August 28, 2023

The Honorable Xavier Becerra
Secretary
United States Department of Health and Human Services
330 C Street, SW
Washington, DC 20201

RE: Docket number ACF–2023–0003 / RIN number 0970–AD02

Dear Secretary Becerra,

Child Care Aware® of America (CCAoA) and the undersigned organizations appreciate the opportunity to comment on the Administration for Children and Families' (ACF) notice of proposed rulemaking (NPRM), *Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)*. These comments are provided on behalf of Child Care Aware® of America and the undersigned organizations.

Child Care Aware® of America is the nation's leading voice for child care. CCAoA is a national nonprofit with a network of more than 500 child care resource and referral (CCR&R) member organizations working to advance a high-quality, affordable child care system that supports children's healthy growth, development, and learning. Founded in 1987, CCAoA partners with national state, and community organizations to deliver innovative, results-based services for families and child care providers, produces research, engages the media, public and policymakers, and advances policies and mobilizes action that promote understanding of and increased support for and investment in an equitable high-quality child care system for America.

CCAoA and the undersigned organizations appreciate and support the intent of the proposed rule that seeks to both improve child care access and affordability for families and providers and reinforce key provisions of the primary federal law that provides support for states' child care programs, the Child Care and Development Block Grant (CCDBG).

This NPRM comes at a critical time as families and providers continue to feel the strain of a child care system that relies heavily on family payments, which are not enough to cover the high costs it takes to provide labor-intensive child care services. As a result, families are paying upwards of $11,000 a year for one child in child care, while at the same time our nation's child care teachers earn just over $13.50 per hour, often without benefits.[1] Child care programs remain short-staffed, and providers often express that they are burned out from long-standing under-compensation and the effects of the

[1] Child Care Aware® of America (2022). Demanding Change: Repairing our Broken Child Care System. https://www.childcareaware.org/demanding-change-repairing-our-child-care-system/

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pandemic.[2] Families also continue to struggle to find and afford child care. It is no secret that the pandemic has exacerbated these long-standing challenges.

Our comments focus on three key areas for consideration:

1. **Funding:** Many of these proposed changes reflect policies that some states recently implemented with a combination of federal relief and state funding, such as capping family copayments, paying providers based on enrollment, and utilizing grants or contracts to increase supply. Federal funds provided under Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA), and the American Rescue Plan Act (ARPA) have been a lifeline for the child care sector and helped states make critical gains toward implementing policies that improve access, affordability, and quality. As federal relief funds are soon set to expire, many states, territories, and Tribes will struggle to immediately implement or continue these policies without additional sufficient funding. The Regulatory Impact Analyst in the NPRM specifically notes that absent additional state and federal funding, some states will have to make difficult tradeoffs to support some policies over others to comply with the NPRM if it becomes final.[3] Additional federal funding may be needed to comply with some of the proposed rule changes. Any additional investments should supplement, not supplant, existing state and federal investments.

2. **Timing of implementation**: The NPRM proposes that all provisions included, if finalized, will become effective 60 days from the date of publication of the final rule. Compliance with provisions in the final rule would be determined through ACF review and approval of CCDF plans, including plan amendments; through federal monitoring, including on-site monitoring visits as necessary; and through ongoing federal oversight. Many states will need time to approve state budgets, enact legislative changes, and submit amendments to state CCDF plans or take other steps necessary to comply with this NPRM if it becomes finalized. We recommend that clear and reasonable timelines be established within the rule language for all provisions. Additionally, we recommend that ACF provides sufficient guidance to Lead Agencies to meet the regulatory requirements included in the final rule. We request that ACF clarify in the final rule whether CCDF state plan amendments are necessary for the fiscal year (FY) 2022–2024 CCDF state plan period and provide additional guidance on how states can use the FY 2025-2027 state plan to address implementation plans that would be required because of any final rule. Lastly, we request ACF provide guidance for how states, territories, and Tribes can seek waivers or CCDF state plan submission extensions if they need to revise policies or procedures to come into compliance with the new regulatory requirements.

