



REGULATORY WAIVERS

The Use of Waiver Authority Under the Child Care & Development Block Grant Act

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Introduction

The law that governs the administration of federal child care assistance — The Child Care and Development Block Grant Act (CCDBG)— applies to much of the federal relief that has been provided to the states over the past two years. The law, which was updated in 2014, includes requirements in key areas, including: health and safety standards; pre-licensure and annual unannounced on-site monitoring visits for certain providers; criminal background checks and professional development for child care providers; and activities to improve the quality and availability of child care.

CCDBG also provides states the ability to seek temporary relief from nearly all of the law’s statutory or regulatory provisions if there is an inability for the state to comply with the law, or in the event of extraordinary circumstances.

Over the past two years, every state sought and gained at least one waiver from the federal law.¹

The Department of Health and Human Services’ (HHS) Administration on Children and Families (ACF) has provided a summary of these approvals, including which states have sought waivers and from what areas of the law. This is more than the law requires in terms of transparency, and goes beyond the efforts of the past two presidential administrations in terms of transparency around waivers. However, there remains no public information surrounding:

- The contents of states’ waiver requests;
- The requested duration for waivers;
- Any recent denials of state waiver requests; nor
- How states plan to ensure that the health, safety and well-being of children are not compromised because of any waiver.²



As systems of early learning and care expand, issues of administration, governance, monitoring, and oversight will be critical in ensuring successful, equitable, implementation. Thus, knowing which parts of the law apply, and which do not, is essential. However, there is little or no information available on how HHS uses its waiver authority in granting states relief from the law, and it is under no obligation to provide that information. Nor does the public have any view into the deliberations – at either the state or federal levels – on which federal requirements should apply to the states and which should not. This must change.

Apart from the need for transparency, broad understanding around the need for waivers among stakeholders may reveal that areas of the laws require revision, or that certain aspects of the law are not possible to implement fully without additional resources.

The following provides an overview of the history of CCDBG waiver authority, different administrations' interpretation and implementation of that authority, an analysis of states' requests for waivers, the potential use of waivers in the future and recommendations for policymakers.

Legislative and Regulatory History of Waivers

When CCDBG was originally enacted in 1990, and later when it was updated in 1996, the law included no waiver provisions allowing states to seek statutory or regulatory relief.³ The waiver authority included in the law, which has been given greater clarity through implementing regulations promulgated later, was first included in the 2014 reauthorization of CCDBG.⁴

ESEA WAIVERS

It is instructive to discuss the waiver provisions included in CCDBG in the context of the waiver authority used by the Department of Education to grant conditional relief to the states from the requirements of the Elementary and Secondary Education Act (ESEA) between 2011 and 2015. During this period, states remained obligated to carry out the requirements under ESEA's most recent reauthorization at that time: No Child Left Behind.

Under the ESEA's statutory waiver provisions, Congress granted the Secretary of Education wide-ranging authority to waive most statutory and regulatory requirements of the law, apart from certain provisions, such as those relating to fiscal accountability.⁵ In 2011, the Secretary of Education exercised this authority to provide states with the opportunity to voluntarily request waivers from certain requirements of the law in exchange for a commitment to engage in certain reforms important to the Obama Administration.⁶ Between 2011 and 2015, more than 40 states and the District of Columbia applied for and received this flexibility from the Department of Education, implementing state-developed plans to tackle issues relating to academic standards, annual assessments, teacher evaluation and support systems and school improvement.

Without this flexibility, states were subject to the restrictions and requirements of No Child Left Behind, which obligated states to implement the same sets of interventions in schools identified as needing improvement, a determination based primarily on students' performance on annual assessments

in reading and math. By 2011, these interventions were not only unpopular, but they were also viewed as insensitive to the individual needs and circumstances of schools and communities.⁷

The Department of Education's use of waiver authority was the subject of litigation⁸ and extensive congressional inquiry.⁹ Lawmakers found the Obama Administration's use of ESEA waivers objectionable enough that when substantial majorities in both houses of Congress reauthorized ESEA in 2015, they took steps to curtail the Secretary of Education's waiver authority, including preventing future Secretaries' ability to condition waiver approvals on states' or districts' agreement to tackle issues around standards, assessments or school improvement.¹⁰

