FIRST FIVE YEARS FUND

August 25, 2023

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

Docket number ACF–2023–0003 and/or RIN number 0970–AD02

Re: Comments on Notice of Proposed Rulemaking for Child Care and Development Fund (CCDF) Regulations (45 CFR Part 98)

To Secretary Becerra,

These comments are submitted on behalf of the First Five Years Fund (FFYF) in response to the Notice of Proposed Rulemaking for the Child Care and Development Fund (CCDF) Regulations (45 CFR Part 98). FFYF appreciates this opportunity to provide comments on issues that relate our core mission: ensuring all children from birth through age five have equitable access to affordable, comprehensive, high-quality early care and education (ECE) to support their healthy development and help them achieve their full potential in school and life. CCDF provides essential support to approximately 1.5 million children each month and promotes quality in the child care sector. However, meaningful policy changes are needed to improve the experiences of both participating providers and families.

FFYF commends the Administration for Children and Families (ACF) for ongoing efforts to make child care more affordable, increase the supply of quality child care programs, and support the early education workforce, as evidenced in this NPRM. It is clear that the proposed changes were written to align practice with the ever growing body of early learning research as well as the learned experiences of state agencies, providers, and families. FFYF believes the proposed changes are a critical step forward in addressing the child care crisis and building an effective ECE system. This proposed rule also furthers the directives set forth in the Executive Order signed by President Biden in April 2023, which calls on nearly every Cabinet-level agency to make child care more affordable, expand access to high-quality early learning programs, and support the ECE workforce.

As a result of program flexibility established in response to the COVID-19 pandemic and the fundamental design of CCDF, which allows states to make the best decisions for their communities, many of the proposed provisions are already being implemented in states with success. This proposed rule offers the opportunity to advance the program across the country.

Our comments highlight several improvements made to CCDF in this proposed rule that will strengthen ECE systems, as well as discuss areas for further thought. Before states move forward with implementation, we recommend providing further clarity on which provisions are required changes and which are suggested. States would also benefit from recommendations on how to create feedback loops with providers and families to better understand the impact of implementation. And importantly, we wish to emphasize that additional federal funding is necessary for states and territories to be able to fully and faithfully implement these changes. Without these resources, Lead Agencies may be forced to confront difficult tradeoffs that could compromise the quality and accessibility of care.

Our comments are organized by section below.

Lowering Families' Costs for Child Care (§§ 98.45, 98.33)

Child care is one of the most significant expenses in a family's monthly budget, and the high cost is simply untenable for many families. According to Child Care Aware of America, the national annual average price of child care in 2022 was $10,853 per year.[1] Even if a family is eligible for child care assistance, high co-payment rates can prohibit families from participating, forcing them to have to patch together various informal and often unregulated child care arrangements or take time away from work.

Prohibit Family Co-Payments that are a Barrier to Child Care Access

FFYF applauds ACF's commitment to ensuring child care expenses are no more than 7% of a family's income. Capping co-payments can help improve family economic stability and expand the child care options available to parents, as well as have broader benefits on parental employment and the economy. Current co-payment rates in many states are unaffordable for families, making it difficult or even impossible to use subsidized child care, or placing extreme financial hardship on families that do. For instance, according to the latest available data from 2019, in Nevada,

[1] Child Care Aware of America, "2022 Child Care Affordability"

copayments can be as high as $2,024 per month.[2] Capping co-payments at 7% will be particularly helpful for single parent households, who are disproportionately impacted by these high costs. Nearly one in every three children live in a single parent household, and in 2021, child care prices were equivalent to 24.6% to 75.1% of a single parent's income.[3]

The 7% co-payment threshold is intended to lower costs for families and make it more feasible for them to participate in the child care subsidy system. However, 38 states currently allow providers to charge more than the co-payment to account for the difference between the amount they are reimbursed from the state and the actual cost of care (sometimes this additional cost is called a "fee"). These monthly fees can vary substantially, and have been reported to be as high as $420 in Georgia, making affordable high-quality care even further out of reach for many families.[4] The National Association for the Education of Young Children (NAEYC) conducted a provider survey to gauge the field's response to the NPRM. They found if co-payments go down in ways that result in an overall decrease in provider payments, 43% of directors and 49% of family child care providers were "very" or "somewhat" likely to respond by increasing families' additional payments. To truly lower costs for families, the rule should be modified to ensure that providers cannot charge families "fees" outside of the co-payment.