3. **Flexibility:** The NPRM establishes parameters for policies that are currently allowable under CCDF to help states increase families' child care options, stabilize operations for providers, and make it easier for families to receive assistance faster and with minimal disruptions to their work, training, or education. We are concerned that a one-size-fits-all approach for states to

[2] National Association for the Education of Young Children (November 2022). Uncertainty Ahead Means Instability Now: Survey of Child Care Providers Shows Why Families, Children, Educators, Businesses, and States Need Congress to Fund Child Care. https://www.naeyc.org/sites/default/files/wysiwyg/user-73607/november_2022_naeyc_policy_fieldsurvey_final.pdf

[3] Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF), 45 CFR Part 98, 45040 (proposed July 13, 2023) https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14290.pdf

meet the new requirements in the NPRM will make implementation unnecessarily difficult and untenable for some given various state factors. Instead, we encourage ACF to provide further clarity and guidance on flexibilities, alternative options, and how to demonstrate progress for states to come into compliance with the final NPRM that still meet the intent of the rule provisions. We encourage ACF to consider what flexibilities are allowed under current law and how states can find an achievable path forward to comply with the proposed changes.

Additionally, while not an exhaustive list of provisions we support in the NPRM, we express support for the following:

- On page 45031, 1st column, §98.45(g) – Paying the Established Subsidy Rate
- On page 45033, 2nd column, §98.21(g)(1) and page 45034, 1st column, §98.21(g)(2) – Eligibility Verification
- On page 45034, 1st column, §98.21(f)(1) – Application Processes
- On page 45034, 2nd column, §98.21(d) and page 45034, 3rd column, §98.16(h)(4) – Additional Children in Families Already Receiving Subsidies
- On page 45035, 2nd column, §98.13 – Applying for Funds
- On page 45035, 2nd column, §98.16 – Plan Provisions

Comments by NPRM Section:

Page 45026, 1st column – Effective Dates

The NPRM proposes that all provisions included, if finalized, will become effective 60 days from the date of publication of the final rule. Compliance with provisions in the final rule would be determined through ACF review and approval of CCDF plans, including plan amendments; through federal monitoring, including on-site monitoring visits as necessary; and through ongoing federal oversight.

CCAoA supports the proposed effective date of 60 days that is included in the NPRM to ensure all states are making progress toward a more affordable, accessible child care system, with the caveat that the NPRM be updated to include reasonable timelines for states to make progress towards, and ultimately come into compliance with, some of the new requirements. It is critical that when issuing a final rule ACF includes a multi-year timeline for implementation, developed by utilizing feedback and comments from state lead agencies and other stakeholders.

We recommend that ACF provides sufficient guidance to Lead Agencies to meet the regulatory requirements included in the final rule. Additionally, we request that ACF clarify in the final rule whether CCDF state plan amendments are necessary for the federal fiscal year (FFY) 2022–2024 CCDF state plan period and provide additional guidance on how states can use the 2025-2027 state plan to address implementation plans that would be required because of any final rule. Lastly, we request ACF provide guidance for how states, territories, and Tribes can seek waivers or CCDF state plan submission extensions if they need to revise policies or procedures to come into compliance with the new regulatory requirements.

Page 45027, 1st column, §98.45(b)(5) – Prohibit Family Co-Payments That Are a Barrier to Child Access

The NPRM proposes that copayments be no more than 7 percent of a family's income, even when a family has multiple children utilizing CCDF subsidies, to reduce a barrier to child care access and options, improve family stability and economic well-being, and support stable family employment. Section 658E(c)(5) of the Act (42 U.S.C. 9858c(c)(5)) establishes that Lead Agencies must not set copayment policies that are a barrier to families receiving assistance. The preamble (81 FR 67515) of the 2016 CCDF final rule established 7 percent as the federal benchmark as an affordable copayment for families receiving CCDF but did not make it a mandatory ceiling.

CCAoA supports this proposed change and believes it will be a significant improvement for families eligible for federal child care subsidies. CCAoA's research underscores how care is incredibly unaffordable for families, especially those with low incomes who are eligible for CCDF. Our report finds that in 2022, the national annual average price of child care was $10,853.[4] It would take 10 percent of a married couple with children's median income and 33 percent of a single parent with children's income to afford this national average price. The high price of child care continues to exceed many family household expenses. The average price of care for two children exceeded average housing costs in three of four regions – the Midwest, the Northeast and the South. As we've seen in years past, the average price of child care for two children exceeds annual in-state tuition in all four regions.

