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PROGRAM INSTRUCTION

TO: All Head Start recipients, including Head Start, Early Head Start, Early Head Start-Child Care Partnerships, Collaboration Offices, and National Centers

SUBJECT: New Eligibility Provisions for Migrant and Seasonal Head Start programs

INSTRUCTION:

On March 23, 2024, President Biden signed the [Further Consolidated Appropriations Act, 2024 \(Public Law 118-47\)](#), which provides fiscal year (FY) 2024 appropriations for several federal departments and agencies. This spending bill funds Head Start programs through the remainder of the fiscal year. The Office of Head Start (OHS) funding changes for FY 2024 are detailed in a separate Program Instruction (PI), [ACF-OHS-PI-24-02](#). This PI describes changes to eligibility requirements for Region XII, Migrant and Seasonal Head Start (MSHS) recipients in Section 239 of the Further Consolidated Appropriations Act, 2024.

The new provision expands opportunities for MSHS programs to more effectively serve the families they were designed to serve. Our nation's rich agricultural history has always featured the incredible resilience of farmworkers and their families. MSHS programs take great pride in supporting the legacy of these families and offering new opportunities for future generations.

Implementation of the New Eligibility Provision

This provision specifies that in FY 2024, and every year after, MSHS programs can serve any age-eligible child who has one family member whose income comes primarily from agricultural employment as defined in Section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802), regardless of total family income.

In accordance with the Head Start regulations at 45 CFR §§[1302.14](#) and [1302.11\(b\)](#), programs are required to annually establish selection criteria that weigh the prioritization of participants based on needs identified in the community needs assessment. MSHS programs must still follow these requirements and use selection criteria to enroll children who would benefit most from their services, prioritizing the children of migrant farmworker families. Programs do not need to

update their selection criteria at this time. However, if a program opts to change its selection criteria in response to the new provision in Section 239, it must engage in consultation with and obtain approval from its governing body and policy council. The program can then begin using the updated criteria. Additionally, all programs must include their selection criteria in their annual refunding application.

One unique characteristic of MSHS eligibility is a family connection to agricultural employment. To be eligible for a MSHS program before the passage of this provision, a family had to show that their income came primarily from agricultural labor, in addition to meeting income eligibility or other criteria for Head Start services. However, it has become increasingly less common for agricultural work to be the primary source of a family's income. Agricultural work has become less available or stable due to unpredictable weather events and higher pay in other industries.

This new law addresses such barriers while maintaining the MSHS connection to agricultural work. Now, a child is eligible if at least one family member's income comes primarily from agricultural work. To make this determination, a program must verify that more than 50% of the individual's income comes from agricultural work. The new provision also reiterates the requirement that MSHS programs prioritize farmworker families who would benefit most from their programs — especially migrant farmworker families who have relocated frequently within the past two years to pursue agricultural work.

Per Section 239, for the purposes of eligibility, MSHS programs are now required to collect income information from only one family member to determine whether the individual's income comes primarily from agricultural work. However, if a MSHS program decides to use income as part of its selection criteria to support making determinations regarding families most in need, it should collect income information from the entire family accordingly.

This new law is effective immediately. It applies this fiscal year and for all future years. However, no child who is currently served in a MSHS program should have their enrollment disrupted to accommodate new enrollees who may qualify based on this change.

Additional Details on Eligibility, Recruitment, Selection, Enrollment, and Attendance Requirements

Due to this statutory change, the Head Start Program Performance Standards (HSPPS) on eligibility now reflect some outdated requirements. To update the HSPPS, OHS must engage in a rulemaking process.

In the interim, where there is misalignment between the Further Consolidated Appropriations Act, 2024, and existing HSPPS eligibility requirements, MSHS programs should follow the new statutory provision in Section 239. For example, MSHS programs are no longer required to adhere to income eligibility requirements under [45 CFR §1302.12\(c\)](#). However, these programs are still required to verify eligibility under 45 CFR §1302.12(f) based on the income of one family member coming primarily from agricultural employment.

While this new law changes income eligibility requirements, other HSPPS for eligibility, recruitment, selection, enrollment, and attendance remain. For example, programs must still adhere to age eligibility requirements (45 CFR §1302.12(b)). Per [45 CFR §1302.13](#), programs also must develop and implement a recruitment process designed to actively inform all families within the recruitment area of the availability of program services and encourage and assist them in applying for admission to the program.

Please note, as emphasized in Section 239, a MSHS program is still required to prioritize migrant families who move multiple times within a two-year period for enrollment. Existing enrollment ([45 CFR §1302.15](#)) and attendance ([45 CFR §1302.16](#)) regulations also remain.

Definitions

This new statutory language does not change the definition of *family* in the existing HSPPS. The definition of *migrant family* is now outdated, in part — a migrant family no longer needs to have a family income that comes primarily from agricultural employment. Rather, the family must have one family member whose income comes primarily from agricultural employment, which is operationalized as more than 50% of one family member's income is derived from agricultural employment.

The term *agricultural employment* (29 U.S.C. § 1802 (3)) means employment in any service or activity included within the provisions of Section 3(f) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 203\(f\)](#)) or section [3121\(g\) of title 26](#), such as the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. In accordance with current practice, programs should apply this definition consistent with their community needs assessment and selection criteria.

Data and Reporting

The OHS [Program Information Report \(PIR\)](#) provides comprehensive data on the services provided and staff, children, and families served by Head Start and Early Head Start programs nationwide. All grant recipients and delegates are required to submit a PIR annually. The 2024–2025 PIR will be updated to reflect these changes to MSHS eligibility policy. OHS issued guidance to grant recipients on May 9 on how to submit the 2023–2024 PIR for those MSHS programs that deem families eligible per the new language in Section 239 during this program year.

Monitoring

The Head Start Act requires periodic federal review of all Head Start programs. Recipients with upcoming FY 2024 monitoring reviews will be monitored according to these changes to MSHS eligibility policy. FY 2025 monitoring protocols will reflect these changes.

Full Enrollment Initiative

Additional guidance will be forthcoming from OHS about how this new provision will impact the Full Enrollment Initiative.

Change in Scope Process

This new eligibility provision will not impact Change in Scope applications that have already been approved and implemented. If you have questions about a change in scope request, please reach out to your regional office.

Training and Technical Assistance (TTA) and Ongoing Support

With this new law, many resources and materials available to programs on the [Early Childhood Learning and Knowledge Center \(ECLKC\)](#) will need to be updated. It will take time to align the website with the new provision.

OHS encourages recipients to continue to use the TTA system, inclusive of the [four National Centers](#) and the Region XI TTA network, for support. The OHS TTA system supports program staff in delivering quality services to children and families at the national, regional, and recipient levels. While each level has distinct and unique functions, they are designed to complement each other.

OHS anticipates that programs will have questions about these changes. We welcome your feedback and communication throughout the implementation process. Specific opportunities to provide feedback will be shared soon. Please send your questions about these changes to MSHeadStart@acf.hhs.gov.

OHS is grateful for your partnership in implementing this new change so that more families are eligible for Migrant and Seasonal Head Start services. Thank you for the work you do on behalf of children and their families. I look forward to our continued partnership.

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