

CAPLAW
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CHANGES AHEAD: THE NEW HEAD START DESIGNATION RENEWAL SYSTEM (DRS) RULE

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About Your Presenter

R. Brian Tipton, Esq., is a practicing attorney with over two decades of experience working with nonprofits and grant-funded organizations across the United States. Currently, Brian is Managing Director with Kirk Private Client Law, LLC, in Atlanta, where he heads the firm's tax-exempt organizations practice. Brian is a summa cum laude graduate of the Louisiana State University and the Cumberland School of Law of Samford University. He regularly advises and represents Head Start and other grant-funded entities in the areas of regulatory compliance, audits, funding source disputes, administrative appeals, and litigation. Brian also consults with organizations on governance, human resources, program, and corporate matters, and develops and presents training programs for nonprofits and a wide range of grant-funded entities.

Changes Ahead



“We’re throwing out the old rules.”

Designation Renewal System

- Head Start Act (2007 reauthorization) requires “system for designation renewal” [42 U.S.C. § 9836]
 - Agencies “delivering a high-quality and comprehensive Head Start program” designated for renewal grant (non-competitive renewal)
 - Other agencies must re-compete
- Designation Renewal System implemented in 2011
- DRS implementing regulations found in Head Start Performance Standards [45 C.F.R. §§ 1304.10 - .16]

Designation Renewal System

- DRS has seven conditions (triggers) [45 C.F.R. § 1304.11]
 - **CLASS** condition
 - **Deficiency** condition
 - **School readiness** condition
 - **License revocation** condition
 - Head Start **suspension** condition
 - **Debarment** or **disqualification** condition
 - **Fiscal** condition

Designation Renewal System

- **OHS published new DRS rules on August 28, 2020** (85 Fed. Reg. 53189)
 - Request for comments on CLASS conditions published December 18, 2017
 - Notice of Proposed Rulemaking for DRS revisions published August 13, 2019
 - Over 60 unique submissions/comments received for Notice of Proposed Rulemaking
- **New DRS effective October 27, 2020**

Designation Renewal System

- What is changing?
- DRS revisions to three conditions
 - **CLASS** condition
 - **Deficiency** condition
 - **Fiscal** condition

Designation Renewal System

CLASS Condition

Current

- Domain absolute thresholds
- Bottom 10%

New

- Competitive thresholds
- Quality thresholds
- No bottom 10%

| NEW DRS RULES | | CAPLAW | | 8 |
|-----------------------------------|--------------------|-------------------|---------------|---|
| Designation Renewal System | | | | |
| Domain | Absolute (Current) | Competitive (New) | Quality (New) | |
| Instructional Support (IS) | 2 | 2.3 | 3 | |
| Classroom Organization (CO) | 3 | 5 | 6 | |
| Emotional Support (ES) | 4 | 5 | 6 | |

| NEW DRS RULES | | CAPLAW | | 9 |
|--|--|--|--|---|
| Designation Renewal System | | | | |
| Deficiency Condition | | | | |
| Current | | New | | |
| <ul style="list-style-type: none"> • One deficiency • 5-year grant period | | <ul style="list-style-type: none"> • Two (or more) deficiencies • 5-year grant period | | |

| NEW DRS RULES | | CAPLAW | | 10 |
|--|--|--|--|----|
| Designation Renewal System | | | | |
| Fiscal Condition | | | | |
| Current | | New | | |
| <ul style="list-style-type: none"> • “Going concern” doubt • Within 1 year of DRS decision | | <ul style="list-style-type: none"> • “Going concern” doubt • Two (or more) material weaknesses or questioned costs related Head Start • 5-year grant period | | |

| NEW DRS RULES | | CAPLAW | | 11 |
|---|--|--------|--|----|
| Designation Renewal System | | | | |
| <ul style="list-style-type: none"> • What is staying the same? • Other four conditions (triggers) NOT changing <ul style="list-style-type: none"> • School readiness condition • License revocation condition • Head Start suspension condition • Debarment or disqualification condition | | | | |

Designation Renewal System

- New DRS effective October 27, 2020
- Largely prospective
 - Non-competitive decisions not reviewed (but status could change if condition met before end 5-year grant, like current DRS)
 - Re-compete decisions reviewed and may change based on new DRS

Designation Renewal System

- Non-competitive renewal designation would change (i.e., must re-compete) **ONLY IF:**
 - Two or more deficiencies
 - License revocation
 - Head Start suspension
 - Debarment or disqualification
 - “Going concern” doubt
- Not considering new “two material weaknesses or questioned costs” fiscal condition

Designation Renewal System

- Re-compete decisions reviewed if Funding Opportunity Announcement not yet issued
- Will become non-competitive **IF**:
 - One deficiency
 - Bottom 10% CLASS
 - Instructional Support = 2.3+
 - Classroom Organization = 5+
 - Emotional Support = 5+
- Not considering new “two material weaknesses or questioned costs” fiscal condition

Designation Renewal System

- OHS also updating language in two other sections of DRS regulations
 - 2 C.F.R. § 1304.12 (Grantee Reporting)
 - 2 C.F.R. § 1304.15 (Designation Request, Review, and Notification Process)
- Changes more technical in nature

Designation Renewal System

Additional Resources

- Revised DRS Rules (Federal Register Notice):
<https://www.govinfo.gov/content/pkg/FR-2020-08-28/pdf/2020-17746.pdf>.
- OHS Revised DRS Program Instruction (ACF-PI-HS-20-05):
<https://eclkc.ohs.acf.hhs.gov/sites/default/files/pi/downloads/acf-pi-hs-20-05.pdf>.
- OHS Revised DRS Frequently Asked Questions:
<https://eclkc.ohs.acf.hhs.gov/designation-renewal-system/article/questions-responses-regarding-designation-renewal-system-changes>.
- OHS Revised DRS Rule Changes Webinar:
https://goto.webcasts.com/starthere.jsp?ei=1363499&tp_key=8b5f01dcbe.
- OHS Revised DRS Answering Your Questions Webinar:
https://goto.webcasts.com/starthere.jsp?ei=1363522&tp_key=0b34a4242d

Other Changes



He waited for the next wave of regulations to arrive.

Uniform Grants Guidance

- OMB issued revised UGG on August 13, 2020
- Effective dates for revised UGG
 - August 13, 2020
 - 2 C.F.R. § 200.216
 - 2 C.F.R. § 200.340
 - November 12, 2020 (generally)
- HHS will need publish own revisions to Part 75

Uniform Grants Guidance

Revisions found throughout Uniform Grants Guidance

Definitions

Award Considerations

Procurement

Termination

Closeout

Indirect Costs

Other Cost Principles

Audit Supplement

- New 2020 Compliance Supplement for Single Audits issued August 18, 2020
 - Effective for audits of fiscal years beginning after June 30, 2019
 - Includes Head Start cluster under HHS programs in Part 4 (4-93.600)
- Available on OMB website:
https://www.whitehouse.gov/wp-content/uploads/2020/08/2020-Compliance-Supplement_FINAL_08.06.20.pdf

QUESTION & ANSWER PERIOD

WHAT ARE YOUR QUESTIONS?



"Did someone have a question?"

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