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August 28, 2023

The Honorable Xavier Becerra  
Secretary of United States Department of Health and Human Services

RE: Docket number ACF-2023-0003 / RIN number 0970-AD02  
**Improving Child Care Access, Affordability, and the Child Care and Development Fund (CCDF)  
A Proposed Rule by the Health and Human Services Department on 7/13/2023**

Dear Secretary Becerra,

Thank you for your commitment to addressing the challenges that face families seeking access to child care and workers providing care. This is especially important during a difficult time for the nation as we continue to experience the impacts and aftermath of the COVID-19 pandemic and navigate an ongoing and exacerbated child care crisis. I am writing from First Focus on Children to express appreciation for the proposed rules that will make child care more affordable and accessible and will also increase respect and support for providers.

First Focus on Children is a bipartisan child advocacy organization dedicated to making children and families the priority in federal policy and budget decisions. As advocates for children, we are committed to ensuring that all children have an equal chance for success, including access to a comprehensive, equitable, and well-funded child care system that supports all children. We are submitting comments for consideration to strengthen child care systems across the country.

Access to high-quality and affordable child care benefits communities in various ways, and impacts children, families, and the child care workforce but also the nation at-large. Ensuring parents have secure care for their children while pursuing job opportunities or educational pursuits supports not only benefits families, but our entire economy. The Child Care and Development Fund (CCDF) is a lifeline for families who receive it, but far too few families who are eligible actually receive support. Only one in six children eligible for child care assistance under federal law received it as of data from 2019. Only 2.5% of infants and toddlers experiencing homelessness were enrolled in CCDF. And according to research from 2019, access to CCDF-funded child care varies significantly by race and ethnicity across states, with Latino and Asian families accessing subsidies at the lowest rates overall because parents may be deterred if the application materials are not in their native language.<sup>1</sup> Research from the Migrant Policy Institute shows that Dual Language Learners (DLLs) who participate in CCDF experience meaningful benefits, and these programs also represent an accessible employment opportunity for many immigrant and adults with limited English Proficiency (LEP) who comprise a significant proportion of the early childhood workforce.<sup>2</sup>

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<sup>1</sup> Ullrich, Rebecca, Schmit, Stephanie, & Cosse, Ruth, *Inequitable Access to Child Care Subsidies*, Center for Law and Social Policy, April 2019.

<sup>2</sup> Park, Maki, Jacob Hofstetter, and Ivana Tú Nhi Giang. 2022. *Overlooked but Essential: Language Access in Early Childhood Programs*. Washington, DC: Migration Policy Institute.

The policy improvements included in the Notice of Proposed Rulemaking (NPRM) reflect positive steps forward in access to child care. Because of the child care relief funding, as well as states' broader efforts to improve their own child care policies, many states are in the midst of implementing policies with both federal and state resources that are reflected in the proposed rules. Examples of these policies include but are not limited to establishing copayment policies that cap family contributions at 7 percent of their income, waiving copayments for additional families, reducing application burdens including establishing presumptive eligibility policies, and supporting providers through payments based on enrollment and that reflect the cost of care. We are pleased to see this alignment between state actions and the NPRM.

However, the impending expiration of ARPA child care funds—this September for stabilization grants funding and next September for CCDBG supplemental funding—and the ongoing debates over appropriations and the budget are creating tremendous uncertainty about future funding levels for CCDF. And in the absence of sufficient funding, it will be extremely challenging for states and territories to fully and faithfully implement the changes in the proposed rule without tradeoffs. We also acknowledge that states may need time to approve legislative and/or administrative changes, adopt technology upgrades, train staff, inform families and providers, and take other steps necessary to implement any new rules. That is why it is imperative to also secure additional resources in this moment so that states can maintain the policies and strides that they have made throughout the pandemic with relief resources. Without such resources, the inequities in how states continue to advance these important policies and goals will be exacerbated.

Again, we want to thank you for addressing both the programmatic and systemic challenges within child care programs to build a better system and address the needs of families, providers, and communities. We acknowledge, as do you, that true long-term, systemic changes require Congressional action and significant investment, and will not be achieved by this change in rules, but these changes will provide movement in the right direction. We have included various considerations on the proposed rules by section which you will find below.

#### Lowering Families' Costs for Child Care

- § 98.45(I)(3) **Provides for affordable family copayments not to exceed 7 percent of income for all families**, regardless of the number of children in care who may be receiving CCDF assistance, that are not a barrier to families receiving assistance under this part;

We applaud the Department's recognition that child care must be more affordable in order to support families' access. We appreciate and support the 7 percent copayment cap per family, regardless of the number of children, and know that many states have or are currently working to implement this provision already, acknowledging that families simply cannot afford to pay more. In fact, research indicates that, for families with low incomes, the cost of child care is a barrier to access at any level, including families experiencing homelessness. Child care is least affordable and accessible for Black, Hispanic, and low-income parents.<sup>3</sup> Forty-six percent of child care workers themselves, who are overwhelmingly women and disproportionately women of color, rely on one or more public programs such as Medicaid, food assistance,

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<sup>3</sup> Maura Baldiga, Pamela Joshi, Erin Hardy, Dolores Acevedo-Garcia. "Data-for-Equity Research Brief: Child Care Affordability for Working Parents." Institute for Child, Youth, and Family Policy, Brandeis University. November 2018 [https://www.diversitydatakids.org/sites/default/files/2020-02/child-care\\_update.pdf](https://www.diversitydatakids.org/sites/default/files/2020-02/child-care_update.pdf)

and Temporary Assistance for Needy Families each year.<sup>4</sup> Many states have implemented more affordable copayment scales that limit copayment fees to 7 percent or lower.

