



Interpreting and Implementing the Head Start Act Amendments of 2007

In drafting proposed regulations, the Office of Head Start (OHS) has some flexibility of interpretation with regard to the new Head Start Act amendments passed in December 2007. Indian Head Start urges that the following suggestions be implemented in the regulations (or other guidance issued by OHS).

(A) New Compositional Requirement for the Governing Body – The Act Provides an Exception for Indian Head Start Programs. The amended Act establishes new qualifications for the governing board (requiring that it include members with fiscal management, early childhood education and legal backgrounds). As the governing board of most Indian Head Start programs is the tribal council, which is generally an elected body, it would be hapenstance if all of the Act’s new requirements were met. However, the Act contains an exception for public officials (Sec. 642(c)(1)(B)(v) (“subsection v”). **This provision should be interpreted as an absolute exception for tribal councils that serve as Indian Head Start governing bodies to the new compositional requirements in the Act, without having to hire consultants.**

- **Because subsection (v) is an absolute exception to the new composition requirements, OHS has erred in applying the provisions of the next paragraph, Sec. 642(c)(1)(B)(vi) to Indian programs (subsection vi),** when it issued guidance that stated that tribal councils serving as the governing body of a Head Start program, if they do not meet the new requirements, must use a consultant or another individual with relevant expertise. Retaining consultants is an expense that most Indian Head Start programs cannot afford. Paying for consultants will take funds from the delivery of services and will drive down quality at these programs, not elevate quality.
- **Alternatively, if it is ultimately determined that Indian programs must comply with subsection (vi), even if they meet the terms of (v),** it should suffice for Tribes to use employees or consultants already available to them, such as tribal fiscal officers, tribal attorneys and early childhood experts retained by the tribe’s Head Start program. Independent experts will not provide qualitatively better advice, but will cost substantially more.

Inter-Tribal Consortia. Some Indian Head Start programs have governing bodies made up of tribal officials from a consortium of tribes. Such officials participating in inter-tribal consortia should also meet the exception for public officials described above. Notably, inter-tribal entities do meet the Act’s definition of “Indian tribe” which includes an “organized group ... of Indians.” Sec. 637 (12).

“Public entity” as an inappropriate term for Indian Nations. The public official exception in the Act described above uses the term “public entity.” The drafters of the Act were clear in discussions with Indian Head Start advocates that they intended “public



entity” to include Tribal Nations so that they would fall into this exception. Nonetheless, this is not the typical language used to refer to Tribal Nations and many tribal leaders find it offensive. We ask that implementing regulations or guidance emphasize the sovereign nature of tribes with regard to this term.

(B) Indian Special Expansion Funding, Sec. 640(a)(3). It is very likely that Indian Head Start will receive special expansion funding pursuant to the formula provided for in the Act. The regulations, appropriate budget and grant documents should reflect the specificity of this formula, with no room for subjective interpretation. It should also be clear that the AIAN program receives the same COLA as the other programs, in addition to the special expansion funds.

- **Scope of Permissible “Expansion” should be interpreted broadly in the regulations to accomplish Congress’ intent.** Under the Act, expansion is not limited to adding slots, but is also intended to include expanded staff, competitive compensation levels and expanded services as was made clear in the Joint Explanatory Statement of the Committee of Conference (see House Report 110-439): “The Conferees intend for the Secretary to allow Indian Head Start agencies, in using the funds described in section 640(a)(3)(A)(i)(II) to increase enrollment, to use such funds for conversion of programs from part-day to full-day and from home-based to center-based,” The regulatory definition of “expansion” should reflect this broad understanding of how special expansion funds can be applied and should be clear that special expansion funds can be used for existing programs as well as for the establishment of new programs across “Indian Country.” Indian country would like to consult with OHS about its plans for spending the special expansion dollars.
- **Assuring That Expansion Funds are Spent.** The Joint Explanatory Statement of the Committee of Conference also stated that: “The Conferees intend for the Secretary to work with the Indian Head Start and Migrant and Seasonal Head Start communities to enable the funds described in section 640(a)(3)(A)(i)(II) to be obligated to the maximum possible extent.” Any time new funding comes down, it can take awhile to efficiently and effectively distribute that funding.
- **The regulations should make clear that if and when Indian special expansion funds are reallocated, they are to be reallocated among AIAN programs, not among all programs.** This reflects the new statutory requirement set forth at section 640(a)(3)(B)(ii)(aa) that special expansion funds remain available to the programs involved or, as provided at (bb), if a portion is reallocated under clause (iii), the portion shall remain available to the recipients of the portion, which should be Indian Head Start programs.
- **Expansion funds to go to both Indian Head Start and Indian Early Head Start.** The Joint Explanatory Statement of the Committee of Conference further stated that: “The Conferees encourage the Secretary to make available from the funds described in section 640(a)(3)(A)(i)(II) for increasing enrollment in Indian Head Start programs, significant portions both for Indian Head Start programs and for provision of services for additional infants and toddlers in Indian Early Head Start programs.” Expansion should occur in both programs.