With relief funding, many states have made progress in lowering family copayments at or below 7 percent. In response to the pandemic, several states and territories waived copayments for all families for some period. An analysis of state CCDF policies in 2021 finds that 21 states and territories exempted all families with income below 100 percent of the federal poverty level (FPL).[5] In 2022, Rhode Island passed legislation capping family copayments at 7 percent. In 2023, states across the country continued to cap family copayments. For example, New York's final state budget increased eligibility and capped child care copayments to one percent of the total family income above the poverty line. North Dakota allocated $2.3 million in state general funds to eliminate copayments for families making less than 30 percent of state median income (SMI). New Hampshire eliminated copayments for families below 100 percent of FPL and limits costs to $5 per week for families under 138 percent of FPL. California will eliminate copayments for families earning under 75 percent of SMI starting on October 1, 2023, and limit copayments to one percent for families earning between 75–85 percent of SMI.

However, when federal relief funding is expended, states may not be in a position to continue current copayment policies with existing ongoing funding without making difficult trade-offs that could impact the number of families served or other quality efforts. Further, not all states have limited copayments at 7 percent, and some who initially did with federal relief funding have already ended this policy. Data from 2021 finds that copayments for a three-person family with $25,000 in annual earnings were as high as $249 per month in Tennessee, though the median monthly copayment across all states was $71.[6] And, other states are making progress. Montana, for example, passed legislation in 2023 capping family copayments at 9 percent of family income.

CCAoA recommends that ACF provide clear guidance to states on how they can plan to meet this requirement, which may include a phased-in approach based on household income, within a reasonable timeframe. We also recommend that the NPRM acknowledge that the 7 percent copayment cap is the maximum cap allowed and states can and should set copayment rates at lower rates for families with lower incomes.

It is imperative that ACF monitor states to ensure that the cost of capping a family's copayment to 7 percent is not then passed on to providers and is instead covered by the Lead Agency. In April 2023, states who had subsidy reimbursement rates below the 50th percentile of their most recent market rate survey

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[4] Child Care Aware® of America (2023). Catalyzing Growth: Using Data to Change Child Care. https://www.childcareaware.org/catalyzing-growth-using-data-to-change-child-care-2022/

[5] Kwon, D., Dwyer, K., Todd, M., & Minton, S. (July 2023). *Key Cross-State Variations in CCDF Policies as of October 1, 2021: The CCDF Policies Database Book of Tables. OPRE Report 2023-020.* Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. https://www.acf.hhs.gov/sites/default/files/documents/opre/CCDF%20Policies%20Database%202021%20Book%20of%20Tables%20%28final%29.pdf

[6] Ibid.

were sent letters of non-compliance from OCC.[7] Most states and territories set payment rates for child care that meet or exceed the 50th percentile, and we applaud OCC and its technical assistance network as it continues to partner with states and territories to achieve full compliance with CCDF policies. Raising all reimbursement rates higher than the 50th percentile threshold, with a target of at least the 75th percentile, a benchmark established in the 2016 CCDF final rule, would help states ensure that capping family copayments will not have an adverse effect on providers. CCAoA recommends that ACF retain the language in the preamble that "Lead Agencies must continue to set payment rates at levels that provide equal access to care for families receiving child care subsidies" and further clarify the specific mechanisms they will take to monitor implementation to ensure that providers stay whole and do not assume the costs of capped copayments. We also recommend that the NPRM require states to certify in their FY 2025-2027 CCDF state plans that the cost to cover the difference will be paid for by the Lead Agency.

Page 45027, 2nd column, § 98.45(l)(4) – Allow Lead Agencies to Waive Co-Payments for Additional Families

The NPRM proposes Lead Agencies have discretion in waiving copayments for eligible families with income up to 150 percent of FPL and eligible families with a child with a disability. This NPRM also exempts all Tribal Lead Agencies from the requirement to establish a sliding fee scale, meaning families would not be required to pay copayments.

CCAoA supports this proposed change and believes that children and families from these populations would benefit from reduced barriers to accessing CCDF and states would benefit from the flexibility to waive copayments for these populations. Allowing Lead Agencies to waive copayments for families with incomes up to 150 percent FPL would eliminate financial barriers that prevent low-income families, who disproportionately spend more of their income on child care than wealthier families, from accessing CCDF.[8] This flexibility is currently allowed under CCDF and would not alter existing options for states to define additional special populations eligible for waiving copayments.

CCAoA recommends that ACF clarify that states still can and should waive copayments for families at a higher income threshold, too, where possible, and encourage states to waive copayments for families belonging to additional populations that could benefit from child care assistance if resources allow.