Additionally, the rule must guard against a 7% threshold from placing additional burden on providers. In states where providers are already unable to collect additional fees and reimbursement rates cover only a portion of the amount needed to meet the federal equal access target, providers are forced to absorb the additional costs themselves. The Prenatal-to-Three Policy Impact Center reported that after receiving the state reimbursement and family co-payment, providers are still coming up short, as much as $485 per slot in Colorado.[5] Thus, increased and sustained funding is needed to ensure that provider payments are substantial enough so the 7% co-payment threshold does not have unintended negative consequences on providers. If the Lead Agency is unable to reimburse providers at a sufficient rate, some will not be able to stay afloat and may choose to exit the subsidy system.

Providers across the nation are concerned that states would reduce provider payment rates to pay for these required changes. Seventy-three percent of respondents to NAEYC's survey were

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[2] Administration for Children and Families, "State and Territory Profile- Nevada"
[3] U.S. Department of Labor Women's Bureau, "Childcare Prices in Local Areas Initial findings From the National Database of Childcare Prices"
[4] Prenatal-to-Three Policy Impact Center, "Child Care Subsidies"
[5] Ibid.

providers who currently serve children using subsidies; of those 81% were “somewhat” or “very” concerned that their state would decrease provider payment rates as a result of specific policy changes in this NPRM, despite ACF’s commitment to ongoing monitoring. We recommend amending the rule to include stronger language around requiring monitoring and enforcement mechanisms to ensure provider payments are not decreased, as the Lead Agency must establish a plan to cover these costs. We urge ACF to have The Office of Planning, Research and Evaluation (OPRE) study the 7% parental co-payment cap closely in order to determine whether it meets the stated goal of the proposed rule and lowers families overall child care costs.

Allow Lead Agencies To Waive Co-payments for Additional Families

Encouraging Lead Agencies to waive co-payments for families with incomes up to 150% of the federal poverty level (FPL) and those caring for a child with a disability is a critical step forward in better supporting families in need of child care. For families with very low incomes, even the 7% co-payment threshold is burdensome, and fully waiving co-payments may be essential to them accessing subsidized care. States would also benefit from flexibilities to waive co-payments or develop eligibility policies for families enrolled in other programs and/or belonging to certain populations that could benefit from child care assistance. Some additional populations include: early educators working in child care programs, families receiving Temporary Assistance for Needy Families (TANF), families with children enrolled in Head Start or Early Head Start, families experiencing homelessness, families involved with the state child welfare agency, children in foster care, teen parents, and those impacted by parental incarceration.

As with the 7% co-payment discussed above, the key is to ensure that this provision truly reduces costs for families and is not just a shuffling of dollars. Families with waived co-payments should not experience increased fees in other areas, nor should other families be asked to make up the difference. The burden must fall on the Lead Agency instead of on families or providers. Thus, additional funding is necessary to make this feasible.

Consumer Education

It is critical that families have access to educational resources to best understand the available child care options. Ensuring Lead Agencies post clear, accessible information about their co-payment sliding fee scales online helps meet this need and supports parental choice. To ensure equitable access to information, we urge Lead Agencies to use simple, concise language that is accessible to all families, including those with limited literacy. To best support families that speak languages other than English, Lead Agencies need to include information in other languages. Approximately 22% of people in the U.S. speak a language other than English at home and 8% speak English less than “very well”; these families tend to experience increased barriers in accessing child care.[6] To help families estimate what their co-payment would be, the Department should encourage Lead Agencies to include a calculator of what federal poverty level (FPL) or state median income (SMI) range a family would be in based on their income and family size. Additionally, Lead Agencies should consider alternative methods for reaching families beyond websites, such as providing pamphlets and booklets at locations like food banks, shelters, churches/places of worship, and other community-based spaces.

