

## ERSEA FAQ

# Part II: The Other Paths to Eligibility:

## Public Benefits, Homelessness, and Foster Care

Nicole M. Bacon

# OPERATING THE NAVIGATION PANEL

Presentation Slides: Click the arrow on the handouts tab and then the document icon.

Questions: Click the arrow on the questions tab, enter your question in the text box, and click 'Send'

The screenshot shows the GoToWebinar navigation panel with the following callouts:

- Audio:** Select how you would like to listen to the webinar. Callout points to the radio buttons for "Computer audio" and "Phone call".
- Audio:** If listening over the phone, your dial-in information will be here. Callout points to the "Dial:", "Access Code:", and "Audio PIN:" fields.
- Handouts:** Click here to download the presentation slides and any other available handouts. Callout points to the "Presentation Slides.pdf" document icon.
- Questions:** Type in any questions you have here and click "send". Callout points to the text input field containing "[Enter a question for staff]".

The interface also includes a "Send" button, a "GTW Demo" label, and the GoToWebinar logo at the bottom.

# NICOLE M. BACON



Contact  
Information:

[nbacon@ftlf.com](mailto:nbacon@ftlf.com)

202.466.8960

- Nicole, a Partner at Feldesman Tucker Leifer Fidell LLP, has been with the firm since 2008 and a practicing attorney since 2003.
- She is counsel to numerous federal grantee organizations across the country representing her clients in federal litigation as well as providing counsel on compliance and transactional matters.
- Her representative activities include reviewing and revising contracts, subrecipient agreements, procurement policies and procedures, and other grant-related documents to ensure compliance with programmatic requirements and other federal regulations. Nicole also advises clients on the federal requirements for grant related construction and renovation projects including issues related to filing notices of federal interest.
- Prior to joining the firm, Nicole worked as a legal services staff attorney, representing low-income clients in domestic violence matters, family law issues, public housing and landlord-tenant disputes, and consumer cases.

# DISCLAIMER

---

- This presentation has been prepared by the attorneys of Feldesman Tucker Leifer Fidell LLP. The opinions expressed in these materials are solely their views.
- The materials are being used with the understanding that the authors are not engaged in rendering legal or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.
- Please do not record today's training session.

# ERSEA FAQ SERIES

---

Part I: Income Eligibility

Part II: The Other Paths to Eligibility

Part III: Recruitment, Selection, and Attendance

**Part IV: Q&A**

# LEARNING OBJECTIONS

---

- Understand the Head Start eligibility based on receipt of public benefits, homelessness or foster care;
- Identify which terms need to be defined in your organization's internal policies and procedures;
- Know what types of documentation eligibility staff should collect and maintain to verify eligibility; and
- Outline how to conduct internal monitoring to verify whether your program follows the Head Start income eligibility requirements.

# TODAY'S AGENDA

---

- I. Overview
- II. Foster Care
- III. Public Benefits
- IV. Homelessness
- V. Applying
- VI. Over income considerations

