February 22, 2016

Submitted Electronically

Office of Child Care
Administration for Children and Families
330 C Street, S.W.
Washington, DC 20201
Attention: Office of Child Care Policy Division

Re: Child Care and Development Fund (CCDF) Program
ACF–2015–0011
RIN 0970-AC67

Dear Sir or Madam:

On behalf of the United States Conference of Catholic Bishops (USCCB), Catholic Charities USA, and the National Catholic Educational Association, we respectfully submit the following comments on proposed Administration for Children and Families (ACF) regulations on the Child Care and Development Fund (CCDF) program. 80 Fed. Reg. 80466 (Dec. 24, 2015).

Background

The Catholic Church in the United States has long provided high quality child care options for working parents, especially the working poor and single mothers. In 2014, Catholic Charities agencies across the country provided direct child care services to over 16,700 children, including for children with developmental and physical disabilities and other special needs. Most Catholic

elementary schools provide pre-K and after-school programs, including in economically challenged urban and rural areas, that prepare students for success in school. Given the long-standing nature of Catholic institutions in the United States, Catholic child care providers serve Catholic and non-Catholic families alike and provide stability in communities.

The USCCB (and through the United States Catholic Conference, a predecessor organization), along with other faith-based organizations, has long played an active and prominent role in the passage and subsequent implementation of the federal child care program. The program has worked well over the last quarter century and continues to provide low-income working families with the child care assistance they need, from the provider they choose. Child care is an important part of the safety net and is critical for people in programs that have work requirements (e.g., Temporary Assistance for Needy Families) in particular. All eligible families should have access to affordable and high quality child care.

Parents are the first educators of their children and, as such, have the right to choose the means that best assists them in fulfilling their duties as educators. For its part, the State has an obligation to create the conditions necessary for parents to exercise their responsibilities as educators. We therefore welcome the recognition of the importance of parental choice in the preamble to the proposed regulation, which states that "[p]arental choice is a very important part of the CCDF program, and parents often consider a variety of factors, including religious affiliation, when choosing a child care provider." 80 Fed. Reg. at 80520. Indeed, many parents opt to place their children in faith-based child care programs because they prefer to have their children cared for in a faith-based environment.

Therefore, we are concerned about any action proposed by the federal government to alter the CCDF program in a way that diverts child care resources away from parents choosing the best child care programming for their children to direct grants and contracts. Such action could have the effect of disempowering low-income parents' choices in child care settings, including the freedom to choose faith-based providers, and could divert child care funds from low-income parents seeking child care to agencies expanding facilities or programs.

Outline of Concerns

Several of the proposed regulations are problematic in that they (1) would, contrary to the plain text of the statute and clear legislative intent, weaken the

parental choice provisions of the CCDF legislation, most recently reauthorized in the Child Care and Development Block Grant ("CCDBG") Act of 2014; and (2) propose to add new and possibly onerous "quality" requirements not supported by the text of the statute and not supported by additional funding needed to implement such requirements. The proposal that states must include some use of grants or contracts violates the clear language of the CCDBG Act of 2014. The second proposal is not supported by the statute and may be unduly burdensome for many faith-based non-profit entities that parents choose to provide care for their children. Because these particular regulatory provisions either conflict with federal law or are inconsistent with the statute on which they purport to be based, they also violate the Administrative Procedure Act ("APA").

At the same time, we wish to commend efforts in the proposed regulations to improve continuity of care and greater financial stability for low-income families receiving child care assistance through revised minimum eligibility timeframes.

More detailed comments follow.

I. Weakening of Parental Choice Provisions

The proposed regulations would require states to include some use of grants or contracts under the CCDF. 80 Fed. Reg. at 80569, § 98.30(g). This subsection completely contradicts the express language of the CCDBG Act of 2014, which states that nothing in it "shall be construed in a manner to favor or promote the use of grants and contracts for the receipt of child care services . . . over the use of child care certificates." CCDBG Act of 2014, § 658Q(b).

Section 98.30(g) of the proposed rules also contradicts the legislative history of the CCDBG Act, as Senator Scott, who introduced the bipartisan amendment that became Section 658Q(b), stated the following when introducing the provision: "My amendment seeks to clarify that the statute does not favor or promote the use of grants or contracts over the use of childcare certificates, nor does it adversely impact the use of certificates in faith-based or other settings."[1]

[1] Statement of Sen. Tim Scott, Floor Remarks Introducing S. Amdt. 2837 amending S. 1086, Child Care and Development Block Grant Act of 2014, agreed to in Senate by Voice Vote, Mar. 12, 2014, https://www.congress.gov/amendment/113th-congress/senate-amendment/2837/text.

This bipartisan amendment was a direct response to a previous regulatory attempt by ACF in 2013 to promote grants and contracts at the expense of certificates in the CCDF program. 78 Fed. Reg. 29441 (May 20, 2013). Many faith-based organizations filed comments opposing this change proposed by ACF.[2]

In addition, the proposed regulation's mandate for grants or contracts will result in fewer providers and options for parents. Currently faith-based providers provide child care services largely through participation in the certificate based service delivery system. A move away from this service delivery model towards grants or contracts will result in fewer faith-based providers being willing to meet the additional requirements and restrictions related to grants and contracts. Such a result will reduce the diversity of child care providers available to parents and will frustrate the purpose of the proposed mixed service delivery model mandate.