In addition to the listed information related to co-payments, FFYF recommends Lead Agencies also be required to include information on waiting lists, including whether a state maintains a waiting list, and the average time a family spends on the waitlist before receiving access to care. According to a recent report from the National Women’s Law Center (NWLC), thirteen states had waiting lists or frozen intake for child care assistance in 2021.[7] Given families can remain on waiting lists for a while before receiving child care assistance, or may never receive it, including accurate publicly available data will help families understand the realistic process of receiving child care assistance.

Improving Parent Choice in Child Care and Strengthening Payment Practices (§§ 98.16, 98.30, 98.45, 98.50)

We are very pleased to see ACF’s commitment to supporting Lead Agencies in implementing best practices that build the supply of child care, support providers, and ultimately increase choices for families.

Building Supply With Grants and Contracts

FFYF strongly supports the requirement for Lead Agencies to use grants and contracts, which have proven to be effective tools for expanding parent choice because they can build child care supply in underserved areas and for underserved populations. We applaud ACF for focusing on addressing the shortage of quality child care options for infants and toddlers, children with disabilities, and nontraditional hour care. Eighty percent of program directors and administrators and family child

[6] U.S. Census Bureau, “Why We Ask Questions About…Language Spoken at Home”
[7] National Women’s Law Center, “At the Crossroads: State Child Care Assistance Policies 2021”

care owners/operators who responded to NAEYC's survey indicated they would "definitely" or "maybe" be interested in applying for grants and contracts to serve these populations. Grants and contracts address some of the disincentives providers face in participating in the child care subsidy system by providing stable reimbursements. Georgia, for example, has successfully used grants and contracts to increase access to high-quality care for infants and toddlers since 2015.[8] As of spring 2020, the grant program funded approximately 3,000 slots across 141 child care providers.

Despite the potential benefits, currently only 10 states and territories report using any grants and contracts for direct services, and only 6 states and territories report supporting more than 5% of children receiving subsidy via a grant or contract. While some states use grants and contracts interchangeably within the child care subsidy system, grants may not need to move through a complex procurement process in the same way required of a contract. To ensure states have flexibility and clarify that they are required to use grants, contracts, or both to build the supply of child care, FFYF recommends amending the language to "grants and/or contracts."

The NPRM requires "the use of some grants and contracts for direct services." Given many states already use some amount of grants and contracts, the NPRM's current non-directive language is unlikely to increase their use. To further incentivize this effective practice and ensure states truly use enough grants and contracts for children, families, and providers to see the benefits, we recommend further guidance on the extent to which states should utilize these mechanisms, the benefits associated, as well as guidance on implementation. We also recommend that the rule require states and territories to design both the application process and the actual grants and contracts to be available and accessible to home-based providers, legally operating unlicensed providers, and informal caregivers, who are all essential in providing care to underserved areas and populations. Lastly, we recommend further clarification around how these grants and contracts might support these types of providers.

ACF proposes to require Lead Agencies to describe their strategies to increase the supply and improve the quality of child care services, including the method for tracking progress to increase supply and support parental choice. While grants and contracts can increase the supply of child care and bring new providers into the system over time, families may have trouble finding a provider that meets their specific needs (linguistic, cultural, program hours, etc.) It is critical to

[8] Center for American Progress, "Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care"

ensure there is a diverse supply of child care providers in the market that meet the needs of families. As such, when Lead Agencies are required to track progress, we recommend additionally requiring Lead Agencies to break down the supply by types of child care providers to understand the gaps and pursue strategies to intentionally support the types of child care providers who are underrepresented in the subsidy system yet desired by families. This may include information on program size, program type, program hours, language, etc.