---

# I. Overview



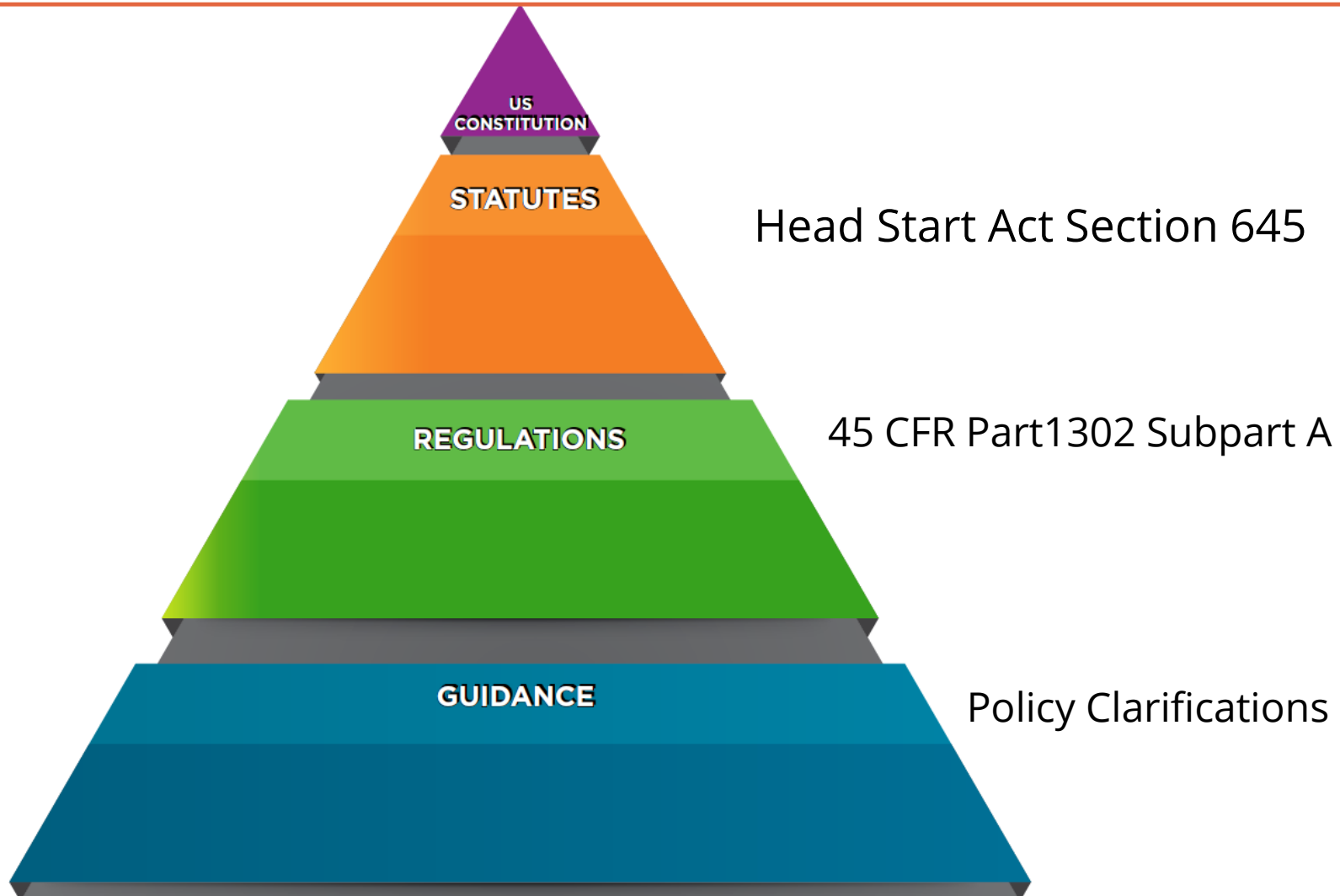
# POLL #1

---

How do you pronounce ERSEA ?

- A. er-see
- B. er-see-a
- C. er-sa

# WHERE DO THE RULES COME FROM?



# HEAD START ACT ELIGIBILITY

---

“(i) that children from low-income families shall be eligible for participation in programs assisted under this subchapter if their families' incomes are below the poverty line, or if their families are eligible or, in the absence of child care, would potentially be eligible for public assistance; and

(ii) that homeless children shall be deemed to be eligible for such participation”

645(a)(1)(B)

# HEAD START ACT ELIGIBILITY: EHS

---

(c) PERSONS ELIGIBLE TO PARTICIPATE.--Persons who may participate in programs described in subsection (a) include--

- (1) pregnant women; and
- (2) families with children under age 3; who meet the eligibility criteria specified in section 645(a)(1), including the criteria specified in section 645(a)(1)(B)(ii).

