section II.A.

Together, the Proposed Rule’s changes related to screening and family support services will have cascading effects on children’s health as a result of delayed treatment.¹⁰⁰ Intervention to

⁹⁹ HHS only notes that the proposal “retains the core principles of Head Start to engage families and provide for the health, nutrition and well-being of children and families” and emphasizes nutrition “in contrast to the otherwise de-regulatory approach of this [proposed rule],” 91 Fed. Reg. 51269, and that “[m]any mental Health regulations were introduced in a 2024 final rule” which HHS, after just two years, now believes are “overly prescriptive.” *Id.* at 51270; *see also id.* at 51312 (describing requirements related to family support services for health and mental health as “overly prescriptive”). The Proposed Rule also removes the requirement for on-site mental health consultants, *see* 45 C.F.R. §§ 1302.45, 1302.80, which is also without adequate justification and will lead to the dismantling of available mental health and trauma support for vulnerable children.

¹⁰⁰ Nat’l Acad. of Sci., Eng’g, & Med., *Launching Lifelong Health by Improving Health Care for Children, Youth, and Families*, NAT’L ACADEMIES PRESS 1, 287 (Tina L. Cheng & James M. Perrin eds., 2024), https://nap.nationalacademies.org/resource/27835/Healthcare_Report_Highlights.pdf [<https://perma.cc/T2LF-PJS8>] (Documenting the findings from a committee of members including physicians, nurses, community health center providers, economists, and health care financing experts. The committee notes: “Head Start and Early Head Start have notable direct impacts on children’s health outcomes. Compared with children who are not receiving these services, children enrolled in Early Head Start are more likely to be immunized and have access to services for their disabilities Those in Head Start are more likely to receive dental checkups . . . and have improved oral health knowledge, behaviors, and activities Children with obesity, overweight, or underweight are more likely to have a healthier body mass index by kindergarten In addition, Head Start has been shown to improve mental health outcomes”) (internal citations omitted); *see also* Anna Farr, Cary Lou & Hannah Sumiko Daly, *How Do Children and Society Benefit from Public Investments in Children?*, URBAN INST. (Sept. 4, 2024), <https://www.urban.org/research/publication/how-do-children-and-society-benefit-public-investments-children> [<https://perma.cc/9LFG-4G5E>] (noting the most positive return on investment, “some [of which] also eventually pay[ing] for their cost—and more—to government through increased tax revenues and decreased spending on criminal justice and public assistance programs for adults,” comes from *early* funding for childcare, health care, nutrition, and education for children).

support children with developmental delays is most impactful when such delays are identified early.¹⁰¹ Early intervention is aligned with the recommendation of pediatricians, who strongly urge early intervention for infants and young children with developmental delays, disabilities, or adverse childhood experiences (ACEs).¹⁰² Despite the importance of early intervention, children and families who are Head Start-eligible face significant barriers in obtaining early evaluation and services.¹⁰³ Families in rural areas face even greater challenges due to limited access to specialists, longer travel distances, and fewer early intervention services.¹⁰⁴ Under the current standards for screenings and family support, Head Start serves a critical role in addressing these gaps and barriers; in 2023-24, 570,172 Head Start children were up-to-date on early and periodic screening, diagnostic and treatment screenings.¹⁰⁵

The costs of cutting these standards will be borne both by families and the States.¹⁰⁶ For example, without developmental screenings previously required within 45 days by 45 C.F.R. § 1302.33, a child may go months or years before delays or other concerns are brought to the attention of health care providers. Missing early detection windows means children miss critical periods for speech, behavioral, and motor development, among other areas.¹⁰⁷ Untreated developmental delays often translate into lower academic achievement, reduced future earning potential, and a heavier reliance on public health and social support systems.¹⁰⁸ HHS has entirely failed to consider these costs.

¹⁰¹ *Head Start Advantage: Investments That Work*, NAT'L HEAD START ASS'N, <https://nhsa.org/resource/head-start-advantage-investments-that-work/> [<https://perma.cc/8X67-DTU5>].

¹⁰² Paul H. Lipkin & Michelle M. Macias, Council on Child. with Disabilities, *Promoting Optimal Development: Identifying Infants and Young Children with Developmental Disorders Through Developmental Surveillance and Screening*, 145 PEDIATR. 1 (2020), <https://publications.aap.org/pediatrics/article/145/1/e20193449/36971/Promoting-Optimal-Development-Identifying-Infants> [<https://perma.cc/Y2M5-S6L5>]; Sukhdip K. Purewal et al., *Screening for Adverse Childhood Experiences (ACEs) in an Integrated Pediatric Care Model*, 36 ZERO TO THREE J. 10 (2016), https://www.zerotothree.org/wp-content/uploads/2022/06/Connecting-Science-Policy-and-Practice_-2015-16-Jan-Digital-Journal-Issue.pdf#page=12 [<https://perma.cc/WRS7-W6WW>].

¹⁰³ U.S. DEP'T OF HEALTH & HUM. SERVS. & U.S. DEP'T OF EDUC., *Policy Statement on Inclusion of Children with Disabilities in Early Childhood Programs* 3 (Nov. 2023), <https://acf.gov/sites/default/files/documents/ecd/policy-statement-on-inclusion.pdf> [<https://perma.cc/D38L-B9CF>] (“[Y]oung children with disabilities and their families continue to face significant barriers to accessing and participating in inclusive high-quality early childhood programs.”).

¹⁰⁴ Shantel Meek, et al., *Head Start's Footprint: A Focus on Rural Communities, Children with Disabilities and Vital Health Services*. THE CHILDREN'S EQUITY PROJECT AT ARIZ. STATE UNIV. (May 2025), <https://cep.asu.edu/resources/HeadStartsFootprint> [<https://perma.cc/A5HL-WQH3>].

¹⁰⁵ Office of Head Start Program Information Report (PIR) data, NAT'L HEAD START ASS'N (2025), <https://headstart.gov/sites/default/files/pdf/2025-2026-hs-pir-change-highlights.pdf> [<https://perma.cc/E2P3-3HZG>].

¹⁰⁶ See, also, Kimberly W. McDermott & H. Joanna Jiang, *Characteristics and Costs of Potentially Preventable Inpatient Stays*, 2017, HLTHCAR. COST AND UTILIZATION PROJ. (2020), <https://hcup-us.ahrq.gov/reports/statbriefs/sb259-Potentially-Preventable-Hospitalizations-2017.jsp> [<https://perma.cc/T9YE-RZBM>].

¹⁰⁷ U.S. DEP'T OF HEALTH & HUMAN SERVS., CTRS. FOR DISEASE CONTROL & PREVENTION, *Why Act Early if You're Concerned about Development?* (Feb. 16, 2026), <https://www.cdc.gov/act-early/families/why-act-early.html> [<https://perma.cc/RP7S-53X3>] (“early intervention is **likely to be more effective** when it is provided earlier in life rather than later” [emphasis in original]).

¹⁰⁸ *Policy Statement on Inclusion of Children with Disabilities in Early Childhood Programs*, *supra* note 103, at 7.

When families fall through the cracks of the health care system, the costs to the States to address later health problems will be even more significant. In the case of vision services, delayed care risks missing the opportune window of time to treat vision conditions.¹⁰⁹ Early detection of health and oral health concerns leads to early intervention, treatment, and better health outcomes.¹¹⁰ Half of children receiving Medicaid do not receive dental services, which is more than three times the rate for children from higher-income households.¹¹¹ Early prevention, by contrast, can save up to \$300 million in dental treatment costs.¹¹² Similarly, eliminating toothbrushing in learning environments can have negative effects on children's oral health.¹¹³ Researchers have estimated that every dollar spent on early intervention saves between \$3.78 to \$17.07.¹¹⁴

These failures will impact not just children's health, but their learning and school readiness. Children often struggle to learn when they have unidentified or unaddressed health issues that cause pain,¹¹⁵ limit focus, or prevent full participation in their education.¹¹⁶ Early childhood trauma, home environment insecurity, and toxic stress (all considered adverse childhood

¹⁰⁹ Bharat Gurnani & Dipesh Patel, *Advancing Vision Care in Children – Bridging Science, Policy, and Practice*, 26 BMC PEDIATR. 325 (2026), attached in Appendix (“Vision impairments significantly influence early cognitive, language, and socio-emotional development. Delayed diagnosis of refractive errors, amblyopia, or congenital cataracts can have irreversible consequences . . . [and] children with vision loss face elevated risks of academic underperformance, social isolation, and mental health issues.”).

¹¹⁰ U.S. DEP’T OF HEALTH & HUMAN SERVS., CTRS. FOR DISEASE CONTROL & PREVENTION, *Adverse Childhood Experiences (ACEs): Preventing early trauma to improve adult health* (Aug. 23, 2023), <https://www.cdc.gov/vitalsigns/aces/index.html> [<https://perma.cc/Y9DG-V5RW>]; see also Arthur Nowak, et. al., *Do Early Dental Visits Reduce Treatment and Treatment Costs for Children?*, 36(7) PEDIATR. DENT. 489-93 (2014), https://www.aapd.org/assets/1/7/Nowak_early_dental_visits_reduce_costs_PD_20141.PDF [<https://perma.cc/99ZD-UQ33>].

¹¹¹ Pew Ctr. on the States, *The Cost of Delay: State Dental Policies Fail One in Five Children* 7 (2010), https://www.pew.org/-/media/legacy/uploadedfiles/pcs_assets/2010/costofdelaywebpdf.pdf [<https://perma.cc/6NFA-ARNL>].

¹¹² Kendall Speer, *Meeting Children Where They Are: State Strategies to Increase Preventive Oral Health*, NAT’L CONF. OF STATE LEGIS. (May 8, 2025), <https://www.ncsl.org/health/meeting-children-where-they-are-state-strategies-to-increase-preventive-oral-health> [<https://perma.cc/4QT6-R8PG>].

¹¹³ Yuri Tashiro et al., *The Impact of a School-Based Tooth-Brushing Program on Dental Caries: a Cross-Sectional Study*, 24 ENVIRON. HEALTH PREV. MED. 1 (2019), attached in Appendix.

¹¹⁴ Frances Page Glascoe, *Identifying and Addressing Developmental-Behavioral Problems: A Practical Guide for Medical and Non-medical Professionals, Trainees, Researchers and Advocates* 2 (2011), https://www.researchgate.net/publication/342361310_Identifying_and_Addressing_Developmental-Behavioral_Problems_A_Practical_Guide_for_Medical_and_Non-medical_Professionals_Trainees_Researchers_and_Advocates [<https://perma.cc/B4ZT-6GE8>].