Thus, requiring states to include use of grants or contracts, as the proposed regulations would do, would alter the CCDF program and violate its reauthorizing statute, which strips the Executive Branch of any authority to require states to favor, much less mandate, these methods for the receipt of child care services. The requirement should therefore be removed from the ACF regulations.

II. Practical Issues that Increase Costs and are Inconsistent with the CCDBG Act of 2014

The proposed regulations set forth a number of provisions that purport to improve quality in child care settings. While we support efforts to ensure that child care providers provide safe and quality services, we remain concerned that some of these provisions may have unintended consequences in limiting the number of low-income families that can participate in the program, as the CCDF program is not sufficiently funded to incorporate such requirements. Further, the statutory language does not mandate several of these requirements, so the regulations should allow for greater flexibility in implementation.

Any training or professional development requirements states impose should be flexible in order to accommodate training in various distinctive approaches to early childhood education and care, such as faith-based child care programs, instead of imposing a "one-size-fits-all" approach to caregivers' education.

[2] *See, e.g.*, Comment Letter of USCCB (Aug. 23, 2013), http://www.usccb.org/about/general-counsel/rulemaking/upload/Child-Care-NPRM-Final.pdf.

Further, federal funding should be provided for any required training and professional development. Child care providers, many of which operate on a non-profit basis, cannot afford to absorb the cost of new training requirements, which could total in the tens of millions of dollars in a single state.

The CCDBG Act of 2014 provides that "a tiered quality rating system for child care providers and services … *may* … accommodate a variety of distinctive approaches to early childhood education and care, including but not limited to, those practiced in faith-based settings, community-based settings, child-centered settings, or similar settings that offer a distinctive approach to early childhood development." CCDBG Act of 2014, § 658G(b)(3)(G) (emphasis added). However, we would urge that in the implementation of a quality improvement system or "other transparent system of quality indicators," *see, e.g.,* 80 Fed. Reg. at 80569, § 98.30(g), that Lead Agencies proactively include the variety of distinctive approaches provided for in § 658G(b)(3)(G) when setting quality rating systems. Faith-based child care providers such as Catholic schools and charities already receive high ratings on quality indicators, and their long experience and distinctive approaches to providing quality child care provide an invaluable contribution in setting inclusive quality rating systems.

The proposed regulations would require that states provide in their CCDF Plans standards on "group size limits, child-staff ratios, and required qualifications for caregivers, teachers, and directors." 80 Fed. Reg. at 80566, § 98.16(m). The CCDBG Act of 2014, however, does not require that states have specific group size limits. *See* CCDBG Act of 2014, § 658E(c)(2)(H)(ii). The statute requires that any child-to-provider ratio standards be "appropriate to the type of child care setting involved". *Id.* § 658E(c)(2)(H)(i). Therefore, ACF should not mandate that states require group size limits for child care providers. If states do require such limits, then additional federal funding should be provided in order to allow child care providers to meet these requirements.

Finally, although we support conducting background checks, inspections, and safety training, these additional new requirements may have the effect of reducing low-income parents' participation in the program – both as service providers and as recipients of CCDF certificates. Unless additional federal funding is provided and greater assistance is provided to care providers as well as recipients, fewer low-income families will be able to afford to establish a child care center, and fewer child care subsidies will be made available for parents.

III. Administrative Procedure Act

Because they are in direct conflict or are otherwise inconsistent with relevant federal law, the proposed regulations discussed heretofore in this letter that weaken the parental choice provisions in the CCDF program violate the Administrative Procedure Act ("APA"). 5 U.S.C. § 706 (authorizing a court to "hold unlawful and set aside agency action[s]" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"). Congress passed the CCDBG Act of 2014 just sixteen months after ACF proposed CCDF regulations that were similar to the current problematic proposals. The Administration should heed the clear statutory text and intent of Congress rather than exceed its rulemaking authority.

IV. Improving Continuity of Care and Financial Stability for Families

Despite our concerns above, we commend the Administration for efforts to improve continuity of care and greater financial stability for low-income families receiving child care assistance. The twelve-month minimum eligibility requirement as well as three-month mandatory assistance for parents experiencing non-temporary job loss or cessation of education or training provide parents with greater stability in child care and minimize reporting requirements for families and child care providers.

In addition, we support the proposed higher exit-level eligibility threshold which allows children receiving CCDF assistance to remain income-eligible for CCDF until their family income exceeds 85 percent of State median income (SMI). This proposal will help to ensure continuity of care as well as allow parents to take job advancement or raises without jeopardizing their child-care benefits so that they can eventually achieve independence from public assistance.

Finally, we support codification of the 1998 ACF Program Instruction (ACYF-PI-CC-98-08), which clarifies that only the citizenship and immigration status of the child is relevant for the purposes of determining eligibility for CCDF assistance.

V. Conclusion

While we support the regulation's efforts to improve the implementation of the CCDF program and expand access to quality child care, we remain concerned that the proposed regulations would weaken the parental choice provisions in child

care that have been enshrined in the Child Care and Development Block Grant statute for over a quarter century. The proposals would require states to use grants and contracts as methods of promoting child care, which would reduce parental choice in child care providers, including faith-based providers. The proposals also contain provisions that raise costs for providers and that are not mandated by the CCDBG statute; such provisions would have the practical effect of limiting participation of both families and faith-based providers in the CCDF program.

Respectfully submitted,

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