Both CCDBG and ESEA are under the authority of the same congressional committees and were reauthorized in 2014 and 2015, respectively. Due to the bipartisan concern elicited by the Department of Education's use of waiver authority between 2011 and 2015, the committees of jurisdiction assembling the CCDBG reauthorization likely included certain provisions to circumscribe the ability of the Secretary of HHS to grant conditional waivers.¹¹ This is most noticeable in the provisions in the 2014 law that restrict the Secretary from imposing any new or additional requirements in exchange for receipt of a waiver.¹²

KEY FEATURES OF THE CCDBG WAIVER PROVISIONS

While Congress took steps to limit the authority of the administering federal agency and provide maximum flexibility to states seeking relief from the law, Congress deemphasized the need for public transparency into the waiver process. The law requires HHS to report on the approval or denials of waivers to two congressional committees, but it does not require HHS to make this information public.

Instead, the waiver provisions focus on the contents of the waiver requests, the approval process and restrictions on the Secretary during such process. Key provisions from the statute are outlined here¹³:



Conditions Precedent

The waiver provisions included in the law allow the Secretary to grant states relief from CCDBG’s statutory and regulatory requirements if:

- One of the following conditions exists:
 - Conflicting or duplicative requirements prevent the effective delivery of child care services; or
 - Extraordinary circumstances (including a natural disaster or financial crisis) or a delay in the state legislature impedes implementation of a statutory provision;
- The condition, or conditions, prevents a state from complying with a statutory or regulatory requirement;
- The requested waiver will enhance the state’s ability to meet the purposes of the law; and
- The waiver will not contribute to the inconsistency with the law’s objectives.

Content Requirements

In its waiver application, the state must provide the following information:

- Each sanction or provision from which the state seeks relief;
- A description of how a waiver from that sanction or provision will improve the delivery of child care services for children in the state; and
- A certification that the health, safety and well-being of children will not be compromised because of the waiver.

Waiver Timelines

The Secretary must approve or deny a state’s request within 90 days. If the request is disapproved, the state is entitled to amend the request. The Secretary is also required to inform the Committee on Education and Labor in the House of Representatives and the Senate Health, Education, Labor & Pensions Committee (hereafter, “relevant committees”) of any disapproval, and state the reasons for any disapproval.

If the state’s request is approved, the Secretary must, within 30 days of granting the waiver, notify and submit a report to the relevant committees describing:

- The circumstances of the waiver, including each sanction or provision waived;
- The stated need for the waiver; and
- The expected impact of the waiver on the children served through the state’s child care assistance program.

In either the case of an approval or disapproval of a waiver, the Secretary must, by law, inform the relevant committees.

Duration

The Secretary may approve a waiver request for a period of not more than three years and may provide a renewal of a waiver for a period of not more than one year. Further, the Secretary may terminate a waiver (after notice to the state and an opportunity for a hearing) if the performance of a state granted relief has been inadequate or if the conditions necessitating relief are no longer present.



REGULATORY HISTORY

Shortly after CCDBG was signed into law in November 2014, the Obama Administration worked quickly to draft regulations to interpret the law and guide its implementation.

Within a year, HHS had released its notice of proposed rulemaking (NPRM) for the Child Care and Development Fund (CCDF), a term used by HHS to encompass the discretionary funds authorized by CCDBG, mandatory funds provided through the Child Care Entitlement to the States under section 418 of the Social Security Act (CCES), Temporary Assistance for Needy Families funds that states transfer to their CCDF allocations, and state maintenance of effort and match funds associated with CCES.¹⁴ Though the funds come from different sources—and carry different formulas for allocations—all CCDF funds are governed by the requirements under CCDBG.¹⁵

In its NPRM, HHS proposed establishing two types of waivers to deal with the conditions set out in the statute that might encourage a state to seek a waiver—transitional or legislative circumstances and extraordinary circumstances. As stated in the NPRM’s preamble:

- ***Transitional and legislative waivers*** would provide states at most one full legislative session to enact legislation to implement the provisions of CCDBG and were limited to a one-year initial period and at most, an additional one-time, one-year renewal from the date of approval of the extension, which might be appropriate for a state with a two-year legislative cycle, for example.
- ***Waivers for extraordinary circumstances*** would address temporary circumstances or situations, such as a natural disaster or financial crisis. Extraordinary circumstance waivers were limited to an initial period of no more than two years from the date of approval, and at most, an additional one-year renewal from the date of approval of the extension.