¹¹⁵ See Bruce Dick & Rebecca Pillai Riddell, *Cognitive and School Functioning in Children and Adolescents with Chronic Pain: A Critical Review*, 15(4) PAIN RES. MANAG. 238-244, (2010) <https://pmc.ncbi.nlm.nih.gov/articles/PMC2935724/pdf/prm15238.pdf> [<https://perma.cc/C9UX-K5JS>].

¹¹⁶ Delaney Gracy, et. al., *Health Barriers to Learning: The Prevalence and Educational Consequences in Disadvantaged Children*, CHILDREN’S HEALTH FUND 5 (2017) <https://www.childrenshealthfund.org/wp-content/uploads/2017/01/Health-Barriers-to-Learning.pdf> [<https://perma.cc/D6MT-ECVA>] (noting “[that] [a]mong the issues which can negatively affect learning are those that clearly relate to medical or health issues that have been unrecognized or undermanaged”).

experiences) can affect a child’s brain and body development in ways that compound this struggle.¹¹⁷

HHS’s elimination of standards for screening and family support services is contrary to the Act’s requirements, and HHS has failed to consider the critical role that Head Start has in ensuring access to health care for the most vulnerable children and the significant impacts that these changes will have on children’s health and education and, by extension, State healthcare systems.

E. The Proposed Rule Will Harm the Educational Outcomes of Children with Disabilities, Which Exacerbates the Burden on State Resources (Proposed § 1301.10)

Proposed § 1301.10—requiring all Head Start programs to follow “all applicable Federal and state statutes and regulations” about children with disabilities—would remove four existing regulations that provide carefully developed and important standards regarding children with disabilities. See 45 C.F.R. §§ 1302.60, 1302.61, 1302.62, 1302.63.¹¹⁸ These changes will not only frustrate the Head Start Act and the Individuals with Disabilities in Education Act (“IDEA”) (20 U.S.C. § 1400 et seq.), but will also contradict well-supported best practices with respect to children with disabilities, harm their school readiness and future educational outcomes, and ultimately cost the States more money in long-term services.

Under the Proposed Rule, Head Start programs would no longer be required to serve children with disabilities in “the least restrictive possible environment” nor afford them the opportunity to “fully participate in all program activities.” See 45 C.F.R. § 1302.60. Instead, proposed § 1301.10 would only require Head Start programs to follow federal law on services for children with disabilities. The Proposed Rule does not explain what federal laws might be relevant or applicable, creating an administrative burden for programs to fend for themselves in understanding complex obligations. Moreover, the elimination of the inclusion requirements will be harmful for children. Because neither state nor federal law mandates least restrictive environment for all Head Start programs in the States, this standard is not duplicative; without it, some programs would no longer be expressly required to provide the inclusive environment that

¹¹⁷ See U.S. DEP’T OF HEALTH & HUMAN SERVS., CTRS. FOR DISEASE CONTROL & PREVENTION, *About Adverse Childhood Experiences* (Mar. 2, 2026), <https://www.cdc.gov/aces/about/index.html> [<https://perma.cc/RKK8-AL9A>]; Linlin Fan & Tinghu Kang, *Early Childhood Trauma and its Long-Term Impact on Cognitive and Emotional Development: a Systematic Review and Meta-Analysis*, 57 ANN. MED. 1, (2025), <https://pmc.ncbi.nlm.nih.gov/articles/PMC12308860/> [<https://perma.cc/956W-EFBG>]; Charles Nelson, et .al., *Adversity in Childhood is Linked to Mental and Physical Health Throughout Life*, 371 BMJ 1 (2020) <https://pmc.ncbi.nlm.nih.gov/articles/PMC7592151/> [<https://perma.cc/D4MA-YMMK>].

¹¹⁸ Among those deleted are 45 C.F.R. § 1302.61’s requirements that that Head Start programs meet the needs of children with disabilities, provide necessary modifications and accommodations for children with disabilities, and the requirement of programs to protect children with disabilities from discrimination, and collaborate with local educational agencies and “plan and implement transition services” and § 1302.63’s requirements that Head Starts work with local educational agencies toward “promotion of service provision in the least restrictive appropriate community-based setting and reduction in dual enrollment which causes reduced time in a less restrictive setting,” and that Head Start programs participate in individualized education program and individualized family service plan team meetings.

will allow children to thrive.¹¹⁹ Placing children in the least restrictive environment alongside children without disabilities to the maximum extent appropriate has been found to support the development of children with disabilities.¹²⁰

The Proposed Rule also cuts the requirement that Head Start programs provide services to children during the IDEA evaluation process. 45 C.F.R. § 1302.61. HHS asserts that this longstanding protection for children with disabilities is not needed because it is duplicative of requirements in the Act, but this is false. The Act only requires that programs collaborate with educational agencies to ensure evaluation of children with disabilities and says nothing about the provision of services during the evaluation period. 91 Fed. Reg. 51254 (citing § 642(b)(14)-(15) [42 U.S.C. § 9837(b)(14)-(15)]).¹²¹ Moreover, the Act requires HHS to “[e]stablish effective procedures for providing necessary early intervening services to children with disabilities prior to an eligibility determination.” 42 U.S.C. § 9837(b)(15). HHS merely states that, if the rule eliminating such procedures becomes final, HHS “would issue policies and procedures to ensure these requirements are met”—outside of the notice and comment process, on undisclosed terms, at an unidentified time. 91 Fed. Reg. 51271. By eliminating relevant requirements without replacement, proposed 1301.10 falls woefully short of establishing the effective procedures for pre-eligibility services required by the Act.

Under the Proposed Rule, programs would also newly be permitted to turn children away because of a disability or chronic health condition. 45 C.F.R. § 1302.14. Taken together with the elimination of the requirement that at least ten percent of a program’s enrolled children must be eligible for services under IDEA (45 CFR § 1302.14(b)), this would have a detrimental effect on access to educational spaces for children with disabilities. Children with disabilities are often turned away from ECE programs due to the significance of their child’s needs, the lack of staff training, the lack of accommodations, or other reasons.¹²² Head Start has been one of the few places where an agency cannot turn a child away and is required to support that child. As a result of these changes, the most vulnerable children are likely to struggle to find care, with long-lasting effects on those children, their families, and the States. *See supra* Section II.B.1.

¹¹⁹ Head Start programs that are run by state or local educational agencies that are subject to IDEA will still be required to serve children with disabilities in the least restrictive environment, but this does not apply to privately run programs. *See, e.g.*, 20 U.S.C. §§ 1411(f)(1) (states must distribute IDEA funding to local educational agencies); 1412 (state educational agency eligibility); 1413 (local educational agency eligibility); and 1419 (preschool grants to “local educational agencies”); *accord* 20 U.S.C. §§ 1434 and 1435 (similar requirements for early intervention services for children from birth to age three).

¹²⁰ Jennifer J. Kurth, *The Persistence of Highly Restrictive Special Education Placements for Students with Low-Incidence Disabilities, Res. Practice for Persons with Severe Disabilities* 4-5 (Jan. 2015), <https://journals.sagepub.com/doi/full/10.1177/1540796914555580> [<https://perma.cc/E4BC-GVWJ>] (discussing research that documents the benefits of inclusive (general education) settings for children with disabilities).

¹²¹ HHS also cites § 642(e)(2)(B) [42 U.S.C. 9837(e)(2)(B)] of the Head Start Act, but that section is on the composition of a policy council that has no apparent function with respect to the rights of children with disabilities. *See* 91 Fed. Reg. 51254.

¹²² *See Policy Statement on Inclusion of Children with Disabilities in Early Childhood Programs, supra* note 103 at 3 (“In many systems, programs are not structured to provide preschool children with disabilities access to early childhood special education services in inclusive settings.”).

The impacts of removing the Performance Standards’ supports for children with disabilities will be devastating. Annual per pupil expenditures for special education and retention amount to from \$8,000 to \$12,000 per child.¹²³ The average cost per child for special education services is \$13,127, or \$38.8 billion nationwide.¹²⁴ Early interventions reduce later placement in costly special education programs in elementary school.¹²⁵ Indeed, studies have shown that Head Start reduces special education placement by four to eight percent, an annual savings of \$2.18 billion.¹²⁶ Participation in high-quality early education increases high school graduation rates by 11.4%.¹²⁷ As a result of the Proposed Rule change, the States stand to lose billions of dollars for additional or more intensive special education placements due to lack of early interventions. Head Start’s success in reducing special education placements benefits all 50 states, regardless of their education policy landscape.

F. The Proposed Rule Will Eliminate the Prohibition on Suspensions and Expulsions, Which Will Have a Detrimental Impact on Children (Eliminated § 1302.17)

The Proposed Rule deletes the longstanding regulatory limits on suspensions and prohibition on expelling children in Head Start programs. 45 C.F.R. § 1302.17. There is compelling evidence of the long-term harms suspension and expulsion impose upon children. For example, suspensions and expulsions have been found to have a detrimental impact on children’s long term mental health, and are associated with depression in adolescence and adulthood.¹²⁸ In addition, missing school days due to expulsion or out-of-school suspension negatively affects students’ educational achievement and likelihood of ultimately graduating from high school.¹²⁹ Expulsion and suspension are generally not associated with reducing challenging behaviors by children,

¹²³ Dana Charles McCoy, et al., *Impacts of Early Childhood Education on Medium- and Long-Term Educational Outcomes*, 46 EDUC. RSCH. 474, 475 (2017), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6107077/> [<https://perma.cc/3TC8-UBZQ>].

¹²⁴ Krista Kaput & Jennifer O’Neal Schiess, *Who Pays for Special Education? An Analysis of Federal, State, and Local Spending by States and Districts*, BELLWETHER (Oct. 2024), <https://bellwether.org/publications/who-pays-for-special-education/?activeTab=1> [<https://perma.cc/9FWZ-2VAJ>].

¹²⁵ McCoy, *supra* note 123.

¹²⁶ *Executive Brief: Head Start reduces unnecessary special education placements, saving billions in K–12 costs* 1, 10, NAT’L HEAD START ASS’N (Oct. 13, 2025), <https://nhsa.org/wp-content/uploads/2026/03/2025-Special-Education-Cost-Savings-NHSAs-Executive-Brief.pdf> [<https://perma.cc/GA5U-PE37>].

¹²⁷ McCoy, *supra* note 123, at 474.

¹²⁸ Meek, *supra* note 53, at 34. *See e.g.*, Robert Balfanz, vaughan byrnes & Joanna Fox, *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade*, 5 J. APPLIED RSCH. ON CHILD., art. 13 (2014), <https://files.eric.ed.gov/fulltext/EJ1188519.pdf> [<https://perma.cc/ZJH5-G93C>]; Anne Gregory, Russell J. Skiba & Pedro A. Noguera, *The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?*, 39 EDUC. RSCH., 59–68 (2010), attached in Appendix.