Page 45028, 2nd column, § 98.33(a)(8) – Consumer Education

The NPRM proposes that Lead Agencies post information about their process for setting the sliding fee scale for copayments, information on waived copayments, and estimated copayment amounts for families to help ensure families are aware of all copayment policies.

CCAoA supports this proposed change. Section 658E(c)(2)(E) of the Act (42 U.S.C. 9858c(c)(2)(E)) already requires Lead Agencies to collect and disseminate consumer education information that will promote informed child care choices to parents of eligible children, the public, and providers. All states post this information to consumer education websites to provide the general public with information about child care in their community. While some states are already posting copayment information on these websites, it remains difficult in some communities for parents to learn about and understand copayment rates and what their families might expect to pay or what is required of them to receive a copayment. This piece of vital consumer education should be readily accessible to families to make informed decisions about their child care options.

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[7] Office of Child Care (April 2023). *Child Care and Development Fund Payment Rates.* Office of Child Care, Administration for Children and Families, U.S. Department of Health and Human Services. https://www.acf.hhs.gov/occ/news/child-care-and-development-fund-payment-rates

[8] Campbell, M., Smith, L.K., & Suenaga, M. (August 2020). *Demystifying Child Care Affordability.* Bipartisan Policy Center. https://bipartisanpolicy.org/blog/demystifying-child-care-affordability/

CCAoA recommends that ACF encourage states to consider additional barriers for families to access copayment information on their state's consumer education websites, such as mobile-only internet users, people with limited literacy and limited English proficiency.

Page 45029, 1st column, §§ 98.16(y), 98.30(b), and 98.50(a)(3) – Building Supply with Grants and Contracts

The NPRM proposes to require states and territories to provide some child care services through grants and contracts to address the lack of supply of child care for underserved populations. The NPRM specifies that at a minimum, states must use some grants or contracts for infants and toddlers, children with disabilities, and nontraditional hour care. This proposed rule aligns with Section 658E (c)(2)(A) of the CCDBG Act, which requires Lead Agencies to provide parents the option of enrolling with a child care provider that has a grant or contract for the provision of such services or to receive a certificate or voucher. CCDBG also requires that Lead Agencies prioritize addressing the lack of supply of child care for underserved communities.

Contracts and grants allow providers to meet higher quality standards by providing stable, predictable, and timely funding. And most importantly, both contracts and grants enable states to establish financial incentives for programs that provide care to underserved communities, like infants and toddlers, children with disabilities, and families who need nontraditional hour care. When states use contracts, they can pay providers monthly installments based on enrollment and allow for flexible absence policies given the fixed, monthly payment.[9] Some states have had success in using contracts, while others have noted administrative challenges around implementation, low participation among programs, inability to fill slots, and a lack of significant funding to support this initiative.[10]

Grants have been instrumental for supporting immediate stabilization, supply building and helping states meet quality improvement goals. In fact, CCAoA's *Annual Child Care Landscape Analysis 2022* report shows evidence of national child care supply recovery during the time that grants were used in all states to stabilize the child care system. When examining the number of center-based programs open between 2019 and 2022, the number increased, and during the same period the rate of decline among family child care homes was smaller than in prior years.[11] These grants have specifically been used by programs to cover fixed costs like rent and utilities, compensation and other benefits, and program materials and supplies for centers, family child care homes, and family, friend and neighbor care. Every state demonstrated with federal relief funding that they can successfully provide grants to child care programs, with some states using this funding to provide grants for supply and capacity building for care of

[9] The State Capacity Building Center (September 2022). *Using Grants and Contracts to Build the Supply and Quality of Infant and Toddler Care.* Office of Child Care, Administration for Children and Families, U.S. Department of Health and Human Services. https://childcareta.acf.hhs.gov/sites/default/files/new-occ/resource/files/using_contracts_high_quality_infant_and_toddler_ca.pdf

[10] Workman, S. (August 2020). *Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care.* The Center for American Progress. https://www.americanprogress.org/article/grants-contracts-strategy-building-supply-subsidized-infant-toddler-child-care/

[11] Child Care Aware® of America (2023). Catalyzing Growth: Using Data to Change Child Care. https://www.childcareaware.org/catalyzing-growth-using-data-to-change-child-care-2022/

underserved populations. States like Colorado[12], New Jersey[13], and Tennessee[14] used relief funding to provide additional grant funding or bonus awards for programs that served infants and toddlers, children with special needs, or providing care during non-traditional hours.