This delineation is not something contemplated by the law, which provided the Secretary with the authority to grant states waivers for up to three years, with an option to renew for one year, for any enumerated circumstance that might necessitate a waiver.

While it is not stated in the NPRM, it is clear the intent with these categories of waiver requests was to limit states' ability to delay implementation of the law. This is borne out by responses HHS provided to the comments it received from the public on the waiver portion of the NPRM.

Commenters, which included states, expressed concern over the short time frame for transitional and legislative waivers, while other commenters noted that the law allowed for waivers for up to three years. In response, HHS stated "the vast majority of state legislatures meet annually; only four states have a legislature that meets every other year. They have the potential to be approved for a one-year waiver followed by the possibility of being approved for a one-year renewal. Providing for a longer base time period for a waiver could lead to delays in making the necessary legislative or transition changes."¹⁶

Ultimately, HHS opted to retain what it initially proposed and the final rule, promulgated late in 2016, only a few months before the end of the Obama Administration, limits the types of waivers states may seek as well as their duration.¹⁷



CONGRESSIONAL OVERSIGHT OF WAIVERS



As stated above, if at any time a state submits a CCDBG waiver request to HHS, the Secretary is required to provide a report on the approval or denial of the waiver to the relevant committees.

Based on a review of official communications over the past seven years, it does not appear that HHS has sent any formal correspondence to the Senate Health, Education, Labor & Pensions Committee regarding child care.¹⁸ Communications that have been sent to the House Education & Labor Committee include a 2015 letter regarding the use of CCDF in 2012 and 2013¹⁹—which necessarily could not have involved the use of waivers established in 2014—and a formal transmission of the final CCDF rule in 2016.²⁰

In the Senate Health, Education, Labor & Pensions Committee held a hearing regarding the implementation of CCDBG. Members of the Committee raised the use of waivers among the panelists, including HHS' Deputy Assistant Secretary for Early Learning.²¹ The testimony here provides insight into the Obama Administration's view of waivers.

For instance, in her opening statement, the Deputy Assistant Secretary explained that roughly a dozen states had already sought waivers from the health and safety training requirements that were added to CCDBG in 2014.²² HHS chose to deny all of these requests because the agency considered health and safety training vital to reducing the risk of death or injury among children and also free or low-cost training was readily available.²³ HHS stated that it approved all other waiver requests made by 24 states.

Further, following a question from a member of the Committee regarding compliance, and how HHS can ensure that states are following the mandates in the law with respect to health and safety, monitoring and background checks, the Deputy Assistant Secretary responded they were actively tracking states' progress and the limited duration of waivers assisted in that process. By offering states experiencing transitions only one year for a waiver, HHS could better track progress in implementing the law's requirements.²⁴

Notably, the Deputy Assistant Secretary testified that prior to moving forward with these actions, HHS had held a congressional staff briefing, and that “soon [it] will be providing formal notice to members of this committee and the House Committee on Education and the Workforce as required by the CCDBG Act.”²⁵ And while this may, in fact, have occurred, there is no public record of formal notice.



USE OF WAIVERS: PRE-PANDEMIC

The history of CCDBG state waivers prior to the COVID-19 pandemic can be best understood using a timeline of key dates following the reauthorization of CCDBG. Below is a timeline of the law’s enactment and implementation, and how waivers appeared in those contexts between 2014 and 2019.