¹²⁹ *See, e.g.*, Tony Fabelo et al., *Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement*, COUNCIL OF STATE GOV’TS JUST. CTR. & PUB. POL’Y RSCH. INST. (2011), https://ppri.tamu.edu/wp-content/uploads/2026/07/Breaking_Schools_Rules-1.pdf [<https://perma.cc/LPZ2-LHK5>].

further calling their use into question given their impact on educational outcomes for students.¹³⁰ Suspensions and expulsions are also disproportionately applied to Black children, boys, and children with disabilities, including at the preschool level.¹³¹ There is a history of disproportionately high expulsions of children in preschool compared to older students, and of race- and gender-based discrepancies.¹³²

The removal of current limitations on suspension and expulsion will result in harm to children that HHS does not even acknowledge, let alone address. While HHS relies upon state childcare licensing to provide protections against excessive suspensions and expulsions, 91 Fed. Reg. 51265, HHS fails to acknowledge the serious impact of the removal of the regulations on children in States that do not regulate suspensions and expulsion at the early childhood and preschool level, or provide weaker protections than Head Start. Relying on current state suspension and expulsion policies applicable in early childhood programs will be problematic as a significant number of states do not have such policies, and very few require early childhood mental health consultation in connection with suspensions and expulsions.¹³³ Only 17 states include specific suspension and expulsion provisions in their state licensing systems.¹³⁴ Even for those states that require suspension or expulsion policies, those policies are likely to be less stringent than the Head Start regulations.¹³⁵ Moreover, states that lack strong protections governing suspensions and

¹³⁰ Meek, *supra* note 52, at 34 (citing Elizabeth M. Chu & Douglas D. Ready, *Exclusion and Urban Public High Schools: Short- and Long-term Consequences of School Suspensions*, 124 AM. J. OF EDUC., 479–509 (2018), attached in Appendix); *see also* Richard O. Welsh & Shafiqua Little, *Caste and Control in Schools: A Systematic Review of the Pathways, Rates and Correlates of Exclusion Due to School Discipline*, 94 CHILD. AND YOUTH SERVS. REV., 315–339 (2018), attached in Appendix.

¹³¹ Meek, *supra* note 53, at 34 (citing Russell J. Skiba & M. Karega Rausch, *Zero-Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness*, in HANDBOOK OF CLASSROOM MANAGEMENT 1073 (Edward J. Sabornie & Dorothy L. Espelage eds., 2013), attached in appendix); *see* Shantel Meek, et al., *Harsh Punishment and Exclusionary Discipline in the Early Years: Data, Research, and a Policy Comparison Between Head Start and States*, CHILDREN’S EQUITY PROJECT AT ARIZ. STATE UNIV. 10-12 (Sep. 2026), <https://cep.asu.edu/sites/g/files/litvpz916/files/2026-09/Harsh%20and%20Exclusionary%20Discipline%20%288%29.pdf> [<https://perma.cc/65E6-LBFW>.]

¹³² U.S. DEP’T OF EDUC., OFF. FOR CIV. RTS., 2021-2022 CIVIL RIGHTS DATA COLLECTION: A FIRST LOOK: STUDENTS’ ACCESS TO EDUCATIONAL OPPORTUNITIES IN U.S. PUBLIC SCHOOLS 20-25 (Jan. 17, 2025), <https://www.ed.gov/laws-and-policy/civil-rights-laws/civil-rights-data-collection-crdc/civil-rights-data/civil-rights-data-collection-crdc-2021-22-school-year> [<https://perma.cc/2HG5-YQWP>] (detailing, among other discrepancies, that Black children represent thirty-eight percent of preschoolers in receipt of one or more out-of-school suspensions despite amounting to only eighteen percent of all children enrolled).

¹³³ An analysis of early childhood suspension and expulsion policies at the state-level revealed that 32 states require expulsion policies, 12 require suspension policies, 10 mandate family involvement, and just 6 require early childhood mental health consultations during exclusions. Meek, *supra* note 53, at 34 (citing Martha Buell, et al., *Policies Addressing Suspension and Expulsion in State Early Care and Education Subsystems: A National Census of Policy Alignment and Integration*, 67 EARLY CHILDHOOD RESEARCH QUARTERLY 191 (2024), attached in Appendix).

¹³⁴ Meek, *supra* note 52, at 34 (citing U.S. Dep’t of Health & Hum. Servs., Admin. for Child. & Fams., *National Database of Child Care Licensing Regulations*, OFF. OF CHILD CARE: CHILD CARE TECH. ASSISTANCE NETWORK, <https://licensingregulations.acf.hhs.gov/> [<https://perma.cc/37N8-QKTH>.]

¹³⁵ Meek, *Harsh Punishment and Exclusionary Discipline in the Early Years*, *supra* note 131, at 25-27.

expulsions for early childhood and preschool programs may not have adopted such regulations specifically because they have been relying upon the longstanding Head Start regulations. Finally, even states with protections will be harmed as students move across state borders, resulting in the States educating students who have been harmed by suspensions or expulsions in their early childhood.

G. The Proposed Rule Will Increase Class Sizes and Remove Child-Staff Ratios, Contrary to Prevailing Research on Harms to the Safety and Well-Being of Infants and Toddlers (Proposed § 1301.05)

Proposed § 1301.05 eliminates Performance Standards on maximum child-staff ratios and group size, with HHS requiring instead that each “Head Start program must establish and publish both a maximum group size and a ratio of children to staff that is consistent with applicable state and local laws and Child Care and Development Fund regulations.”¹³⁶ 91 Fed. Reg. 51319. Eliminating the child-to-staff ratios is unsafe and harmful for infants and children, and will depress educational outcomes, but HHS fails to meaningfully consider these impacts.¹³⁷

HHS cites a single research paper that states there are “few, if any consistent or statistically significant associations” between staff-child ratio and children’s educational outcomes.¹³⁸ However, HHS fails to disclose that this research review states that it has “significant methodological limitations” and “should not be interpreted as indicating that regulation of ratios can be relaxed in any way.”¹³⁹

To the contrary, there is a plethora of research indicating the beneficial impacts of lower staff-child ratios, including research that HHS itself has funded finding that lowering child to staff ratios is “associated with a lower risk of fatal and nonfatal injury,” while “larger group sizes” are “associated with higher rates of upper respiratory illness, gastrointestinal illness, and ear infections

¹³⁶ 45 C.F.R. § 1302.21(b) provides a floor for staff-child ratios and group size maximums for Head Start Centers that varies by the age of the majority of children present and their needs, setting separate ratios and size limits for classes serving children younger than three years, aged three years, or aged four and five years. Similarly, HHS proposes to cut § 1302.24(c), which provides ratios and group size requirements for Family Child Care Head Start, which operate in a home other than the child’s home. 91 Fed. Reg. 51278; *see also* 42 U.S.C. § 9832(9) (defining “Head Start family day care”).

¹³⁷ For example, the Performance Standards require that infants are held for bottle-feeding, which fosters positive interactions and emotional connection, and “[e]nsure[s] bottle-fed infants are never laid down to sleep with a bottle,” in accordance with CDC recommendations. *See* 45 C.F.R. § 1302.44(a)(2)(v). However, eliminating the ratios and class sizes could mean that there is no limit to how many infants a single teacher must hold to bottle feed, which would endanger the safety of all infants in that classroom.

¹³⁸ 91 Fed. Reg. 51266 (citing Michal Perlman, et al., *Child-Staff Ratios in Early Childhood Education and Care Settings and Child Outcomes: A Systematic Review and Meta-Analysis*, 12 PLOS ONE 1 (2017), <https://doi.org/10.1371/journal.pone.0170256> [<https://perma.cc/E29L-E3H9>]).

¹³⁹ As the cited research study itself notes, “the research available for this systematic review included studies with significant methodological limitations and only studies with child-staff ratios that fell within current regulations. Thus, our findings should not be interpreted as indicating that regulation of ratios can be relaxed in any way.” Perlman, *supra* note 138, at 19; *see also id.* (noting “[t]he studies included in this review exhibited many measurement problems,” including not “reporting information related to the reliability and validity of the child outcome measure(s),” and having “enormous variability in the method of ratio data collection”).

for preschoolers.”¹⁴⁰ HHS does not contend with that research or with research demonstrating that “teacher-child relationship quality tends to be greater in settings with lower child-to-adult ratios and smaller group sizes.”¹⁴¹ HHS also fails to cite any research drawing upon either the “Head Start Family and Child Experiences Survey (FACES)” database¹⁴² or the “Early Head Start Family and Child Experiences Survey (Baby FACES)” database¹⁴³ to justify this change in staff-child ratio and group size maximums despite the prior role of the HHS, Office of Planning, Research and Evaluation in creating those databases for research and analysis. The research is extensive and unequivocal that outcomes in early childhood programs depend on quality and that quality requires strong standards on class sizes and group ratios.¹⁴⁴ As such, this abrupt and monumental change, untethered to any robust evidentiary support, is arbitrary, capricious, and unjustified.

H. The Proposed Rule Will Cut Home Visits and Increase Caseloads, Undermining Home-Based Head Start Services in the States (Eliminated §§ 1302.21, 1302.22, 1302.23)

HHS proposes to cut 45 C.F.R. § 1302.22, which establishes the home-based Head Start option to provide a full range of Head Start services in a child’s home and through group socialization opportunities. *See* 91 Fed. Reg. 51268.¹⁴⁵ This includes cuts to standards establishing

¹⁴⁰ Patti Banghart & J. Lee Kreder, *What Can CCDF Learn from the Research on Children’s Health and Safety in Child Care?*, URB. INST. 3-4 (Mar. 2012), <https://www.urban.org/sites/default/files/publication/25456/412579-What-Can-CCDF-Learn-from-the-Research-on-Children-s-Health-and-Safety-in-Child-Care-PDF> [<https://perma.cc/JL5Y-UJCS>].

¹⁴¹ U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAMS., OFF. OF PLAN., RSCH. & EVALUATION, OPRE REP. 2022-122, *Teacher–Child Relationship Quality and Beyond: Unpacking Quality in Early Head Start Classrooms in 2018*, at 16 (2022), https://acf.gov/sites/default/files/documents/opre/bfaces_quality_report_july2022.pdf [<https://perma.cc/8278-GEVY>]; *see also id.* at 19 (“Classrooms with higher child-to-adult ratios have lower scores in Emotional and Behavioral Support.”).

¹⁴² *Head Start Family and Child Experiences Survey (FACES) Series*, CHILD & FAM. DATA ARCHIVE, UNIV. OF MICH., <https://www.icpsr.umich.edu/sites/cfdata/view/collections/236> [<https://perma.cc/F2K8-VNLG>].