CCAoA supports this proposed change, which would support efforts to increase the supply of high-quality child care. CCAoA believes that grants and contracts can play an important role in increasing capacity, quality and greater financial stability for providers working with underserved populations. We're encouraged by the progress some states have made in the last two years around implementing grants and contracts, especially with the availability of federal relief funding. CCAoA supports a proposal that requires states to use grants, contracts, or a combination thereof to address the lack of supply of high-quality child care for underserved communities and populations.

We recommend that the NPRM's preamble include additional language to clarify that the requirement for states to use grants and contracts would not be limited to securing slots only, and that grants may be used for the supply building of high-quality care for infants and toddlers, children with disabilities, and nontraditional hour care. This includes providing grants to programs to cover compensation and benefits, fixed costs, and other program needs to meet the supply-building requirements for children in underserved areas included in §§ 98.16(y), 98.30(b), and 98.50(a)(3). Now that every state has been required to administer and disperse grants with federal relief funding and available data that show that child care supply increased on the heels of large-scale investments, we have evidence that grants to programs can be an extremely effective strategy in building supply.

We also recommend that ACF provide dedicated support and technical assistance, including peer-to-peer learning opportunities to Lead Agencies, so states can better understand how to successfully address administrative challenges and implement contracts and grants outside of relief funding. Grants and contracts should include incentives for programs to participate, like higher reimbursement rates aligned with contract agreements and prospective monthly payments based on overall enrollment. Georgia had success in offering higher reimbursement rates to providers who participating in its Quality Rated Subsidy Grant program for licensed, high-quality infant and toddler care. Beginning in 2015, participating providers received rates that were 50 percent higher, and the number of quality-rated grant slots rose to 3,000 across 141 child care providers in 2020 from just 12 providers in 2015.[15] The program was initially funded by federal Race to the Top Challenge grants and then later continued with CCDF funding. This program, however, was cut in 2020 due to pandemic-era budget cuts, further highlighting the success of statewide-level grants and contracts when significant funding, especially federal funding, is available.[16]

Finally, we recommend that ACF provide guardrails around this proposal that states must make contracts and capacity building grants available to all regulated child care settings, including family child care (FCC).It is critical that ACF provide guidance and support for states to ensure that their policies and processes are

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[12] Colorado Department of Early Childhood (April 2022). Federal Stimulus Funding FAQ. https://drive.google.com/file/d/1_l_Ay_QUi9vmxWJ80dAD9MmOtXqop_j-/view

[13] State of New Jersey Governor Phil Murphy (October 2021). Murphy Administration Announces Additional Child Care Investments to Support Working Families, Child Care Workers, & Providers. https://www.nj.gov/governor/news/news/562021/20211013b.shtml

[14] Tennessee Department of Human Services (September 2021). Tennessee Working to Make Childcare Easier to Find and More Affordable. https://www.tn.gov/humanservices/news/2021/9/29/tennessee-working-to-make-childcare-easier-to-find-and-more-affordable.html

[15] Camardelle, A. (June 2019). *Georgia's Boost in Child Care Funding.* The Georgia Budget and Policy Institute. https://gbpi.org/wp-content/uploads/2020/04/Georgias-Boost-in-Child-Care-Funding-updated.pdf

[16] Workman, S. (August 2020). *Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care.* The Center for American Progress. https://www.americanprogress.org/article/grants-contracts-strategy-building-supply-subsidized-infant-toddler-child-care/

inclusive of, and accessible to, regulated programs in all settings including FCC.

Page 45030, 2nd and 3rd columns, §§98.45(m)(1), §98.45(m)(2) and Page 45031, 1st column, §98.45(l)(2) – Sustainable Payment Practices

The NPRM proposes to implement payment practice policies that are consistent with the private-pay market. First, it proposes requiring Lead Agencies to pay prospectively prior to the delivery of services. Second, the NPRM proposes to delete two of three current payment practice options that allow for full payment if a child attends at least 85 percent of authorized time or if a child is absent 5 or fewer days a month, to instead require that Lead Agencies pay child care providers based on a child's enrollment rather than attendance. Third, the NPRM proposes requiring Lead Agencies who determine they cannot pay based on enrollment to describe their approach in the CCDF Plan, provide evidence that their proposed alternative reflects private pay practices and does not undermine the stability of child care providers participating in CCDF.