January 2015 – ACF releases a Program Instruction (PI) document that provides guidance on effective dates included in the reauthorization. This guidance included a description and timeline summarizing effective dates associated with different provisions in the law.²⁶ The PI did not specifically reference waiver authority, but it did state the following (emphasis added):



“Reauthorization of the CCDF program brings about a number of changes, some of which are straightforward to implement, and others that are more complex and will take time to put in place. The level of effort needed for implementation will vary across the country depending on the number of changes a state needs to make. **Some states and territories will need time to enact changes through their state legislatures or rulemaking processes. In addition, some requirements will take time to fully operationalize, such as ensuring all CCDF providers have requisite health and safety training on the topics outlined in the new law. ACF will work with states and territories to ensure that adoption and implementation of these important changes is done in a thoughtful and comprehensive manner.**”

“If a state or territory provides justification for why it cannot yet certify compliance with one or more of the new requirements in its FY 2016-2018 CCDF Plan, **ACF may allow the Lead Agency to submit a state-specific timeline for achieving compliance with such provision(s).** The timeline must provide sufficient information to support approval of the Plan for funding.”

“**We expect the need for additional time would be limited to provisions that require significant policy revisions or implementation efforts by the Lead Agency and that the timeline for implementation would not exceed a 1-year period (i.e., September 30, 2016).**”²⁷

Here, the PI indicates to states that they may gain compliance without following the timelines established under the law.

July 1, 2015 – States and territories are required by ACF to submit their FY 2016–2018 CCDF State Plans by July 1, 2015.²⁸ These plans require states, territories and tribes to outline how they will use this dedicated federal funding over a three-year period. CCDF State Plans cover a multitude of areas, including how states will promote family engagement and consumer outreach, ensure equal program access, establish health and safety standards, recruit and retain a qualified workforce and support continuous quality improvement.

September 2016 – ACF’s Office of Child Care (OCC) published the final CCDF rule in the Federal Register, with an effective date of November 2016. ACF also published a list of the States and Territories that had requested waivers as of June 2016 through their CCDF State Plans.

In posting this list, OCC noted that if a state was unable to come into compliance with one or more of the new provisions in the law by the effective date of that provision, the state was required to submit a request for a waiver along with its CCDF State Plan, outlining how the state planned to fully implement the new requirement and the timeline for implementation. Initial waivers only covered provisions required in the 2016 calendar year. For requirements with an effective date after 2016, ACF stipulated that waiver requests be submitted no later than 90 days prior to the effective date. As mentioned previously, during this first wave of waiver applications, no requests for the health and safety training provision were approved.³¹

An analysis provided by the National Women’s Law Center (NWLC) and the Center for Law and Social Policy (CLASP) sheds further light on the waivers, highlighting that 35 states submitted waivers for at least one provision of the law for varying reasons, including: additional time needed to pass legislation; a desire to wait for the finalization of federal regulations, which were not yet final during the CCDF State Plan approval process; or a lack of resources available to implement the law. NWLC and CLASP noted that the most common waiver requests tied to provisions related to the phase-out of assistance



once families became ineligible, providing families 12 months of eligibility for assistance, health and safety topics, and inspections for license-exempt care.³²

June 2018 CCDF Plan Preprint – During the Trump Administration, OCC published its preprint for the FY 2019-2021 CCDF State Plans. In its preprint, OCC reiterated that states must come into compliance with its regulations for CCDF no later than October 1, 2018. OCC did, however, indicate that states could delay the implementation of background check requirements through time-limited waiver extensions, if certain milestones were fully implemented by fall 2018. OCC also stated it would grant additional waivers of up to two years, in one-year increments (i.e., potentially through September 30, 2020) for the background check requirements, if significant milestones were met.³³

In the CCDF State Plans themselves, OCC provided a standardized form for states to seek background check waiver requests. The standardized forms included fields for states to provide a description of: the provision from which the state sought relief; how the waiver would improve the delivery of child care services; and how the health, safety and well-being of children served would not be compromised as a result of the waiver. Approved CCDF State Plans for FY 2019-2021 were subsequently posted on OCC's website, and a review of state plans that remain available shows that states requested waivers ranging from requirements associated with background checks, to those involving emergency and disaster preparedness.³⁴

Up until this point, the CCDF State Plans provide the only public view into states' reasons for pursuing waivers from legal or regulatory requirements. However, publicly available CCDF State Plans reflect only what HHS has *approved* the state to do as a part of their plans to administer the CCDF program.