¹⁴³ U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAM., OFF. OF PLAN., RSCH. & EVALUATION, *Early Head Start Family and Child Experiences Study (Baby FACES)* (Sep. 16, 2026), <https://perma.cc/FR4N-QMUS>; *Teacher–Child Relationship Quality and Beyond*, *supra* note 141, at 43; *see also* *Early Head Start Family and Child Experiences Survey (Baby FACES) Series*, INTER-UNIV. CONSORTIUM FOR POL. & SOC. RSCH., UNIV. OF MICH., <https://www.icpsr.umich.edu/sites/icpsr/view/collections/1500>

¹⁴⁴ Antje von Suchodoletz et al., *Early Childhood Education and Care Quality and Associations with Child Outcomes: A Meta-Analysis*, 18 PLOS ONE, 1 (2023), <https://doi.org/10.1371/journal.pone.0285985> [<https://perma.cc/U4WB-HYKN>]; Jocelyn Bonnes Bowne et al., *A Meta-Analysis of Class Sizes and Ratios in Early Childhood Education Programs: Are Thresholds of Quality Associated with Greater Impacts on Cognitive, Achievement, and Socioemotional Outcomes?*, 39 EDUC. EVALUATION & POL’Y ANALYSIS 407, 423–24 (2017), <https://doi.org/10.3102/0162373716689489> [<https://perma.cc/R845-7EXD>].

¹⁴⁵ HHS also proposes to cut 45 C.F.R. § 1302.35, which establishes the educational requirements for home-based Head Start programming, including program design, experiences, curriculum, group

caseloads for home visitors, service duration, and safety standards. Home-based programs are “a vital component of [Head Start’s] success in preparing children for kindergarten entry and academic adjustment.”¹⁴⁶ Significant evidence demonstrates the positive impacts of home-based programs on the entire family. Parents demonstrate increased levels of engagement and support during semi structured play,¹⁴⁷ including “significantly more stimulating home environments, participated in more bedtime reading, and had greater knowledge of child development” and faced less “stress and greater involvement in education and training activities.”¹⁴⁸ Children in home-based programs “showed stronger vocabulary development ... [and] more strongly engaged their parents during play, a measure of social-emotional development,” as well as “positive impacts on child cognitive and language development.”¹⁴⁹

HHS acknowledges that under the new rules, “programs will likely shorten home visits, increase caseloads, and adjust [*i.e.*, reduce] staffing,” 91 Fed. Reg. 51291, which “may represent a reduction in program benefits to families.” *Id.* at 51310. HHS has failed to adequately consider these harms, expressly noting that “the net impact on benefits is uncertain and is not separately quantified in [their] analysis.” *Id.* Without the clear requirements enshrined in § 1302.22 establishing maximum home visitor caseloads, minimum requirements for weekly and annual home visits, and annual group socialization activities, programs will no longer be held to the standards that have made the home-visiting program such an effective agent of positive, long-term changes in the home and school lives of both parents and children.

socialization, and screening and assessments. The Head Start Act requires that the Secretary “establish standards for training, qualifications, and the conduct of home visits for home visitor staff in Early Head Start programs,” including “structured child-focused home visiting that promotes parents’ ability to support the child’s cognitive, social, emotional, and physical development.” 42 U.S.C. §§ 9840a(i)(1)–(2)(A). Cutting both §§ 1302.35 and 1302.22 without replacement violates this mandate.

¹⁴⁶ Patricia Manz, *Home-Based Head Start and Family Involvement: An Exploratory Study of the Associations Among Home Visiting Frequency and Family Involvement Dimensions*, 40 EARLY CHILDHOOD EDUC. J. 231, 233 (2012), attached in Appendix.

¹⁴⁷ John M. Love, et. al., *The Effectiveness of Early Head Start for 3-Year-Old Children and Their Parents: Lessons for Policy and Programs*, 41 DEV. PSYCH. 885, 896 (2005), attached in Appendix.

¹⁴⁸ U.S. DEP’T. OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAMS., RESEARCH TO PRACTICE: EARLY HEAD START HOME-BASED SERVICES (Apr. 2006), https://acf.gov/sites/default/files/documents/opre/homebase_services.pdf [<https://perma.cc/432N-QATL>].

¹⁴⁹ *Id.* See also Brenda Jones Harden et al., *Early Head Start Home Visitation: The Role of Implementation in Bolstering Public Benefits Programs*, 40 J. CMTY. PSYCH. 438, 449 (2012) (attached in Appendix) (Early Head Start home-based programs have “the potential to enhance participant children’s school readiness, given participant children’s higher scores on the cognitive, language, and applied problems tests ... [and] fewer social behavior problems at pre-kindergarten” and “provide[] parents with models of appropriate parenting behavior, education regarding child development, and opportunities to interact with their children in different ways” that “facilitate parents’ provision of stimulating environments and activities (e.g., book reading), which could enhance their children’s cognitive, language, and academic development. Home-based programs even have positive “impacts on the family socioeconomic context, specifically higher involvement in education/employment activities, an increase in income, and a decrease in the number of moves).

I. The Proposed Rule Will Remove Minimum Program Operating Hours, Reduce the Availability of Childcare, and Burden Already Taxed State Childcare Systems (Eliminated §§ 1302.21, 1302.22, 1302.23)

HHS proposes to remove the regulations setting minimum operating hours requirements (service duration) for Head Start programs.¹⁵⁰ Compounding the reduction in operating hours is the removal of the requirement for a child development specialist (current § 1302.23(e)), who is responsible for supporting family childcare providers, conducting home visits, and ensuring the provision of quality services at each family childcare home. HHS asserts that providers would rely instead on the Act's requirement that programs provide "early, continuous, intensive, and comprehensive" child development and family support services. 42 U.S.C. 9840A(b)(1). This language in the Act, however, does not provide clear guidance to ensure that Head Start programs have sufficient service duration to provide meaningful supports for children and families.

Faced with this lack of clarity, some providers are likely to choose to open for fewer hours than currently required. As HHS acknowledges, this proposed change will require families to seek alternative care due to limited hours of operation, including reducing their own work hours or missing work entirely. 91 Fed. Reg. 51310. This will disproportionately affect families where the caregivers work non-traditional hours. A reduction in work hours for families will cause lost wages and unemployment and will injure the States' workforce participation and tax revenues.¹⁵¹ See *supra* Section III(B)(1). Moreover, if Head Start providers are open for fewer hours, state-subsidized ECE and preschool programs, which are already oversubscribed, will have longer waitlists for the full-day options needed by most working families, causing further administrative burden for those state programs. This will lead to fewer children in educational spaces, which will lead to a corresponding decline in school readiness and educational outcomes. HHS brushes these concerns aside summarily, asserting that "many will choose to continue to offer longer hours of operation." 91 Fed. Reg. 51268. But HHS simultaneously assumes in its RIA that programs will "yield reductions in annual operating costs if they choose to...reduce operating hours." 91 Fed. Reg. at 51310.

J. The Proposed Rule Will Eliminate Community Assessments, Making Head Start Less Responsive to State and Local Needs (Eliminated § 1302.11)

The Proposed Rule entirely eliminates the current Performance Standards governing communitywide strategic planning and needs assessments, including requirements to collect and utilize specific categories of data that describe community strengths, needs, and resources. § 1302.11. HHS also eliminates existing standards for collecting and utilizing data about children

¹⁵⁰ See § 1302.21(c) (center-based Head Start and Early Head Start programs), § 1302.22 (home-based Head Start programs (operating in a child's own home)), § 1302.23 (family childcare-based Head Start programs (operating in a home setting other than a child's own home)).

¹⁵¹ Linda K. Smith, et. al., *Head Start's Impact on the Child Care Gap: How the Loss of Head Start Would Widen Child Care Gaps and Weaken Local Systems*, CHILD CARE TR. 1, 4 (June 2026), https://3957809.hs-sites.com/hubfs/Head%20Start%20Gap%20Report_FINAL_6.30.26.pdf?hsCtaAttrib=215196396178 [<https://perma.cc/23SR-UGJF>].

experiencing homelessness and annually reviewing and updating community assessments. 91 Fed. Reg. 51263-64, 51308.

The Act requires HHS to assess “the extent to which the programs address the communitywide strategic planning and needs assessment,” 42 U.S.C. § 9836A(c)(2)(C)(D), and additionally requires a community assessment to expand existing Head Start programs. 42 U.S.C. § 9835(g)(1)(C). The Act also requires HHS to conduct “a review and assessment of whether programs have adequately addressed population and community needs (including those of limited English proficient children and children of migrant or seasonal farmworker families).” 42 U.S.C. 9836A(c)(2)(C), (G). Without detailed criteria in the Performance Standards, Head Start agencies will lack any clarity as to how HHS will assess their compliance with the Act’s requirements.

Without the guidance elicited through these assessments, programs will be unable to understand the needs of the families in their communities and tailor their services accordingly, as required by the Head Start Act. The standards proposed for deletion required that programs collect and annually update data on demographics, the education, health, nutrition and social service needs of eligible children and their families, and available childcare programs, community resources, and specific infrastructure gaps (like food assistance, housing, or transportation availability). *See* § 1302.11(b)(2). Though HHS affirms the importance of “the ability of grant recipients to tailor services to the unique needs of their communities,” 91 Fed. Reg. 51249, and concedes that the Head Start Act “clearly requires use of a community needs assessment,” *Id.* at 51264, the proposed changes remove all standards governing this primary mechanism that enables responsiveness to local needs.

K. The Proposed Rule Will Weaken Parent and Family Engagement (Proposed §§ 1301.01, 1301.06)

The Proposed Rule would delete the entire regulatory framework governing family engagement, including all criteria for assessing whether a program is successfully or appropriately structuring services that recognize parents’ roles in education.¹⁵² These changes do not comply with the intent of the Act, will upset a vital partnership cultivated and honed over decades between families and educators, and will ultimately harm children’s long-term academic, social, and emotional success.