Current CCDBG statute already requires Lead Agencies to certify that payment practices for child care providers receiving CCDF funds reflect generally accepted payment practices for the private-pay market. These critical provisions in the statute intend to support provider stability and encourage more child care providers to serve subsidy-eligible children. Current law also requires the Lead Agency, to the extent practicable, to implement enrollment and eligibility policies that support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's attendance.

CCAoA supports policies that increase parent choice, support provider stability, and bring new providers into the subsidy system. All child care providers benefit from payments that are consistent, timely, and reflect the cost of high-quality child care. In most states, many providers serving children eligible for subsidies are paid several weeks after services are rendered and the amount can vary based on individual attendance and reimbursement rates, even though provider costs are not determined by how many days a child is in attendance. This monthly variation causes it to be difficult to make informed decisions around budgeting, staffing, and enrollment.

We support the NPRM proposal to require that states pay providers based on enrollment instead of attendance and recommend that ACF allow for alternatives to prospective payments that still meet the intent of the rule provision. Paying based on enrollment was commonly implemented during the pandemic with relief funding and a review of the FY 2202-2024 state CCDF plans finds that 36 states were using this policy in 2022. In 2020, CCAoA, in partnership with New America, analyzed how this policy impacted providers in Massachusetts and southern California. Our analysis showed a stabilizing effect for reimbursing providers based on enrollment.[17] In Massachusetts from April to June 2020, centers received subsidy payments based on enrollment that were 13.52 percent higher than they would have been under a regular attendance-based payment system. CCAoA found that 82 percent of providers in Massachusetts that accepted subsidies in January and February 2020 remained in business as of July and August 2020. Cost modeling showed that permanently moving from attendance-based to enrollment-based payment practices for all licensed providers would require an increase of 4.15 percent over the projected cost of maintaining current policy. Massachusetts continues to enact this policy.

In southern California, our analysis found that providers serving children with variable schedules did not experience a drop in subsidy payments from March to September 2020 under the enrollment-based reimbursement system, despite variable attendance. This allowed providers to stay in business and retain child care options for families with variable schedules. These counties maintained over 99 percent of family child care subsidized provider capacity and 88 percent of center-based subsidized provider capacity from pre-pandemic months through August 2020. At the time, CCAoA's cost model estimated that

[17] Cooper, A., & Girouard, D. (June 2021). Child Care Payments: Attendance Vs. Enrollments. Child Care Aware® of America. https://info.childcareaware.org/blog/child-care-payments-attendance-vs.-enrollments

permanently switching from reimbursing providers based on attendance to enrollment using the maximum hours allowed would cost California 10.5 percent over the projected cost of maintaining an attendance-based policy.

Based on conversations with state leaders, advocates, and stakeholders, we understand that some existing state procurement laws and rules prohibit this practice and will present barriers to implementation. We encourage ACF to take this into consideration and find an achievable path forward to ensure stable and predictable payments for providers. For example, state agencies currently have much progress to make to even provide more frequent payments to providers and update data systems and technology that would support a quicker payment process. In Colorado, for example, providers are paid weekly through an automated tracking system, according to the state's 2022-2024 CCDF state plan.[18] CCAoA also recommends that ACF provide guidance to states on the use of improved payment practices, including prospective payments, in the form of resources, technical assistance, and peer-to-peer learning opportunities for Lead Agencies. We also recommend that ACF encourage states to incorporate prospective payments in their use of contracts.[19]

Page 45032, 1st column, §98.21(e) and §98.21(h)(5) and Page 45033, 2nd column, §98.21(a)(5)(iv) – Presumptive Eligibility

The NPRM proposes to allow Lead Agencies to use presumptive eligibility to provide quicker access to child care assistance for families with urgent needs, while reducing perceived financial risk and administrative burden by clarifying that CCDF funds may be used to cover presumptive eligibility payments if appropriate safeguards are in place. The proposed policy further reduces financial risk by requiring Lead Agencies to limit the presumptive eligibility period to three months, to set presumptive eligibility criteria and minimum verification requirements that ensure families receiving care during a period of presumptive eligibility are feasibly eligible and minimize the likelihood that they are later found to be ineligible for CCDF, and to track number of ineligibilities and adjust their presumptive eligibility processes accordingly.