CONSIDERATION OF WAIVERS DURING THE PANDEMIC

When it became evident that the pandemic was worsening and would be present long-term, OCC allowed states, territories and tribes to request new temporary waivers or waiver renewals. These waivers would allow time-limited extensions to meet compliance deadlines with CCDBG as the nation responded to the ongoing challenges of COVID-19.

As the Center for Disease Control and Prevention (CDC) released federal guidance urging states to practice social distancing and limit in-person meetings, states submitted waivers to address challenges around meeting fingerprinting requirements, inspections and holding in-person health and safety trainings, among other requirements.³⁵ To address questions around available waiver options, OCC released guidance in September 2020, which urged states, territories and tribes to consider their capacity to remain compliant, especially around background check requirements, as they considered which flexibilities they needed most.³⁶

WAIVER TOPICS

OCC guidance walks through four potential scenarios that would necessitate the submission of waiver requests during the pandemic, as follows:

Background check requirements

States and the District of Columbia were able to submit a waiver for background checks if the state was previously granted a transitional waiver set to expire September 30, 2020, if the justification was connected to COVID-19. States needed to submit a Background Check Waiver Request Form on the ACF-118 submission site by September 30, 2020, but were not required to submit a separate waiver request letter.

These waivers would be granted with an expiration date of September 30, 2021, to align with 2019-2021 CCDF State Plans. Upon approval of a waiver request, state lead agencies had 60 days to submit a CCDF

plan amendment detailing the new waiver request. This waiver did not apply to territories and tribes because their CCDF programs have different implementation timelines.

Non-compliance due to extraordinary circumstances

While initial guidance released in April 2020 did not make this an eligible waiver request, OCC later reconsidered and allowed states and the District of Columbia to submit a waiver for extraordinary circumstances for outstanding non-compliance. As a reminder, states were supposed to receive final notice of non-compliance in early 2020, but these letters were never sent due to COVID-19. States were able to submit this waiver using the existing pre-pandemic waiver process for extraordinary circumstances by September 30, 2020.

These waivers would be granted with an expiration date of September 30, 2021, to align with the 2019-2021 CCDF State Plans. Upon approval of a waiver request, state lead agencies had 60 days to submit a CCDF State Plan amendment detailing the new waiver request. This waiver did not apply to territories and tribes because their CCDF programs have different implementation timelines. Any state not compliant with the CCDBG requirements when the waiver period ended on September 30, 2021, would be subject to penalty.

Waiver renewals for extraordinary circumstances

With the uncertainties of the global crisis, OCC allowed states, territories and tribes to submit a renewal request for a waiver for extraordinary circumstances via email to their OCC Regional Officer by January 28, 2021. **Waivers expired September 30, 2021.**

Market rate surveys and other methodologies

States and territories were allowed to submit a waiver for extraordinary circumstances if they were unable to complete the market rate survey (MRS), alternative methodology or narrow cost analysis for the FY 2022-2024 CCDF State Plan. Waivers allowed for one additional year, until July 1, 2022, to complete the MRS, determine an alternative methodology, or narrow cost analysis. These waivers were required to be submitted through the final FY 2022-2024 CCDF State Plan, under Section 4.2 and Appendix A. These plans were due to ACF by July 1, 2021. This waiver was not available to tribes because they are not required to conduct a MRS or other cost method.





WAIVERS APPROVED DURING COVID-19

Over the course of the pandemic, OCC approved 126 waivers for states and territories between March 1, 2020, and August 4, 2021.³⁷ OCC maintained a cumulative summary chart over this period providing very high-level information on the waivers approved for states, territories and tribes.

As of August 6, 2021, every state in the country has sought and received at least one waiver. The vast majority of these were approved during the Trump Administration. However, as HHS' summary reflects, the Biden Administration has begun its review and approval of waivers and has granted approximately 15 waiver requests.

The summary chart released by OCC includes information on the requested waiver start date and approval date for each state, territory and tribe. The chart also breaks down the waiver requests by category for which they were filed: background checks, consumer and provider education, health and safety inspections, health and safety standards, health and safety training, general eligibility, waived copayments for all families, payment practices/MRS and fiscal requirements.