645A(c)

# PROGRAM PERFORMANCE STANDARDS

(c) *Eligibility requirements.* (1) A pregnant woman or a child is eligible if:

(i) The family's [income](#) is equal to or below the poverty line; or,

(ii) The family is eligible for or, in the absence of child care, would be potentially eligible for **public assistance**; including TANF child-only payments, or,

(iii) The child is **homeless**, as defined in part 1305; or,

(iv) The child is in [foster care](#).

1302.12

# COMMON THEMES

---

- Previously referred to as “categorical” eligibility
- Informally known as “automatic” eligibility
- No need to do income verification
- Remember: Goal is to provide services to those with the greatest need

---

# II. Foster Care

# FOSTER CARE DEFINITION

*Foster care* means 24-hour substitute care for children placed away from their parents or guardians and **for whom the state agency has placement and care responsibility.**

This includes, but is not limited to, placements in **foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities**, child-care institutions, and pre-adoptive homes.

A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is federal matching of any payments that are made.

1305.2



## POLL #2

---

The prospective Head Start child's ("applicant") family has two foster children in the household but the applicant is not a foster child. Could you make an eligibility determination solely based on the fact that there are foster children in the household?

- A. Yes.
- B. No.

## POLL #3

---

The applicant child lives with his grandparents because the parents are not around. Could you make an eligibility determination based on the fact that the applicant is a foster child?

- A. Yes.
- B. No.
- C. It depends. I need more information

# VERIFICATION OF FOSTER CARE

---

To verify whether a child is in foster care, program staff must accept either a **court order** or **other legal or government-issued document**, a **written statement from a government child welfare official** that demonstrates the child is in foster care, or proof of a foster care payment.

1302.12(i)(4)

---

# III. Public Benefits

# PUBLIC BENEFITS ELIGIBILITY

---

“if their families are eligible or, in the absence of child care, would potentially be eligible for public assistance”

645(a)(1)(B)

# WHICH PUBLIC BENEFITS

---

- Supplemental Security Income
- Temporary Assistance for Needy Families
  
- Not Women Infants and Children (WIC)
- Not Food Stamps
- Not Public Housing
- Not Medicaid

# WHAT IS SSI?

---

## Supplemental Security Income

“SSI stands for Supplemental Security Income. Social Security administers this program. [The Social Security Administration] pay[s] monthly benefits to people with limited income and resources who are disabled, blind, or age 65 or older. Blind or disabled children may also get SSI. ”

<https://www.ssa.gov/ssi/text-over-ussi.htm>

# WHAT IS TANF?

## Temporary Assistance for Needy Families

The TANF program, which is time limited, assists families with children when the parents or other responsible relatives cannot provide for the family's basic needs. The Federal government provides grants to States to run the TANF program. These State TANF programs are designed to accomplish four goals:

1. to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
2. to end the dependency of needy parents on government benefits by promoting job preparation, work, and marriage;
3. to prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
4. to encourage the formation and maintenance of two-parent families.

**States have broad flexibility to carry out their programs.** The States, not the Federal government, decide on the design of the program, the type and amount of assistance payments, the range of other services to be provided, and the rules for determining who is eligible for benefits.

<https://www.hhs.gov/answers/programs-for-families-and-children/what-is-tanf/index.html>



# OHS ELIGIBILITY FINAL RULE FAQ

## What does it mean "to be eligible, or in the absence of child care potentially eligible, for public assistance" and how do programs determine this?

This is longstanding language from the Head Start Act that we are simply restating in the regulation. Operationally, programs have long used the receipt of public assistance as proof of eligibility. This continued practice is the best approach to ensure that only eligible children and families are enrolled.