Sustainable Payment Practices

Unpredictable, delayed, and low reimbursement rates discourage providers from participating in CCDF. The new proposed requirements to pay providers prospectively (not as a reimbursement) and based on enrollment rather than attendance will help stabilize finances for providers and, in turn, may increase supply by attracting and retaining providers to enroll children with subsidies. These provisions bring payment practices in line with those of private paying families, who usually pay a set amount at the beginning of the month or week, prior to services rendered. Currently, only eight states pay providers participating in CCDF prospectively, and some providers wait several months for reimbursements. This creates undue financial stress, making it difficult to effectively run a business. Prospective payments are an important step to supporting providers' financial stability. Research collected from the Stanford Center on Early Childhood RAPID Survey Project finds that financial stability is critically important to providers' well-being and mental health.[9] These proposed changes may help to decrease stress and burnout, and in turn the field will retain quality educators, which is especially important given the current nationwide staffing shortage.

Child care programs have fixed costs regardless of whether a child is absent, and yet many states continue to reimburse providers based on individual child attendance. This leads to unpredictable revenue, making it difficult for providers to make informed financial decisions, and causing undue financial stress. It may also discourage providers from serving certain children who are more likely to be absent, such as those involved in the child welfare system, children experiencing homelessness or housing insecurity, and children with disabilities or specialized health needs. During the COVID-19 pandemic and with the support of COVID relief dollars, 19 states switched to paying based on enrollment rather than attendance, and have already seen beneficial impacts. For example, programs in Massachusetts saw increased financial support and stabilization when the state switched to an enrollment-based payment system in 2020.[10] Highly-mobile families, including

[9] RAPID
[10] New America, "Make Child Care More Stable: Pay by Enrollment"

those who are homeless or in foster care, may particularly benefit from this change as challenges with attendance can present a disincentive to providers.

NAEYC's survey found that paying based on enrollment instead of attendance and paying prospectively will be helpful in increasing child care supply for families using subsidies. Eighty percent of child care center directors/administrators and family child care owners/operators who responded to the survey said they would be more likely to serve families using subsidies if the state paid based on enrollment rather than attendance. Seventy-three percent of directors and administrators, as well as family child care owners/operators, indicated they would be more likely to accept families using subsidies if the state paid programs prospectively. Switching to new payment practices will require substantial changes to most states' existing systems. As states work to update their systems, Lead Agencies should ensure that payments to providers are low burden, automated, technology accessible, and accessible to the underbanked and non-English speakers. States may not have the necessary technology infrastructure to shift from paying based on attendance to enrollment, and doing so may have upfront costs for states. To ensure these provisions are implemented successfully, FFYF recommends providing additional technical assistance and guidance for state administrators. Increased and sustained federal funding is needed to make these provisions possible without further burdening states.

Paying the Established Subsidy Rate

FFYF supports the clarification that Lead Agencies may pay amounts above the provider's private pay rate to support quality, offset the costs of providing care, and support continued stability of providers. This practice is particularly important for providers in low-income communities where private tuition fees are lower than the "true" cost of care to meet parents' needs. Providers who responded to NAEYC's survey are also supportive of this clarification and note it will allow them to more fully participate in the child care subsidy system. Of providers who live in a state where the Lead Agency has not allowed subsidy payments to exceed private rates, 93% said this clarification was "very" or "somewhat" important to them. Ninety-one percent of directors and administrators and 89% of family child care owners/operators indicated they would be more likely to accept families using subsidies if the state paid rates that covered the true cost of care.

Because it is so common for child care providers to set their private pay prices lower than the true cost of care, FFYF recommends ACF take this provision one step further and encourage Lead Agencies to establish reimbursement rates that exceed private pay rates and support high-quality care. We propose that the Administration use stronger language to urge states to adopt cost estimation approaches that reflect the true cost of care, including family-sustaining wages. High-quality child care requires additional resources and expertise, and as a result, costs more to provide. Thus, reimbursements that child care providers receive based on the market rate are also often far from covering the true cost of providing high-quality care. To improve the overall quality in the market, it is necessary to pay providers additional costs associated with higher-quality care or types of care that are not produced in sufficient amounts by the market. Not doing so discourages high-quality providers from participating in the subsidy system and makes it harder for families to access care that works for them. Lead Agencies can support providers in offering high-quality services by paying them above the provider's private pay rate.