The NPRM also proposes to allow Lead Agencies to discontinue assistance prior to the end of the minimum 12-month eligibility period in cases where a period of presumptive eligibility ends with a failure to determine eligibility due to the family not completing required eligibility processes, such as providing required paperwork. Lead Agencies have discretion to determine the processes and documentation required for eligibility verification and can consider ways to minimize the time to process applications, thereby reducing the length of the presumptive eligibility.

CCAoA supports policies and practices that reduce administrative burden and streamline eligibility determination for families so that they can access child care and other services they are eligible for more quickly. At the same time, CCAoA recognizes the need to ensure program integrity and minimize fraud. Presumptive eligibility is currently allowable under CCDF but establishing these parameters will help ensure timely access to reliable child care assistance and reduce administrative burdens on families by reducing the amount of information gathering and application processes families must complete. This will also allow families to satisfy specific components of CCDF eligibility such as income eligibility, work, participation in education or training activities, or residency without additional documentation.

We support allowing flexibility to Lead Agencies to define a minimum criterion for granting presumptive eligibility and end presumptive eligibility before the 12-month eligibility period in cases where families do

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[18] Colorado Department of Early Childhood (2022). Child Care and Development Fund (CCDF) Plan for Colorado FFY 2022 – 24. https://drive.google.com/file/d/1ag97SRmjM1lX26o5Kl7sPezK0d6cVCHv/view

[19] The State Capacity Building Center (September 2022). *Using Grants and Contracts to Build the Supply and Quality of Infant and Toddler Care.* Office of Child Care, Administration for Children and Families, U.S. Department of Health and Human Services. https://childcareta.acf.hhs.gov/sites/default/files/new-occ/resource/files/using_contracts_high_quality_infant_and_toddler_ca.pdf

not provide the required information or are deemed ineligible to encourage families to actively participate in the determination process. We support that under this provision providers are paid for services rendered, except in the cases of fraud or intentional program violation, regardless of eligibility determination. Lastly, we support the requirement for Lead Agencies to track the number of presumptively eligible children who end up being found ineligible in an effort to continuously improve the eligibility determination process.

CCAoA acknowledges that states will have to evaluate their current choices for how they spend CCDF funding to reallocate resources to meet the requirements of the rule, absent additional federal or state funding. This proposal would not be a required change for states to enact. Most states do not currently have a presumptive eligibility policy—as of April 2023, only four states and one county (Delaware, Maryland, Montana, Wyoming, and Monroe County, New York) have enacted a presumptive eligibility policy for child care assistance.[20]

Page 45034, 3rd column, §98.2 – Definitions

The NPRM proposes three technical changes to definitions at § 98.2, including to amend the definition of major renovation to be based on cost ($250,000 for centers and $25,000 for family child care homes) and not based on a description of structural change. The NPRM proposes including language clarifying that renovation activities that are intended to occur concurrently or consecutively, or altogether address a specific part or feature of a facility, are considered a collective group of renovation activities.

CCAoA is concerned that codifying a static threshold for major renovations may provide clarity but may not be the best approach. Instead, CCAoA recommends that the final rule establish a floor of $75,000 for family child care homes and $250,000 for centers in year one, and that ACF will issue subsequent annual guidance containing a cost level that constitutes a major renovation, which accounts for regional adjustments, setting, and other factors, and that is established in consultation with experts and available studies and data on child care renovation costs.

Page 45036, 1st column, §98.43 – Criminal Background Checks

The NPRM proposes to clarify at § 98.43(a)(1)(i) and (d)(3)(i) the requirement that employment eligibility decisions must be made based on results of background checks and not after initiating all checks. Second, it proposes to clarify at § 98.43(c)(1) it is the role of the state, territory, Tribe to determine a prospective staff member's eligibility for employment, coordinating across relevant public agencies as necessary, such as state child welfare offices and the State Identification Bureau. As proposed, the Lead Agency must provide the results of the background check to the child care provider in a statement that indicates only whether the staff member is eligible or ineligible, without revealing specific disqualifying information. Lastly, at § 98.43(c)(1)(v) to clarify that all adjudications for child pornography are disqualifying.

CCAoA supports this proposed change and agrees that employment eligibility decisions must be based on the results of background checks and not after only initiating all checks to ensure the safety of all children in child care. However, CCAoA recommends that ACF clarify in the preamble that provisional employment would still be in effect under this NPRM as it is defined in § 98.43(d)(4) of the 2016 CCDF final rule,[21] which states that prospective staff members would still be eligible to begin working for a child care provider while being supervised at all times by an individual who received a qualifying result on a background check.