By eliminating the existing requirements, and by failing to provide any other specific mechanisms for engagement with parents, the proposed changes undermine the Act’s mandates to “provide for direct participation of the parents of such children in the development, conduct, and overall program direction at the local level,” 42 U.S.C. § 9833, and to “afford such parents the

¹⁵² The Proposed Rule would delete the specific steps a program must take to engage parents in educating their children, including by holding at least two home visits and two parent teacher conferences per program year, informing parents about their children’s progress and the results of screening and assessments, and using “accessible communication methods and modalities that meet the needs of the community when engaging with prospective and enrolled families.” 45 C.F.R. § 1302.34(b). The Proposed Rule would also delete regulations regarding family engagement practices (current 45 C.F.R. §§ 1302.34, 1302.50 to 1302.53), parent committees that advise on the development and implementation of “local program policies, activities, and services” (current 45 C.F.R. § 1301.4), policy councils (current 45 C.F.R. § 1301.1 through § 1301.3, and § 1301.5), and collaboration with parents of children with disabilities (current § 1302.62).

opportunity to participate in the development and overall conduct of the program at the local level,” 42 U.S.C. § 9837(b)(3)(B). Moreover, there is a consensus among parents and educators that family engagement matters.¹⁵³ Family engagement is associated with stronger social-emotional development,¹⁵⁴ higher school attendance,¹⁵⁵ and better academic outcomes¹⁵⁶ for students of all ages. And research consistently finds that high parental academic expectations are linked to stronger student achievement.¹⁵⁷ HHS states that rescinding the regulations will “increase program flexibility,” but fails to consider the impact of eliminating regulations specifically geared towards ensuring effective family engagement. 91 Fed. Reg. 51271-72.

Additionally, the proposed new requirement for pro-marriage education is likely to harm grant recipients’ relationships with the families they serve. Under the Proposed Rule, Head Start programs “would newly be required to provide educational material and instruction that demonstrates healthy marriage as a positive good.” 91 Fed. Reg. 51267. Requiring agencies to proselytize about marriage will make it more difficult for them to meet their statutory requirements to engage families, which include single-parent families and families dealing with domestic violence or abuse. HHS also incorrectly assumes that “the specific requirement to develop strategies to engage fathers or to provide educational material and instruction on healthy marriage” will not result in significant additional costs for programs. 91 Fed. Reg. 51311. These new requirements will certainly result in significant additional costs to grant recipients, as programs will have to develop material about a subject not required by the Act or the current performance standards.

L. The Proposed Rule Eliminates Important Nutrition and Sleep Requirements (Proposed §§ 1301.07, 1301.4)

Supporting children’s nutritional needs is among the explicit goals of the Act. *See, e.g.*, 42 U.S.C. §§ 9831(2), 9833, 9836A(a)(1)(A), 9836(d)(2)(B). Further, the Act’s prohibition on HHS lowering standards from those in effect in 2007 explicitly includes nutrition.¹⁵⁸ Yet the Proposed Rule would eliminate most standards related to nutrition, including the most basic requirements such as ensuring children receive meals and snacks, breakfast, and safe drinking water, all of which

¹⁵³ Noel E. Kelty & Tomoko Wakabayashi, *Family Engagement in Schools: Parent, Educator, and Community Perspectives*, 10 Sage Journals 4 (2020) https://www.researchgate.net/publication/345781021_Family_Engagement_in_Schools_Parent_Educator_and_Community_Perspectives [<https://perma.cc/DFH3-TDNG>].

¹⁵⁴ *Id.*

¹⁵⁵ Joyce L. Epstein & Steven B. Sheldon, *Present and Accounted for: Improving Student Attendance Through Family and Community Involvement*, 95 J. OF EDUC. RSCH. 308 (2010), attached in Appendix.

¹⁵⁶ Nermeen E El Nokali et al., *Parent Involvement and Children’s Academic and Social Development in Elementary School*, 81 CHILD DEV. 988 (2010), attached in Appendix.

¹⁵⁷ Lisa Boonk, *A review of the relationship between parental involvement indicators and academic achievement*, 24 EDUC. RSCH. REV. 10 (2018) <https://library.parenthelp.eu/wp-content/uploads/2019/01/35-A-review-of-the-relationship-between-parental-involvement-indicators-and-academic-achievement..pdf> [<https://perma.cc/P3M7-GZSW>].

¹⁵⁸ *See* 42 U.S.C. § 9836A(a)(2)(C)(ii) (requiring HHS to ensure that any revision to the Performance Standards “will not result in the elimination of or any reduction in quality, scope, or types of . . . nutritional . . . services” required to be provided under the standards in effect on December 12, 2007).

were in place in 2007.¹⁵⁹ 45 C.F.R. § 1302.44(a)(2)(i)-(ii) (2025), 45 C.F.R. § 1304.23(b)(ii) (2007); 45 C.F.R. § 1302.44(a)(2)(vi) (2025), 45 C.F.R. § 1304.23(b)(iii) (2007). In lieu of these standards, developed over time and in consultation with experts, the proposed regulation introduces a significantly pared down requirement that “[s]taff and consultants must serve nutrient dense, whole foods that are compatible with a healthy and nutritious diet that conforms to USDA requirements in 7 CFR part 226” and that, “where applicable, properly store breastmilk and provide an opportunity for infants to be served breastmilk during the day.” Proposed § 1301.07(b). While HHS states that the existing regulations are “overly prescriptive or duplicative with requirements in the Act,” 91 Fed. Reg. 51312, the Act does not explicitly require, for example, meals or clean drinking water, or that infants and young toddlers to be fed on demand. See 42 U.S.C. § 1302.44(a)(2). Eliminating these basic requirements threatens children’s wellbeing and violates the Act.¹⁶⁰

Proposed § 1301.04 also cuts a number of other important learning environment standards, such as the rule at § 1302.31(e) requiring that programs implement an age-appropriate approach to accommodate children’s need to nap or rest, including, for programs serving preschoolers for more than six hours a day, a regular time at which children are “encouraged but not forced to rest or nap.” Although HHS justifies this change as providing flexibility, 91 Fed. Reg. 51310-11, this already-flexible rule reflects the well-documented scientific understanding that naps and rest are critical for the health and development of babies and young children.¹⁶¹

¹⁵⁹ The Proposed Rule would also eliminate current requirements to accommodate mothers who wish to breastfeed during program hours, despite the federal government’s asserted support via the CDC for “policies and practices in early care and education settings to make it easier for mothers to continue to breastfeed their children,” see 45 C.F.R. § 1302.44(a)(2)(viii), 45 C.F.R. 1304.40(c)(3) (2007); eliminate requirements to “[e]nsure bottle-fed infants are never laid down to sleep with a bottle,” despite the CDC’s advice against such a practice, see 45 C.F.R. § 1302.44(a)(2)(v) (2025), 45 C.F.R. 1304.23(v) (2007); eliminate the requirement for culturally and developmentally appropriate meal services, 45 C.F.R. § 1302.44(a)(1) (2025), 45 C.F.R. § 1304.23(b)(1) (2007); and “[to] provide sufficient time for children to eat, not use food as reward or punishment, and not force children to finish their food,” see 45 C.F.R. § 1302.31(e)(2) (2025), 45 C.F.R. § 1304(c)(2)-(3) (2007).

¹⁶⁰ Despite these cuts, HHS touts an emphasis on nutrition. However, the existing Performance Standards already require and emphasize nutrition, physical activity, and exercise. Compare Proposed § 1301.07 (requiring “nutrient-dense” foods) with § 1302.44(a)(2)(iii) (requiring adherence to USDA requirements in 7 CFR 45 governing food nutritional content); Proposed § 1301.04(b) (structured snack and meal times) with 45 C.F.R. § 1302.31(e)(2) (requiring structured snack and meal times as learning opportunities and similarly encouraging family style meals).

¹⁶¹ Proposed § 1301.04(c) adds a new requirement that programs “must provide a minimum of 30 minutes of physical activity for every three and a half hours that the child participates in the program.” However, the rule makes no exception or allowance for newborns and infants for whom thirty minutes of outdoor physical activity may not be developmentally appropriate, or for children with disabilities that may require modified requirements. Yet under proposed § 1301.18(b), the rule is ineligible for waiver. HHS’s failure to consider the impacts of its regulations on all children in Head Start is arbitrary and capricious. See, e.g., Cathal O’Connor, *Sleep and infant development in the first year*, PEDIATR. RSCH. (Feb. 2, 2026) <https://www.nature.com/articles/s41390-026-04780-4> [<https://perma.cc/9GKU-3S8N>]; Sabine Seehagen, et. al., *Timely sleep facilitates declarative memory consolidation in infants*, PROCEED. OF NAT’L ACAD. SCI., (Feb. 3, 2015) <https://eprints.whiterose.ac.uk/id/eprint/90981/1/Timely%20sleep.pdf>

M. The Proposed Rule Will Put Children at Risk by Eliminating Safety and Transportation Standards (Proposed § 1301.09)

The Proposed Rule would delete practically all regulations related to safety and transportation practices.¹⁶² This change is contrary to the Act's requirements and will lead directly to avoidable tragic accidents for children enrolled in Head Start.

By eliminating all rules related to transportation, the Proposed Rule falls short of HHS's statutory requirement to "issue regulations establishing requirements for the safety features, and the safe operation, of vehicles used by Head Start agencies to transport children participating in Head Start programs." 42 U.S.C. § 9835(i). Nor does HHS consider any costs related to decreased safety as a result of these changes, such as increase in severity of accidents due to a failure to equip vehicles with safety equipment or have a bus monitor.¹⁶³ The Proposed Rule would also eliminate nearly all other requirements for child safety and supervision practices,¹⁶⁴ on the "assum[ption] that state licensing requirements and CCDF basic health and safety requirements are largely duplicative of existing safety and transportation requirements," rather than any actual analysis. 91 Fed. Reg. 51312. The existing Performance Standards include child safety and supervision standards that are often higher than state childcare licensing standards—and the Proposed Rule would remove those although it is contrary to prevailing research.¹⁶⁵ This cursory justification for the proposed sweeping elimination of safety standards is thus arbitrary and capricious, and contrary to the evidence before HHS.

[<https://perma.cc/N95Y-N5EF>.] HHS also acknowledges that many states lack nap standards in licensing rules. Similarly, proposed § 1301.04(c) eliminates the prohibition on using physical activity or food as reward or punishment. *See* 45 C.F.R. §§ 1302.31(e)(2), (4). HHS does not explain its removal of these safety regulations, address the prevalence of similar rules across state licensing guidelines, or calculate any costs associated with their removal, such as the potential for increased incidents of mental or physical abuse.

¹⁶² These include requirements, *inter alia*, that vehicles used to transport children be equipped with "appropriate emergency safety equipment, including a seat belt cutter, charged fire extinguisher, and first aid kit," that "each vehicle used to transport children receiving such services is equipped for use of age-, height- and weight-appropriate child safety restraint systems," that transportation services maintain "[u]p-to-date child rosters and lists of the adults each child is authorized to be released to," that "there is at least one bus monitor on board at all times," and that drivers be licensed. *See generally* §§ 1301.71 through 1301.74.

