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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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May 22, 2024

VIA ELECTRONIC TRANSMISSION

Jeff Hild
Acting Assistant Secretary
Administration for Children and Families
U.S. Dept. of Health and Human Services
330 C Street SW
Washington, DC 20201

Dear Acting Assistant Secretary Hild,

As we mark the 59th anniversary of the creation of the Head Start program, I write to express concerns about the Notice of Proposed Rulemaking (NPRM) titled “Supporting the Head Start Workforce and Consistent Quality Programming,” published by the Department of Health and Human Services (HHS) on November 20, 2023. The NPRM runs counter to the mission of Head Start to “promote... the school readiness of young children from low-income families by enhancing their cognitive, social, and emotional development.” It eliminates 110,700 funded slots for children, and removes the local control that Head Start programs have always relied on.¹ This rule should not be finalized in its proposed form.

Exceeding Statutory Authority and Removing Local Control

The proposed rule includes a laundry list of new requirements for Head Start programs that were originally proposed under the *Build Back Better* legislative agenda. This suggests that at one time the administration understood that its policy goals exceed the Department’s statutory authority to act unilaterally. However, now the proposed rule asserts that the Head Start statute directs the Secretary to “assure the comparability of wages” as justification for imposing new wage requirements. A plain reading of the statute at 42 U.S.C. 9848(a) demonstrates that this is not the case.

¹ https://www.acf.hhs.gov/sites/default/files/documents/ohs/factsheets_ohs.pdf

First, 42 U.S.C. 9848(a) sets a cap on wages to ensure Head Start educators are not compensated above a certain threshold. The statute directs the Secretary to “take such action . . . to assure” that Head Start personnel “shall not receive compensation. . . *in excess of* . . . the average rate of compensation paid in the area where the program is carried out. . . or *in excess of* the average rate of compensation paid to a substantial number of persons providing substantially comparable services[.]” The proposed rule brazenly redefines “in excess of” to mean “not less than,” to fit the Biden administration’s narrative. But HHS lacks the statutory authority to impose these wage mandates on Head Start programs.

Second, 42 U.S.C. 9848(a) sets the federal minimum wage as the floor Head Start programs must meet or exceed. The role of the Secretary is to ensure Head Start staff are not paid less than the federal minimum wage, as established under the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)). Nowhere in the Head Start statute does Congress provide HHS authority to selectively implement a higher minimum wage or redefine the federal minimum wage writ large to \$15 per hour.

Third, HHS proposes to redefine the Head Start statute by requiring agencies to implement salary scales. The statute does not, however, allow the Secretary to impose wage scales on employers and instead says that HHS “shall *encourage* Head Start agencies to provide compensation according to salary scale.” Again, the proposed rule redefines plain language in statute to meet the Biden administration’s preferred narrative, this time unilaterally deciding that “encourage” means “require,” demanding Head Start programs to “implement a salary scale, salary schedule, wage ladder, or other similar pay structure.” Congress intentionally did not prescribe strict wage scales in statute, ensuring that programs have needed flexibility to serve children, which HHS flagrantly ignored with this proposed rule.

Bidenflation as a Woefully Inadequate Rationale

While the NPRM rightly acknowledges the impact of inflation on the purchasing power of Head Start educators, it does so without taking any responsibility for the administration’s failed economic policies that directly led to over 17 percent inflation since President Biden took office.

Head Start programs need to pay utilities and buy groceries for snacks and lunches for the children they serve. The inflation surge has led to higher costs across the board on gas (up over 50 percent), groceries (up over 21 percent), and utilities (up over 34 percent). The response to the high inflation caused by “Bidenomics” should not be to impose prescriptive rules on wages and benefits, including a \$15 minimum wage. Mandating a new minimum wage will not rectify the two percent decline in inflation-adjusted wages since 2010 that the rule references. Instead, it will only further exacerbate the financial challenges Head Start programs face and result in fewer children being served.

As far as the practical effect of the NPRM, the administration concedes that the proposed rule's new financial burdens on programs will reduce the number of available slots for children by 15 percent. While the administration finds it acceptable to impose this policy tradeoff on Head Start programs and serve 110,700 fewer children, I find this unforced tradeoff unacceptable. Reducing the number of low-income children who can benefit from Head Start is outrageous. Further, consequential policy decisions of this nature are best left to Congress where we can evaluate, debate, and decide what tradeoffs to make in open debate. These sorts of decisions should be left to Congress, not to unelected bureaucrats in your administration.

Conclusion

In conclusion, removing local control over Head Start programs and reducing the number of children served are unacceptable tradeoffs. I urge the administration to not finalize this rule in its current form.

Sincerely,

Handwritten signature of Bill Cassidy, M.D. in blue ink.

Bill Cassidy, M.D.

Ranking Member

U.S. Senate Committee on Health,
Education, Labor, and Pensions