States requested and were approved for the following waivers from March 1, 2020 - August 4, 2021 related to:

- Background check-related requirements including fingerprinting, National Sex Offender Registry, interstate checks, existing staff backlog and provisional hire requirements **(48 states)**
- Pre-licensure and annual health and safety inspections **(36 states and territories)**
- Elimination of copayments for all families **(35 states and territories)**
- Health and safety training requirements **(21 states and territories)**
- Eligibility requirements for subsidy, such as flexibility from the 12-month eligibility period requirement, income eligibility limits for essential workers, the definition of relative child care provider to include other family members, graduated phase-out, and asset limits **(21 states and territories)**

- Providing in-person training on health and safety standards **(14 states)**
- Providing consumer and provider education, including posting of monitoring and inspection reports, aggregate data and the consumer education statement **(10 states)**
- Waiving fiscal requirements around liquidation and obligation of funds and percentage requirements for direct services and quality spending **(9 states and territories)**
- Payment practices, including MRS, equal access related to rates and paying two providers for the same child **(7 states)**

The information provided by HHS, however, does not provide the public with the content of the states' waiver requests nor the expected duration of the waivers. Presumably, the table reflects extraordinary circumstance waivers (with a limit of two years), though it is unclear, and the table does not indicate whether certain waivers may be transitional (with a limit of one year).



RECOMMENDATIONS

In its current form, the waiver process prioritizes rapid consideration of waiver requests but, by design, provides little in the way of transparency, community involvement or oversight.

Below are recommendations that can be applied to the waiver process to address these challenges: :

- **Transparency:** The waiver process could include transparency at the state and federal levels. At the state level, lead agencies could publicly post their waiver requests and any supporting documents, including any updates or modifications to previously submitted and accepted requests. Notably, this is not something that the Secretary of HHS can require, as Congress restricted the agency's ability to require or impose any new or additional requirements in exchange for receipt of a waiver. At the federal level, HHS could post state waiver requests, as well as the agency's decisions communicating denial or acceptance of waiver requests. One potential method for providing such information can be found in the Department of Education's handling of such requests for relief from certain provisions of ESEA.³⁸
- **Public Input & Support:** Prior to submission of transitional waiver requests, states could solicit input from the public, particularly those stakeholders who would be most impacted. States could provide the public with notice and a reasonable opportunity to comment and provide feedback on any anticipated waiver request. In submitting its waiver request to HHS, the state could include any associated public comment alongside a description of how the state addressed the public's input. If practicable, states could consider engaging the public prior to the submission of waivers for extraordinary circumstances. State administrative agencies should also inform their legislatures prior to the submission of waivers. Again, this is activity that HHS may not require, but the states could nevertheless undertake.
- **Uniform Application:** As it has for background checks and reimbursement methodologies, HHS could develop a publicly available application form that states must populate with information, as determined by the Secretary, that provides details on the need for and duration of any waiver. As a part of this application, HHS could



request information on how the state plans to measure the impact on child well-being of any approved waiver, in particular, the impact of any waiver on under-represented or marginalized communities.

- **Monitoring & Enforcement:** HHS could monitor whether states' waivers have been effective in enabling the state to carry out the activities for which the waiver was requested. As a part of this effort, HHS could annually collect and disseminate information to the public on the impact of the waivers in the states that have received them, including the impact of any waiver on under-represented or marginalized communities. Further, HHS could develop a process to enforce the commitments made by the states in their waiver requests, including that the waiver has not compromised quality in child care programs, nor the health and well-being of children supported with funding from CCDF.
- **Congressional Oversight:** The relevant committees could consider holding hearings on the use of waivers prior to and during the pandemic, and how the waiver process can be improved to better meet the needs of children, families and providers who benefit from CCDF funding. Further, Congress can work with HHS to evaluate the use of waivers over the past several years to determine if the frequency of certain waiver requests may indicate that a permanent change in the law may be necessary. Congress can also accomplish this by directing the U.S. Government Accountability Office to conduct a study on the use of waivers since the reauthorization of CCDBG.





CONCLUSION

Basic legal or regulatory requirements—including those relating to health, safety and quality—are critical in ensuring that children are cared for in environments that nurture their healthy growth and development. If states have sought relief from certain aspects of the law, the public should know why relief from these requirements is necessary. Further, states should explain how relief from any legal requirement does not endanger the well-being of children.