¹⁶³ *See* Letter from Linda K. Smith, Deputy Asst. Sec'y, ACF, (accessed Sept. 24, 2026) <https://hsicc.cmail2.com/t/ViewEmail/j/E929D3F9D86C3115/CF7A06A9A53541ECD9767B6002735221> [<https://perma.cc/7CQB-BT5G>] (alerting Head Start directors to the importance of careful bus monitoring and describing an incident in which a child was left alone and strapped in on a Head Start bus for seven hours); *see also* ACF, *Bus Transportation and Safety*, Information Memorandum ACF-IM-HS-14-04 (Aug. 24, 2014) <https://www.headstart.gov/policy/im/acf-im-hs-14-04> [<https://perma.cc/TN6L-KF3G>].

¹⁶⁴ These include requirements, *inter alia*, that Head Start facilities be clean and free from pests; avoid pollutants, hazards, and toxins that are accessible to children; be designed to prevent choking, strangulation, electrical and drowning hazards; contain up-to-date first aid kits and appropriate fire safety supplies; be equipped with play equipment, cribs, and other materials that meet CPSC and ASTM safety standards, as appropriate; be staffed with persons who have been trained in first aid and CPR, and in prevention of SIDS and shaken baby syndrome. *See generally* 45 C.F.R. § 1302.47.

¹⁶⁵ *See* Meek, *supra* note 52, at 39–41.

N. The Proposed Rule Will Eliminate Critical Maternal Health Standards for Pregnant Individuals and Infants (Proposed § 1301.11)

Proposed § 1301.11 would remove three existing regulations that address and provide support for guidance to pregnant and postpartum individuals and their families.¹⁶⁶ These changes will harm early child development and exacerbate already significant health disparities amongst Head Start's populations. Contrary to HHS's justification, the changes will increase burdens on service provider delivery and negatively impact child outcomes, child development and health, and parental engagement, which will drive up costs for the States' public health and reproductive health systems, developmental disability programs, and educational programs.

The importance of early service interventions for pregnant and postpartum women to health outcomes in early childhood development is well-supported by research. Head Start programs serve at-risk, vulnerable populations,¹⁶⁷ which historically experience higher maternal and infant health challenges.¹⁶⁸ Removal of these requirements could decrease prenatal support (including prenatal education, connection to prenatal care, depression screening, nutritional/oral health guidance, and referrals for substance use, mental health, and social services) and lead to increased risk of adverse birth outcomes and gaps in early developmental support, where the most dramatic brain development happens in the child's first three years.¹⁶⁹ Reducing breastfeeding support could also lead to increased health disparities and negative health outcomes such as increased risk of SIDS, asthma, and obesity.¹⁷⁰ Head Start also provides referrals to pregnant and postpartum

¹⁶⁶ First, proposed § 1301.11(a) eliminates current requirements to provide mother and baby with referrals for "oral health care, mental health services, substance abuse prevention and treatment, and emergency shelter or transitional housing in cases of domestic violence," 45 C.F.R. § 1302.80(c), and to include a discussion of "maternal mental and physical health, safe sleep, infant health, and support for basic needs," 45 C.F.R. § 1302.80(d). The Proposed Rule also eliminates the requirement that a newborn visit be scheduled within the first two weeks of the infant's birth and removes recognition of "partners" as among "other family members" who must be provided with prenatal and postpartum information, education, and services. 45 C.F.R. § 1302.80(d). The Proposed Rule directly undercuts the Act's mandate that standards for home visits include content related to "the relationship of health and well-being of pregnant women to prenatal and early child development." 42 U.S.C. § 9840A(i)(2)(G).

¹⁶⁷ *Head Start Snapshot: Populations Served*, FIRST FIVE YEARS FUND, (Aug. 6, 2026) <https://www.ffyf.org/2026/08/06/head-start-populations-served/> [<https://perma.cc/6CXX-TURX>].

¹⁶⁸ Early Head Start serves around 250,000 babies, toddlers, and pregnant women each year, *By the Numbers*, ZERO TO THREE (May 7, 2025) <https://www.zerotothree.org/resource/early-head-start-helps-families-thrive-lets-keep-it-that-way/> [<https://perma.cc/5RG7-WZEN>].

¹⁶⁹ U.S. ADMIN. FOR CHILD. AND FAMILIES, RESEARCH TO PRACTICE: SERVICES AND OUTCOMES FOR EARLY HEAD START FAMILIES ENROLLED DURING PREGNANCY: IS THERE A MAGIC WINDOW? (2006) <https://nhsa.org/resource/head-start-advantage-early-head-start/> [<https://perma.cc/3LXC-EPRD>]; *Head Start Advantage: Early Head Start*, National Head Start Association, <https://nhsa.org/resource/head-start-advantage-early-head-start/> [<https://perma.cc/J4EY-9HAV>].

¹⁷⁰ U.S. DEP'T OF HEALTH & HUMAN SERVS., CTRS. FOR DISEASE CONTROL & PREVENTION, *About Breastfeeding* (July 31, 2026) <https://www.cdc.gov/breastfeeding/php/about/index.html> [<https://perma.cc/QD9E-8WU9>].

women for key state programs including WIC, managed health care, and public health services¹⁷¹ and potential elimination of these referrals and coordinated activities may increase long-term need for developmental services such as special education services required by IDEA Parts C and B, increasing costs to the states.¹⁷² Eliminating the previous guidance will also likely result in a loss of referrals at the state and local level, increasing caseloads in statewide public health and developmental disability programs.

O. The Proposed Rule Will Disrupt Transitions to Preschool and Kindergarten, Which Hurts School Readiness (Eliminated §§ 1302.70, 1302.71, 1302.72)

The Proposed Rule would delete, with no replacement, important guidance regarding transitions from Early Head Start to Preschool (§ 1302.70), transitions from Head Start Preschool to Kindergarten (§ 1302.71), and transitions between programs (§ 1302.72). Ensuring children’s successful transitions to school is a key mandate in the Act; HHS is directed to create performance standards regarding transition activities, and when creating such standards, must consider “mechanisms to ensure that children participating in Head Start programs make a successful transition to the schools that the children will be attending.” 42 U.S.C. § 9836A(a)(1)(A), (a)(2)(B)(viii); *see also* 42 U.S.C. § 9837a(c) (HHS is directed to “disseminate to Head Start agencies information on effective policies and activities relating to the transition of children from Head Start programs to public schools; and provide technical assistance...to adopt and implement [those] policies and activities.”). Deleting these Performance Standards without replacement thus violates the Act.

The proposed changes also contradict well-supported best practices with respect to transitions at critical stages of the early childhood education trajectory and will harm children’s school readiness and future educational outcomes. HHS’s own research shows coordinated efforts across Head Start and elementary schools result in better short-term initial school adjustment, long-term social and emotional development, and academic outcomes for children.¹⁷³ The proposed change will harm the States by reducing collaboration between Head Start programs and States’ Departments of Education, thus increasing the administrative burden on the States as children enter kindergarten with less preparation, support, and coordination. This is a particular concern for children who have more specific needs for educational support, such as children with disabilities

¹⁷¹ Family Well-Being: Strategies to Support Family Safety, Health, and Financial Stability, NAT’L CTR. ON PARENT, FAMILY AND COMMUNITY ENGAGEMENT, https://childcareta.acf.hhs.gov/sites/default/files/new-occ/resource/files/family_well-being_final_508.pdf [<https://perma.cc/RE73-9UYV>].

¹⁷² Maya Brownstein, *Poor birth outcomes increase with poverty*, HARVARD SCH. OF PUB. HEALTH (Mar. 2026), <https://hsph.harvard.edu/news/poor-birth-outcomes-increase-with-poverty/> [<https://perma.cc/PP34-X7C7>]; Beth Duff-Brown, *Babies Born Too Early Likely to Face Educational and Lifelong Behavioral Setbacks*, STANFORD FREEMAN SPOGLI INST. FOR INT’L STUDIES (Feb. 16, 2021), <https://fsi.stanford.edu/news/babies-born-too-early-likely-face-educational-and-lifelong-behavioral-setbacks> [<https://perma.cc/B8E7-3JUQ>].

¹⁷³ Stacy B. Ehrlich, et al., *Understanding Cross-Systems Transitions from Head Start to Kindergarten: A Review of the Knowledge Base and a Theory of Change*, U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAMS., OFF. OF PLAN., RSCH. & EVALUATION, OPRE REP. NO. 2021-128 (2021), <https://acf.gov/opre/report/understanding-cross-systems-transitions-head-start-kindergarten-review-knowledge-base> [<https://perma.cc/77TQ-XHRN>].

and children who are English language learners, as well as children who may need additional administrative support to manage school enrollment and preparation, such as children experiencing homelessness and foster children.¹⁷⁴ Transitions are also particularly challenging for children enrolled in Migrant or Seasonal Head Start programs, whose frequent moves within and between states due to agricultural needs make school transitions more complex.¹⁷⁵

Eliminating these concrete and specific strategies to support school readiness is neither adequately justified nor explained and ignores both statutory requirements and important interests in ensuring that children are supported in their transitions between early childhood educational programs.

P. The Proposed Rule Will Hurt Children’s Education by Lowering Staff Qualifications and Professional Development (Proposed § 1301.12(c))

The Proposed Rule will hurt children’s educational outcomes by cutting all specific requirements for staff qualifications, professional development, and coaching, and imposing a new rule that will make it harder for Head Start programs to hire and retain qualified staff. *See* §§ 1302.90, 1302.91, 1302.92, 1302.94, proposed § 1301.12(c).

1. Staff Qualifications and Competency Requirements

The Proposed Rule will hurt children’s educational outcomes by cutting regulations related to staff qualifications and making it harder for programs to hire and retain qualified staff. Although the Act requires qualifications for certain Head Start roles,¹⁷⁶ qualification requirements for all other positions, such as “Head Start director, Family Child Care provider, coaches, family service staff, and health professional qualification requirements,” would be eliminated. 91 Fed. Reg. 51273. Proposed § 1302.12(c) also imposes a new rule that will prohibit programs from “requir[ing] or incentiviz[ing] ... postsecondary education credits, hours, or credentials,” except

¹⁷⁴ The Act recognizes the importance of transition services for particularly vulnerable groups of children, mandating that Head Start programs provide specific transition support for parents of limited English proficient children and homeless children. 42 U.S.C. § 9837a(a)(7), (8). Proposed § 1303.71(e) deletes all requirements related to transitions services, including the requirement for additional transition services for children with an IEP. *See* § 1302.71(e).

