

PRH Change Notice 22-07

Frequently Asked Questions about Childcare Development Center Policy Updates

1) Does the federal minimum wage apply to the CDC service provider Operating Agreements like SCA does?

Yes, the SCA expressly provides that a contractor on an SCA-covered contract may not pay its service employees on the contract less than the federal minimum wage established under the Fair Labor Standards Act (FLSA). See 41 USC 6704. Of course, prevailing wage rates under the SCA are almost always higher than the FLSA minimum wage of \$7.25 per hour, such that payment of the SCA prevailing wage will satisfy the obligation to pay no less than the FLSA minimum wage. To the extent this question is referring to the minimum wage for federal contractors established under Executive Orders 13658 and 14026 (currently, \$12.15 and \$16.20 per hour, respectively), the requirements of those Executive Orders apply to SCA-covered contracts; in particular, Executive Order 14026 applies to any SCA-covered contract entered into, renewed, or extended on or after January 30, 2022. Please keep in mind that these Executive Orders and the SCA set forth separate minimum wage obligations; thus, for example, where both Executive Order 14026 and the SCA apply to a particular contract, a contractor would need to pay the higher of the EO 14026 and SCA wage rates in order to ensure that it was in compliance with both laws.

2) Will there be a template to support the semi-annual compliance reviews done under Exhibit 5-2?

The Office of Job Corps will consider providing a template to support quality and completeness in semi-annual compliance review reports.

3) If a center is already operating a CDC, where should they start in the “request to operate and need to submit CDC plan” process?

Several Job Corps Centers continued to operate Child Development Centers onsite during the pandemic, and the Office of Job Corps does not wish to see services to interrupted unnecessarily. Therefore, Center Operators currently operating CDCs may continue to do so under their current agreements while reviewing the requirements of PRH CN 22-07, making revisions, and submitted said revisions to the Regional Office in order to come into full compliance with PRH CN 22-07 as soon as operationally possible.

4) Can centers transport non-residential students with children in GSA vehicles as long as they use car seats approved by the DMV?

Centers may transport non-residential students and their dependent children to and from their homes and the Job Corps Center which has on-center childcare. The child is required to be in an approved car seat or child restraint. In addition, centers must follow the law of the state regarding child restraint in motor vehicles (i.e., rear or forwarding facing as well as placement in the car—the restrictions on

age in the front seat).

Other scenarios such as transporting dependent children on fieldtrips or to pediatrician appointments raise appropriations concerns because dependent children are not enrollees in the Job Corps program. Thus, centers may not transport dependent children in these other scenarios (e.g., fieldtrips or pediatrician appointments).

5) Job Corps Center Operators used to enter into MOUs with Child Care Service Providers and under those MOUs, the Service Contract Act (SCA) did not apply. Under an Operating Agreement, SCA does apply. Why use an Operating Agreement versus an MOU?

DOL has determined the SCA applies to Job Corps Center operations work, including childcare services, and what the document is called is not determinative of coverage. As explained in the SCA's regulations, the SCA applies to a wide variety of contractual instruments and "the nomenclature, type, or particular form of contract" that is used "is not determinative of coverage." 29 C.F.R. § 4.111(a); *see also*, e.g., 29 C.F.R. § 4.130. Thus, whether the agreement is styled as an MOU or as an Operating Agreement will not determine coverage under the SCA.

6) What should a center operator do if a potential Child Care Service Provider partner (i.e., subcontractor) is unwilling to comply with the Service Contract Act (SCA)?

The center operator should not enter into an operating agreement (i.e., subcontract) with that potential subcontractor, because it is unwilling to agree to comply with applicable federal law. The Service Contract Act (SCA) applies to Job Corps Center operations contracts (as federal procurements for covered services). Those requirements flow down to subcontracted Job Corps center operations work, including Child Development Center operations. When identifying third-party Child Care Service Providers for a Job Corps Center, center operators are responsible for ensuring SCA compliance (and if the subcontractor agrees to comply with SCA requirements but then fails to do so, the subcontractor will have violated the SCA).