That knowledge is held exclusively by the states and HHS. Absent any meaningful changes in the law, those with a meaningful stake in the administration of child care systems must work to improve these systems at every level of government.

ENDNOTE

¹See, Department of Health & Human Services, Administration on Children and Families, [Summary of Waiver Approvals](#), August 4, 2021.

²Id.

³See [80 Fed. Reg. No. 247 at 80482](#).

⁴Id.

⁵See Congressional Research Service, [Educational Accountability and Secretarial Waiver Authority Under Section 9401 of the Elementary and Secondary Education Act](#), June 1, 2012.

⁶See U.S. Department of Education, [ESEA Flexibility](#).

⁷See N.Y. Times, [School Chiefs See a Path to Proposing Their Own Accountability Systems](#), July 12, 2011.

⁸See, e.g., *Jindal v. U.S. Dep't of Educ. et al.*, 3:14-cv-00534-SDD-RLB, (M.D. La. 2015).

⁹See, e.g., [Harkin Miller Letter to Duncan](#), January 17, 2012; Senate Health, Education, Labor & Pensions Committee Hearing, [No Child Left Behind: Early Lessons from State Flexibility Waivers](#), February 7, 2013; [Dear Colleague Letter from Members of the House of Representatives to Secretary Duncan](#), February 12, 2014;

¹⁰See Congressional Research Service, [Reauthorization of the Elementary and Secondary Education Act: Highlights of the Every Student Succeeds Act](#), December 4, 2015.

¹¹There is not additional context on CCDBG waivers in the public statements of the congressional sponsors of the legislation, or in the report that accompanied the reauthorization approved by the Senate Health, Education, Labor, and Pensions Committee in 2013.

¹²42 U.S.C. § 9858g(c)(4).

¹³42 U.S.C. § 9858g(c).

¹⁴See [80 Fed. Reg. No 247](#).

¹⁵See Congressional Research Service, [Trends in Child Care Spending from CCDF and TANF](#), June 16, 2016.

¹⁶[81 Fed. Reg. No. 190 at 67459](#) (emphasis added).

¹⁷45 C.F.R. § 98.18.

¹⁸A [review](#) of official communications between the United States Senate and federal agencies in the 114th, 115th, and 116th Congresses involving child care yielded no relevant results.

¹⁹[EC1903 – House Communication](#) (114th Congress).

²⁰[EC6894 – House Communication](#) (114th Congress).

²¹Senate Health, Education, Labor & Pensions Committee Hearing, [Implementing the Child Care Development Block Grant Act of 2014: Perspectives of Stakeholders](#).

²²Id.

²³Id.

²⁴Id.

²⁵Id.

²⁶See U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care (OCC), [Program Instruction](#), January 9, 2015.

²⁷Id.

²⁸Id.

²⁹See Office of Child Care, [Overview of Waiver Provisions by Provision Number and State and Territory](#), September 9, 2016.

³⁰Id.

³¹Id.

³²See National Women's Law Center and Center for Law and Social Policy, [Implementing the Child Care and Development Block Grant Reauthorization: A Guide for States](#), updated June 2017.

³³See U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care, [Child Care and Development Fund \(CCDF\) Plan Preprint, ACF-118](#), June 21, 2018.

³⁴See Office of Child Care, [Approved CCDF Plans \(FY 2019-2021\)](#), publication date listed as June 16, 2016.

³⁵See The Center for Disease Control and Prevention, [Guidance for Operating Child Care Programs during COVID-19](#), updated June 10, 2021.

³⁶See Department of Health & Human Services, Administration on Children & Families, [Guidance to States, Territories, and Tribes for Requesting Waivers and Waiver Renewals for Child Care and Development Block Grant \(CCDBG\) Act Requirements Not Met Due to Coronavirus Disease of 2019 \(COVID-19\)](#), September 2020.

³⁷See Department of Health & Human Services, Administration on Children and Families, [Summary of Waiver Approvals](#), August 4, 2021.

³⁸See Department of Education, Office of Elementary and Secondary Education, [State Requests for Waivers of ESEA Provisions for SSA-Administered Programs](#).