¹⁷⁵ *See* § 1302.72(c) (rule proposed for deletion requiring support for children enrolled in Migrant and Seasonal Head Start programs transitioning between programs); Van-Kim Bui Lin, *Migrant and Seasonal Head Start Uniquely Supports Children’s Transitions*, CHILD TRENDS (Jan. 17, 2023), <https://www.childtrends.org/publications/migrant-and-seasonal-head-start-uniquely-supports-childrens-transitions> [<https://perma.cc/TV35-ZFMW>]; Van-Kim Lin, et al., *Supporting Transitions in Migrant and Seasonal Head Start*, U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAMS., OFF. OF PLAN., RSCH. & EVALUATION, OPRE REP. NO. 2022-229 (2022), <https://acf.gov/opre/report/supporting-transitions-migrant-and-seasonal-head-start> [<https://perma.cc/Y4T9-7XTB>].

¹⁷⁶ The Act requires specific qualifications for teachers, education coordinators, and teaching assistants in center-based programs, 42 U.S.C. § 9843A, and teachers providing direct services to children and families participating in Early Head Start programs located in Early Head Start centers, 42 U.S.C. § 9840A(h). The statute further requires that the teachers must be trained “in early childhood development with a focus on infant and toddler development.” 42 U.S.C. § 9840A(h). Finally, the Act requires each Head Start agency to employ “well-qualified fiscal staff with a history of successful management of a public or private organization.” 42 U.S.C. § 9837(h)(i).

in limited circumstances,¹⁷⁷ and requiring programs to provide “explicit alternatives to postsecondary education for demonstrating required skills, such as through assessments, industry-recognized credentials, or relevant work experience,” rather than relying solely on postsecondary educational attainment. *Id.* HHS does not identify—or even confirm the existence of—alternative assessments or industry-recognized credentials that would suffice to demonstrate required skills. *See generally* 91 Fed. Reg. 51273–74. Although HHS states that all statutory requirements related to staff qualifications will still apply,¹⁷⁸ the regulation’s text does not make an exception for roles with statutorily mandated qualifications and will likely lead to significant confusion for Head Start grant recipients.

The proposed change is unsupported by research. HHS cites a single paper for the proposition that “research finds that increased qualifications do not consistently correlate to better child outcomes.”¹⁷⁹ 91 Fed. Reg. 51273. This fails to accurately characterize the cited research, which was conducted by education professors in Malaysia completely outside of the Head Start context.¹⁸⁰ Other research, supported by HHS funding and conducted in affiliation with HHS, but which HHS has failed to consider, has found benefits to post-secondary credentials, such as that “teacher–child relationship quality tends to be greater in settings with... teachers with higher levels of education and training.”¹⁸¹ Such research has also found that “requiring child care center directors to have education beyond a high-school diploma (even by two years), [and] requiring

¹⁷⁷ “Programs shall not require or incentivize the attainment of postsecondary education credits, hours, or credentials unless the program demonstrates that such educational attainment is necessary for the position based on specified skills required for the position that can only be attained through a specific postsecondary education pathway.” Proposed § 1302.12(c).

¹⁷⁸ “The Act requires programs to meet qualification requirements for specified staff positions, including those for education managers, education coordinators, mentor teachers, curriculum specialists, Head Start Preschool center-based teachers and assistant teachers, and Early Head Start center-based teachers (see Sec. 648A(a) and 645A(h)).” 91 Fed. Reg. 51273.

¹⁷⁹ U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAM., OFF. OF HEAD START, *Head Start Program Facts: Fiscal Year 2024* (2025) <https://headstart.gov/program-data/article/head-start-program-facts-fiscal-year-2024> [<https://perma.cc/C6LX-GJDX>].

¹⁸⁰ Xinyue Yang et al., *The Impact of Teachers’ Qualifications on Development Outcomes in Early Childhood: A Systematic Literature Review*, 33 INT’L J. OF EARLY YEARS EDUC. 426, 426 (2025), attached in Appendix. The cited research observed that “some studies found positive associations between higher teachers’ qualifications and children’s cognitive, social-emotional, and academic outcomes, while others showed no significant relationship,” attributing inconsistencies to factors including “definitions of teachers’ qualifications, different measurement approaches, and the potential influence of mediating factors, such as teacher-child interactions.”

¹⁸¹ Y. Xue, et. al., *Teacher-Child Relationship Quality and Beyond: Unpacking Quality in Early Head Start Classrooms in 2018*, OPRE Rep. No. 2022-122 (2022), U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAM., OFF. OF HEAD START, OFF. OF PLAN., RESCH., & EVALUATION, at 16, https://acf.gov/sites/default/files/documents/opre/bfaces_quality_report_july2022.pdf [<https://perma.cc/8278-GEVY>]; *see also id.* at 19 (“Classrooms with higher child-to-adult ratios have lower scores in Emotional and Behavioral Support”).

providers to have training beyond high school” are “associated with a lower risk of fatal and nonfatal injury.”¹⁸²

HHS also lacks any RIA addressing the financial impact of this broad change to staff hiring, though HHS indicates that the changes eliminating staff qualification requirements for non-education staff, such as Head Start directors and fiscal officers, would reduce wages. 91 Fed. Reg. 51294-95. HHS fails to analyze any impact of the proposed changes on quality of Head Start services from reduced qualifications or reduced wages, including whether reduced expenditures on wages would degrade quality.¹⁸³ Separate research into the impact of *increasing* wages for childcare and early education educators found lower absenteeism, a labor market exit rate expected to fall from fifteen percent to two percent, a reduction in turnover from thirty-five percent to five percent, and difficult-to-quantify efficiency gains.¹⁸⁴

2. Training and Professional Development

HHS also proposes to eliminate 45 C.F.R. § 1302.92, which outlines requirements regarding training, coaching and professional development. 91 Fed. Reg. at 51273.¹⁸⁵ Professional development for ECE teachers is strongly linked to improved educational outcomes.¹⁸⁶ However, merely requiring a set number of hours without identifying required content, as the Proposed Rule would do, is not sufficient to see measurable results. To influence educational outcomes and safety for children, professional development must be relevant and effective.¹⁸⁷ Removing content requirements will make professional development requirements in the Act less likely to ensure that all Head Start teachers have a baseline of skills needed to support children.

¹⁸² Patti Banghart & J. Lee Kreade, *What Can CCDF Learn from the Research on Children's Health and Safety in Child Care?*, URB. INST. 4 (2012) <https://www.urban.org/sites/default/files/publication/25456/412579-What-Can-CCDF-Learn-from-the-Research-on-Children-s-Health-and-Safety-in-Child-Care-.PDF> [<https://perma.cc/62MN-9BNV>].

¹⁸³ While 45 C.F.R. § 1302.90(e)-(f) (2024) is the subject of a separate rulemaking, *see* 91 Fed. Reg. 25842 (May 12, 2026), the impact of removing requirements for postsecondary education and expected reductions in wages are an appropriate topic for this rulemaking as well.

¹⁸⁴ Owen Schochet & Katie Gonzalez, *Early Childhood Educator Pay Equity Fund: Do Economic Returns Change over Time?* 7-8, MATHEMATICA (2026), <https://files.eric.ed.gov/fulltext/ED680874.pdf> [<https://perma.cc/Z2WL-WVPE>].

¹⁸⁵ Although the Head Start Act continues to require 15 hours of professional development for teachers each year, the removed regulation eliminates the content requirements for training and professional development, including the requirement that Head Start staff receive training on mandatory reporting of suspected or known child abuse and neglect, positive strategies related to social and emotional development, including tools for managing behavior, specified training for and child and family services staff, and research-based professional development. *See* 45 C.F.R. § 1302.92(b); 42 U.S.C. § 9843a(a)(5).

¹⁸⁶ *See, e.g.,* Haiting Zhang, et. al., *Can Professional Development Programs for Early Childhood Education Teachers Enhance the Quality of Teacher-Child Interactions? A Meta-Analysis*, 37 EARLY EDUC. & DEV., 945-967 (2026), attached in Appendix; Mona Abdullah Alzahrani & Faizah Nor, *Professional Development and EFL Teachers' Practices in Activating Learners' Acquisition Of 21st Century Skills*, 80 PROBS. OF EDUC. IN THE 21ST CENT. 652, 652-678 (2022), <https://files.eric.ed.gov/fulltext/EJ1368911.pdf> [<https://perma.cc/XV8W-PBYP>].

¹⁸⁷ *See* Mustafa Özgenel, et. al., *Redefining the impact of professional development in education with ProDES (Professional Development Evaluation Scale)*, 11 INT'L J. OF ASSESSMENT TOOLS IN EDUC. 733, 733-757 (2024), <https://files.eric.ed.gov/fulltext/EJ1454727.pdf> [<https://perma.cc/VY2L-Y5GX>].

For example, HHS itself has previously explained that training on reporting of child abuse and neglect (a topic that would no longer be required under the Proposed Rule) is particularly important for Head Start programs, as “the risk of experiencing maltreatment is higher for children under the age of four and children who have a diagnosed disability.” 89 Fed. Reg. 67757. Further, because Head Start programs primarily serve children from low-income families, it is critical that staff know how to differentiate between child neglect and a family experiencing poverty.¹⁸⁸ Similarly, training on social and emotional development and managing behavior is crucial for the success of ECE programs.¹⁸⁹ Eliminating this requirement will increase the variability in Head Start program success, leave teachers less prepared, and push the burden of determining best practices and training curricula onto resource-strapped programs.

The Proposed Rule would also eliminate the requirement that programs implement a research-based, coordinated coaching strategy for education staff and the detailed criteria for such a strategy. 45 C.F.R. § 1302.92.¹⁹⁰ Studies have shown improvement in children’s language, literacy, and social-emotional skills when their teachers receive coaching, as well as reduced levels of negative and externalizing behaviors.¹⁹¹ Coaching has been linked to improved educator-child interactions, less educator burnout, and increased educator retention.¹⁹² Removing the requirement for coaching will have trickle down effects for children in Head Start and their school readiness and other educational outcomes, impacting the cost for States for education and intervention services.

¹⁸⁸ 89 Fed. Reg. 67757-58 (Aug. 21, 2024) (citing Child Welfare Information Gateway *Mandatory Reporting of Child Abuse and Neglect*, U.S. DEP’T OF HEALTH & HUM. SERV. (2023)), <https://www.childwelfare.gov/resources/mandatory-reporting-child-abuse-and-neglect/> [<https://perma.cc/QXL4-DXVZ>].

¹⁸⁹ Professional Development for Early Childhood Educators: A Summary of Findings From the 2023 Early Care and Education (ECE) Workforce Survey, WILDER RESEARCH (Dec. 2023) <https://files.eric.ed.gov/fulltext/ED660946.pdf> [<https://perma.cc/FC65-JPBV>] (finding that behavior management was the topic ECE educators most needed and wanted training).