Reducing Bureaucracy for Better Implementation (§ 98.21)

The proposed rule encourages strategies for Lead Agencies to expedite families' access to services by facilitating presumptive enrollment and encouraging an online application option. FFYF supports efforts to simplify the enrollment process for families. We recommend requiring an online application option that is also accessible via mobile device. About 4-in-10 adults with low-incomes do not have home broadband services or a desktop or laptop computer; and about 27% of adults with low-incomes are smartphone-only internet users.[11] More than 70% of early educators who participated in NAEYC's survey indicated that the families they serve primarily access the internet via mobile devices. Therefore, requiring an application to be accessible via mobile device will be more convenient and accessible for parents. Removing a key barrier in the application process can help more families access child care.

Presumptive Eligibility

FFYF commends ACF for clarifying the maximum presumptive eligibility period and believes the proposed 3 months is sufficient to account for the processing of applications and meet families' immediate needs. An eligibility determination can take several months in some states, and presumptive eligibility can expedite access to care for families. According to the Center for Law and Social Policy (CLASP), in the few states with presumptive eligibility, families are considered presumptively eligible for 30 to 60 days.[12] To encourage more states to implement presumptive eligibility, we recommend ACF provide technical assistance to states to further make it known that

[11] Pew Research Center, "Digital divide persists even as Americans with lower incomes make gains in tech adoption"
[12] Center for Law and Social Policy, "Presumptive Eligibility in Child Care: Frequently Asked Questions"

if a child is ultimately deemed ineligible, payments will not be subject to disallowance and that providers will still be paid for services rendered and not penalized.

Implementing Technical and Other Changes for Improved Clarity

Criminal Background Checks—§ 98.43

In many states, early educators often have to wait several months for their background checks to clear, which presents serious concerns for the supply and stability of child care. As the field struggles to recruit early childhood educators, prospective staff end up leaving the field for higher-paying jobs because they cannot wait for employment to begin. FFYF proposes adding language to further clarify that a prospective staff member can work under qualified supervision when the results of their background check are pending. With many states experiencing long backlogs, while it is beyond the scope of this NPRM, we encourage ACF to work with Congress, and the leadership of the pertinent federal departments, to resolve challenges with state background checks to ensure that they can be completed in a timely manner.

Content of Reports – § 98.71

FFYF proposes keeping the requirement for Lead Agencies to report any amount charged by a child care provider to a family receiving a CCDF subsidy that is more than the co-payment in instances where the provider's price exceeds the subsidy payment amount. While ACF is concerned that reporting this data is unreasonably burdensome on parents and providers, FFYF firmly believes that quality data collection is essential to understanding the experiences of young children and their families, and equipping leaders and policymakers with the information needed to improve the child care system. This data element is critical to understanding the financial burdens of some families receiving a CCDF subsidy, and will be particularly important if the proposed changes to cap and waive co-payments are implemented. We encourage ACF to work closely with state agencies to alleviate reporting burdens.

V. Regulatory and Impact Analysis

A2. Implementation Timeline

Given the timing of this proposed rule coincides with state plan submissions, states would benefit from specific clarifying guidance from ACF on how and when states are expected to align their existing CCDF state plans if the rule were to become final, as rewriting their state plan would be a significant, time- and resource-intensive undertaking for some states. This should include information about additional resources that will be required or expected from states to implement the changes and any relevant state budgetary implications. The timing of this information should align, to the greatest extent possible, with the timing of state budget development and legislative sessions.

This NPRM puts forward important and needed changes to the CCDF program that will help states create stronger child care subsidy systems. It is clear that ACF has explored the research on early learning, learned from experiences of stakeholders, and considered how the field has been impacted by the pandemic. However, without additional funding, it may be challenging for states and territories to implement these changes, forcing Lead Agencies to make difficult choices, to either invest additional state funding or serve fewer children. Ultimately, significant and stable investments from Congress are needed for CCDF to effectively support all eligible families in accessing quality child care programs. This NPRM makes important policy changes that, coupled with adequate funding, will allow children, families, and providers to have a better child care experience.

Sincerely,

Sarah Rittling
Executive Director
First Five Years Fund