[20] Gomez, A.L. (May 2023). *Presumptive Eligibility in Child Care: Frequently Asked Questions.* The Center for Law and Social Policy. https://www.clasp.org/publications/fact-sheet/presumptive-eligibility-in-child-care-frequently-asked-questions/.

[21] Child Care and Development Fund (CCDF) Program, 45 CFR Part 98 (2016) https://www.govinfo.gov/content/pkg/FR-2016-09-30/pdf/2016-22986.pdf

Page 45037, 1st column, §98.71 – Contents of Report

The NPRM proposes to delete the data element at § 98.71(a)(11) that requires Lead Agencies to report any amount charged by a child care provider to a family receiving CCDF subsidy more than the copayment set by the Lead Agency in instances where the provider's price exceeds the subsidy payment amount because it would be unreasonably burdensome on parents and providers.

CCAoA opposes this proposed change and believes this data is important for Lead Agencies to collect to accurately reflect the cost of providing high-quality care across the country. To receive total payment that allows providers to viably operate, in some cases charging families more than the state subsidy rate is necessary. The data collected from this reporting requirement will be especially critical in examining the cost of care going forward if there is a requirement for all states to cap copayments at 7 percent of family household income. CCAoA recommends ACF work directly with the handful of Lead Agencies for whom previously reported it is challenging or burdensome to collect or report this data to improve their data collecting or reporting systems.

Page 45041, 1st column – Implementation Timeline

The Regulatory Impact Analysis examines a 5-year timeframe for implementation and builds in one year for Lead Agencies to phase in these provisions. The cost estimate assumes a one-year ramp-up period of half of the full costs with full implementation in years three, four, and five. The costs, transfers, and benefits in this estimate are phased-in as follows: Year 1: One half of the full costs/ transfers/benefits estimate, Years 2, 3, 4, and 5: Full costs/transfer/ benefits transfer.

CCAoA notes that, as proposed, the implementation assumptions in the Regulatory Impact Analysis may not be representative of all states and encourages ACF to provide additional clarity in the final rule on how states can make progress towards compliance over a reasonable timeline. Some states may face significant barriers to implementing all provisions of the NPRM on this timeline. Not every state has a legislative session each year and some states pass a biennial state budget, meaning states will need time within the at least first two years of implementation to pass legislation and state budgets, amend CCDF state plans, and begin implementation efforts. Based on the timing of the final rule, states may not be able to address required legislative changes within the first year. As a result, the Regulatory Impact Analysis' assumption of a one-year "phase in," and subsequent one-year "ramp-up," underestimates the necessary time to reach full implementation of the required proposals.

We recommend ACF clarify how states, territories, and Tribes can seek waivers in cases where specific provisions may require additional time to implement outside of the timeline identified in this NPRM. Additionally, there may be challenges with this implementation timeline for Lead Agencies who have recently had department transitions or have multiple different agencies overseeing child care. And, as stated earlier in this comment letter, we urge ACF to include a clear multi-year timeline for implementation, developed by utilizing feedback and comments from state lead agencies and other stakeholders.

Additional Recommendations for Consideration:

While outside the scope of the proposed rule, CCAoA urges the Office of Planning, Research, and Evaluation (OPRE) to engage in research to better understand child care affordability for families across factors including income level, family composition, geographic location, and needs of children. As ACF and states continue to strive to ensure child care is accessible and affordable for families, research must drive future recommendations.

In addition, the viability of child care businesses that participate in the subsidy systems supported by CCDF hinges on whether payments received cover the true cost of providing high-quality child care. CCAoA urges ACF to continue to support states to move towards using alternative methodologies and cost analyses for the purposes of establishing subsidy payment rates.

At the core of cost analyses is determining compensation ranges for child care staff that reflects their experience, education and training, and address recruitment and retention of this critical workforce. Child care is labor-intensive, and thus an expensive service to provide. CCAoA encourages ACF and OPRE to conduct research into reasonable approaches to setting compensation ranges for early educators so that states can use that information as they develop costs analyses and rate setting policies.

Thank you for the opportunity to submit comments on this NPRM. If you need any further clarifications regarding these recommendations, please contact me at Susan.Gale.Perry@usa.childcareaware.org.

Sincerely,

Susan Gale Perry

Child Care Aware® of America

Chief Executive Officer

CCAoA Member Child Care Resource and Referral Agencies

(list in formation)