Based on the statutory language now included in the regulation, **a program could theoretically make their own determination that a family is eligible or potentially eligible for, but not receiving, public assistance. However, this may only be done if they can ensure that their determination is accurate.** Ensuring an accurate determination requires using state or local TANF or SSI eligibility requirements, including those around income, assets, participation requirements, and lifetime limits. **Operationally, that may prove to be very difficult for Head Start programs to do.** Any program making their own TANF or SSI eligibility determination would need to document their accuracy for monitoring and audit purposes.

We expect the vast majority of programs will continue using public assistance receipt as the best way to ensure eligibility based on public assistance.

## POLL #4

---

The prospective Head Start child lives with her uncle that receives SSI. Is the applicant eligible for Head Start on the basis of receiving public assistance?

- A. Yes.
- B. No.
- C. It depends. I need more information

# WHO'S PUBLIC BENEFITS COUNT

## OHS – PC – I – 016

### How is eligibility for Head Start based on SSI determined?

If **anyone** in a prospective **Head Start child's family is receiving SSI**, that child is considered income eligible for Head Start, irrespective of the child's family's income. Family members include the child, the child's parent(s) or guardian(s) and any other person living in the child's household who is supported by the income of the child's parent(s) or guardian(s) and is related to the child's parent(s) or guardian(s) by blood, marriage or adoption.

# DEFINITION OF “FAMILY”

---

*“Family* means all persons living in the same household who are supported by the child's parent(s)' or guardian(s)' income; and are related to the child's parent(s) or guardian(s) by blood, marriage, or adoption; **or** are the child's authorized caregiver **or** legally responsible party.”

1305.2

# ANSWERING POLL #4

---

Some questions you may need to ask:

- Is the uncle “family” under the Head Start definition?
- Who else lives in the household? Are the parents around?
- Is the uncle an “authorized caregiver” or “legally responsible party” under your organization’s definition of the terms?

# VERIFYING PUBLIC ASSISTANCE

To verify whether a family is eligible for, or in the absence of child care, would be potentially eligible for public assistance, the program must have documentation from **either the state, local, or tribal public assistance agency** that shows the family either receives public assistance or that shows the family is potentially eligible to receive public assistance.

1302.12(i)(2)

---

# IV. Homelessness

# MCKINNEY-VENTO: “HOMELESS CHILDREN AND YOUTHS”

---

- (A) means individuals who **lack a fixed, regular, and adequate nighttime residence** (within the meaning of section 103(a)(1)); and
- (B) includes —
- (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
  - (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C));
  - (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
  - (iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).



## POLL #5

---

5. If a family is knowingly moving to an area where housing is unavailable, and they live with someone else, but pay that person rent, are they considered homeless?

A. Yes.

B. No.

C. It depends. I need more information

# VERIFICATION OF HOMELESSNESS

---

During the interview, ask questions designed to assist in making homeless eligibility determinations of whether the applicant has a **“fixed,” “regular,”** and **“adequate”** nighttime residence.

# RESOURCES

---



National Center for Homeless Education  
Supporting the Education of Children and  
Youth Experiencing Homelessness  
<http://nche.ed.gov>

# SAMPLE QUESTIONS

***Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason***

***Sharing the housing of other persons*** implies that the family or youth is staying in someone else's housing. Questions to help determine if this is the case include:

Is the family or youth living in someone else's residence as an urgent measure to avoid being on the street or in another precarious situation?

Where would the family or youth live if not sharing someone else's housing?

Does the family or youth have a legal right to be in the residence?

Can the family or youth be asked to leave at any time with no legal recourse?

Source: National Center for Homeless Education  
[https://nche.ed.gov/downloads/briefs/det\\_elig.pdf](https://nche.ed.gov/downloads/briefs/det_elig.pdf)

# SAMPLE QUESTIONS

***Due to loss of housing*** implies that the family or youth has no personal housing available. Did the family or youth lose their previous housing due to:

- an eviction or an inability to pay the rent, mortgage, and/or other bills?
- destruction of or damage to the previous housing?
- abuse or neglect (such as in the case of a youth who leaves or is asked to leave the home)?
- an inadequate or hazardous physical environment caused by infestations, drug or alcohol abuse, domestic violence, or some other unsafe or untenable circumstance?
- the absence of a parent or guardian due to abandonment, death, incarceration, or a similar reason?