¹⁹⁰ Although HHS claims that programs must continue to meet statutory requirements related to mentor teachers under 42 U.S.C. § 9843a(b), *see* 91 Fed. Reg. 51296, subsection (b)(2) requires the Secretary to provide technical assistance and training regarding the effective use of mentor teachers. This includes by promoting the development of model curricula. 42 U.S.C. § 9843a(b)(2)(D). Removing the requirement and criteria for coaching gives programs less guidance on how to ensure the competences of mentor teachers.

¹⁹¹ *See, e.g.,* Nikki Aikens & Lauren Akers, *Background Review of Existing Literature on Coaching: Final Report*, MATHEMATICA POLICY RESEARCH (2011) <https://files.eric.ed.gov/fulltext/ED579806.pdf> [<https://perma.cc/R6KJ-JMM3>]; Weipeng Yang, et. al., *Coaching Early Childhood Teachers: A Systematic Review of its Effects on Teacher Instruction and Child Development*, 10 REV. OF EDUC. 1 (2022), <https://bera-journals.onlinelibrary.wiley.com/doi/epdf/10.1002/rev3.3343> [<https://perma.cc/RX7K-S6MB>].

¹⁹² Abby Schachner, *Coaching at Scale: A Strategy for Strengthening the Early Learning Workforce*, LEARNING POLICY INST. 3 (2024), https://learningpolicyinstitute.org/media/4356/download?inline&file=ECE_Coaching_at_Scale_REPORT.pdf [<https://perma.cc/J2QH-7N7J>].

Q. The Proposed Rule Increases Risk of Arbitrary and Biased Decision-Making in Monitoring, Funding, Termination, Appeals, and Waivers (Proposed § 1301.13; Eliminated §§ 1301.18, 1301.16, 1301.19)

The Proposed Rule would create significant uncertainty and risk for arbitrary and biased decision-making with respect to reauthorization, funding, termination, and appeals.

Under the Act, the Performance Standards are the basis for monitoring of programs and allow HHS to fulfill Congress's command that monitoring must "evaluate[] program performance, quality, and overall operations with consistency and objectivity" and be "based on a transparent and reliable system of review." 42 U.S.C. § 9836A(c)(2)(G). By eliminating the vast majority of Performance Standards, as well as the standard on monitoring (§ 1304.2), HHS confronts State grant recipients and programs with a far less transparent and less reliable system of review. The Proposed Rule also cuts the use of reliable tools that States have historically relied upon for supporting Head Start programs.¹⁹³ Although "ACF anticipates that implementation of the proposed regulatory framework may require updates to monitoring protocols, tools, and guidance to align with the proposed structure of regulatory requirements" and that these changes "may influence how designation renewal conditions are assessed in practice," HHS does not explain what these changes will be. 91 Fed. Reg. 51315.

Similarly, the Proposed Rule undermines the Act's requirement that HHS use the Designation Renewal System, a federal accountability mechanism used by the U.S. government to decide whether an existing Head Start grant recipient gets an automatic five-year funding renewal or must compete against other applicants for funding. 42 U.S.C. § 9836A(c); 42 U.S.C. § 9840a(g). Currently, an open competition is triggered when a program has serious program deficiencies or is financially unstable, among other reasons. 45 C.F.R. § 1304.11. The Proposed Rule gives HHS new and unprecedented authority to trigger a competition for a Head Start program's grant for "*any other measure* as specified in the Act." Proposed § 1301.16(i) (emphasis added). There is no definition for "any other measure." *Id.* The new provision also requires programs to demonstrate "suitable" results towards achieving program goals for improving school readiness, but it does not define the term. Proposed § 1301.16(b).¹⁹⁴ HHS also states that they will continue to monitor programs for compliance with the Act, 91 Fed. Reg. 51279, but eliminates the guidance on what, in HHS's view, the Act requires. Because the proposal does not provide standards on monitoring, even "ACF cannot predict or quantify how competition outcomes may change until monitoring protocols are aligned with a final rule." 91. Fed. Reg. 51315. In the absence of several procedural protections, Head Start grant recipients are left with no information as to how they can

¹⁹³ For example, the Proposed Rule removes the requirement that programs participate in state Quality Rating and Improvement Systems (QRIS) (45 C.F.R. § 1302.53(b)(2)), and Classroom Assessment Scoring System (CLASS) (45 C.F.R. § 1304.16). This disruption undermines a crucial mechanism for states that intentionally align their policy frameworks with the metrics established in ECE research specific to high quality programs and points to Head Start.

¹⁹⁴ The proposed regulation additionally requires a tribal government consultation when an Indian Head Start agency is "determined not to be *achieving suitable outcomes*." Proposed § 1301.17(a) (emphasis added). The term "suitable" is also not defined in this section. It is also inconsistent with the Act, which requires a tribal government consultation when an Indian Head Start agency is not delivering a "*high-quality and comprehensive* Head Start program." 42 U.S.C. § 9836(c)(7)(A)(iii) (emphasis added). HHS gives no explanation for this inconsistency.

automatically qualify for a new five-year funding period, or how their grant would be targeted for open competition. Proposed § 1301.16(b). In sum, these changes provide programs with little to no clarity on how HHS will make these decisions, which increases the likelihood of arbitrary and capricious decision-making.

The Proposed Rule further eliminates all requirements regarding termination, monitoring, and appeals (45 C.F.R. §§ 1304.1 to 1304.7). Proposed § 1301.19 removes the procedural guardrails for when and how HHS can suspend Head Start programs. 91 Fed. Reg. 51279 (citing 42 U.S.C. §§ 9841(a)(2), (5)). The proposed changes fall short of the statutory requirement that the Secretary “*shall* prescribe” procedures “for a timely and expeditious appeal” among other procedural protections. 42 U.S.C. 9841(a)-(c) (emphasis added). By failing to prescribe procedures for appeals and by disallowing judicial appeals, these regulations are contrary to statutory requirements. Further, they increase the risk of arbitrary and unpredictable enforcement and subject Head Start agencies to greater financial and programmatic uncertainty.

In addition, the Proposed Rule significantly expands HHS’s waiver authority beyond the current regulations.¹⁹⁵ Proposed § 1301.18(a) “would allow programs to request a waiver for almost any requirement in the entirety of proposed § 1301.” 91 Fed. Reg. 51278. As drafted, however, the proposed regulation provides virtually un-cabined discretion to HHS to grant or deny waivers. Proposed § 1301.18 asserts that “programs [may] submit waivers on a variety of components of operation,” but unlike the current regulations specifies no criteria for waiver approval or evidence in support of the proposed variation.¹⁹⁶ The Proposed Rule does not provide any standard by which proposed waivers would be assessed, opening the door to arbitrary and capricious decisions on waiver requests.¹⁹⁷ HHS also states that “[w]hile the Act provides the Secretary of HHS with waiver authority for a small subset of requirements . . . proposed § 1301.18 would broaden waiver flexibility beyond those explicitly stated in the Act,” 91 Fed. Reg. 51278, creating ambiguity about whether the Secretary intends to improperly waive statutory requirements without statutory authority to do so. If the Secretary uses his authority to expand his ability to waive requirements of the Act beyond what is permitted by statute, these expanded waivers would be *ultra vires* and would be in direct contravention of the Act.

IV. Conclusion

Rooted in decades of evidence-based research, the Head Start program has long been a reliable cornerstone of early childhood education. However, HHS now seeks to aggressively and

¹⁹⁵ Currently, HHS grants waivers to Head Start agencies based on specific statutory and regulatory criteria, *i.e.*, 45 C.F.R. § 1303.4 (waiver of requirement for a twenty percent non-federal financial match), § 1302.24 (waiver of center-based duration or group sizes for children over 24 months), § 1302.14 (waiver of at least ten percent of total funded enrollment to be filled by children eligible for services under the IDEA).

¹⁹⁶ The Proposed Rule, unlike the current regulations, would not require the program operator to “provide supporting evidence that demonstrates the locally designed variation effectively supports appropriate development and progress in children's early learning outcomes.” 45 C.F.R. § 1302.24(c)(4).

¹⁹⁷ Furthermore, the Proposed Rule is silent on whether HHS would use the waiver provision to eliminate or reduce the “quality, scope, or types of health, educational, parental involvement, nutritional, social, or other services” below the 2007 Performance Standards. *See* 42 U.S.C. § 9836A(a)(2)(C)(ii). Such a waiver, if granted, would be contrary to law and *ultra vires*.

systematically deregulate the program—a damaging move that will produce cascading costs and burdens on the States and harm the States’ children and families. The Proposed Rule is contrary to law and exceeds the statutory authority conferred to HHS by the Head Start Act. HHS presents insufficient justifications and reasoning for the Proposed Rule and fails to demonstrate that it adequately considered the impact on children, families, and the States. For all the above reasons, we urge HHS to withdraw the Proposed Rule.

Sincerely,



Rob Bonta
California Attorney General



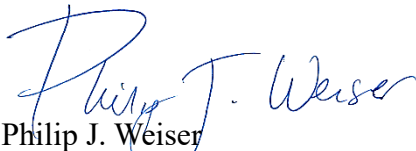
Raúl Torrez
New Mexico Attorney General



Andy Beshear
Governor of the Commonwealth of Kentucky



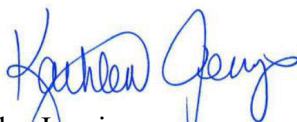
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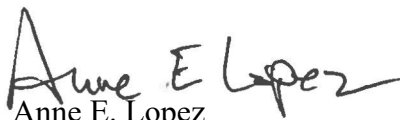
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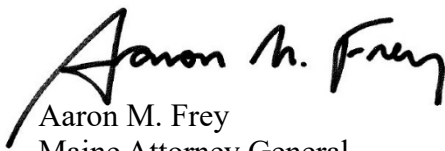
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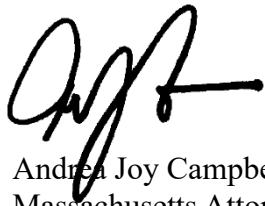
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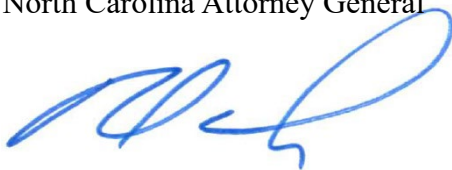
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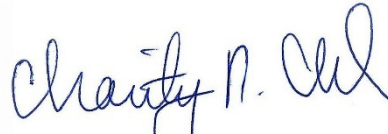
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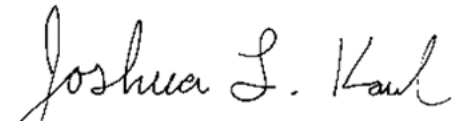
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