Source: National Center for Homeless Education  
[https://nche.ed.gov/downloads/briefs/det\\_elig.pdf](https://nche.ed.gov/downloads/briefs/det_elig.pdf)

# VERIFYING HOMELESSNESS

---

To verify whether a family is homeless, a program may accept a **written statement from a homeless services provider, school personnel, or other service agency attesting that the child is homeless** or any **other documentation that indicates homelessness, including documentation from a public or private agency, a declaration,** information gathered on enrollment or **application forms,** or **notes from an interview** with staff to establish the child is homeless; or any other document that establishes homelessness.

1302.12(i)(3)

# VERIFYING HOMELESSNESS

- (i) If a family can provide one of the documents described in this paragraph (i)(3), program staff must describe efforts made to verify the accuracy of the information provided and state whether the family is eligible because they are homeless.
- (ii) If a family cannot provide one of the documents described in paragraph (i)(3) to prove the child is homeless, a program may accept the family's **signed declaration to that effect**, if, in a written statement, program staff describe the child's living situation that meets the definition of homeless in part 1305 of this chapter.
- (iii) Program staff may seek **information from third parties** who have firsthand knowledge about a family's living situation, **if the family gives written consent**. If the family gives consent to contact third parties, program staff must adhere to program privacy policies and procedures and ensure the eligibility determination record adheres to paragraph (k) of this section.

1302.12(i)(3)

---

# Eligibility Tips

**How to determine eligibility based on foster care, public benefits and homelessness**



# TIPS FOR INCOME ELIGIBILITY DETERMINATIONS

- Create and implement a written policy and procedure for eligibility determination process based on foster care, public benefits, and homelessness
  - Consider including sample forms (e.g. foster care orders, sample public benefit documentation, *etc.* )
- Train on the policy and procedure on what to look for and what to ask and maintain a record of training in employee files
- Monitor compliance with the policy by conducting random spot checks of eligibility files
- Make ongoing corrections and improvements to policies and practices

# TRAINING TOPICS

---

Training for foster care, public benefits, and homelessness should include:

- Sample court orders or documents from local welfare agencies demonstrating that a child is in foster care
- What TANF resources are available in your state and what the forms look like
- The definition of homelessness and questions to ask to determine eligibility (check out resources from the National Center for Homeless Education and local homeless service providers)
- Confidentiality requirements for contacting third parties
- How to work with families dealing with trauma

---

# QUESTIONS

Nicole M. Bacon, Esq.  
Feldesman Tucker Leifer Fidell LLP  
(202) 466-8960  
[nbacon@ftlf.com](mailto:nbacon@ftlf.com)  
[www.FTLF.com](http://www.FTLF.com)

# OTHER UPCOMING TRAINING EVENTS

## Webinars

<b>Nov. 28<sup>th</sup> @ 1pm ET</b>	<b>ERSEA FAQs: Part III – Recruitment, Selection, Enrollment, and Attendance</b>
<b>Dec. 19<sup>th</sup> @ 3pm ET</b>	<b>ERSEA FAQs: Part IV – Q&amp;A</b>

## Workshops in Washington, DC

Dec. 5 <sup>th</sup> – 6 <sup>th</sup>	How to Prepare for Monitoring in the New Era	Washington, DC
Feb. 11 <sup>th</sup> – 12 <sup>th</sup>	Head Start Leadership Workshop: Fiscal Management	Washington, DC
Mar. 20 <sup>th</sup> – 21 <sup>st</sup>	Head Start Leadership Workshop: Human Resources Requirements	Washington, DC

For more information and to register:  
Email [learning@ftlf.com](mailto:learning@ftlf.com) or go to <https://learning.ftlf.com>