Families with low incomes spend 35 percent of their income on care while families with higher incomes spend 7 percent of their income according to the most recent published data from the most recent Survey of Income and Program Participation (SIPP). This shows that care is incredibly unaffordable for families with lower incomes, like families who are eligible for CCDF, and leads to tighter budgets and harder decisions for families who are often already in a challenging financial position. While requiring states to cap their copayment fees at 7 percent is a good start, states need increased and sustained funding to meet the recommended copayment requirement. Especially with the upcoming expiration of COVID relief funding, it is crucial to give states guidance on how to best meet this requirement, especially for states that have made limited or no progress on this provision. It is important to acknowledge that the 7 percent cap is the maximum and that states can and should set copayment rates at lower levels for families with lower incomes. The Department should also consider encouraging or requiring states to use a scale that enforces this.

We understand that providers are concerned about adverse consequences of lowered payment rates, and we deeply appreciate ACF's intent to "closely monitor Lead Agency payment rates to ensure reductions in family copayments do not lead to funding cuts for providers." We recommend that ACF further clarify and specify the mechanisms that will be implemented to ensure state payment rates are not lowered in response to the requirements around family copayments. This will also help providers move away from circumstances where they have to pass lost costs back to parents by charging families additional amounts above the required copayment, as is allowed by 38 states.

Further, it is our recommendation that Lead Agencies clarify components related to copayment scales such as household size, frequency with which families pay (i.e., monthly, weekly, per child, etc.), and other information on the Lead Agency's posted scale as further outlined in the consumer education section in our below comments.

#### Allow Lead Agencies to Waive Copayments for Additional Families

- § 98.45(I)(4) At Lead Agency discretion, **allows for co-payments to be waived for families whose incomes are at or below 150 percent of the poverty level** for a family of the same size, that have children who receive or need to receive protective services, that have children who have a disability, or that meet other criteria established by the Lead Agency.

As was previously mentioned, data from the SIPP, released in 2019, demonstrate that families with lower incomes spend approximately five times the share of their income on child care compared to families with higher incomes. Therefore, we applaud the encouragement for states to waive copayments for eligible families with incomes up to 150 percent of the Federal Poverty Level (FPL) and eligible families with a child with a disability.

However, states would also benefit from additional federal flexibilities that would provide them the option to completely waive copayments for other populations beyond families with incomes up to 150 percent of FPL. CCDF is a program targeted at families with low incomes, and in many states, families with incomes above 150 percent of FPL are still struggling to afford their basic needs and cannot afford copayments. Therefore, states should have the ability to waive copayments for families at a higher income threshold or even for all families, if resources allow. States would also benefit from flexibilities to waive copayments or encouragement to develop eligibility policies for families enrolled in other programs and/or belonging to particular populations that could benefit from child care assistance. Some examples include: early educators

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<sup>4</sup> McLean, C., Austin, L.J.E., Whitebook, M., & Olson, K.L., "Early Childhood Workforce Index – 2020," Center for the Study of Child Care Employment, University of California, Berkeley, 2021. <https://cscce.berkeley.edu/workforce-index-2020/report-pdf/>

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 at risk of becoming homeless, families involved with the state child welfare agency, children in foster care, LEP families, DLLs, and teen parents.

### Consumer Education

- § 98.33(a)(8) **Require Lead Agencies to post current information about their process for setting the sliding fee scale** and for policies related to waiving copayments and estimated payment amounts for families.

We support the requirement of Lead Agencies to post current information about their process for setting the sliding fee scale for parent copayments and other related policies. For families, including those experiencing homelessness, families with child welfare involvement, LEP families, and DLLs, having information about copayments, and the circumstances in which they are waived, is crucial to decision-making about accessing child care services. As for specific information that should be included in posts on consumer education websites, the Department should require that Lead Agencies use simple, concise language that is accessible to all families, including those with limited literacy, LEP families, and DLLs. Language access policies and services are a prerequisite to promoting the equal participation of DLLs in early childhood programs. Federal civil rights laws require that CCDF provide meaningful access to services for LEP individuals. Recent research from the Migration Policy Institute, however, indicates that federal early learning programs, including CCDF, lack the necessary data, monitoring, and accountability measures to demonstrate equal access for DLL families.<sup>5</sup>

We commend Lead Agencies for expanding their information dissemination strategies, with 32 states using a combination of print materials, electronic media, counseling referrals from agencies, and mass media. However, even with these expanded methods for information delivery, it is important to consider how information asymmetry persists. State websites only show up in 17 percent of local child care searches, and 43 percent of households with lower incomes do not have broadband services. To make copayment information more accessible, states should consider using all four information dissemination strategies if they are not already doing so and should adopt search engine optimization strategies to increase the visibility of state websites in online searches. Furthermore, we suggest that HHS encourage states to consider and address other barriers to this information apart from the ones identified above. This could include, but is not limited to, access to information for mobile-only internet users and for people with limited literacy and limited English proficiency. States should consider sharing information in multiple languages and incorporating a translation option for online information. Finally, Lead Agencies should consider alternative methods for disseminating manual information such as pamphlets and booklets, at locations including but not limited to, food banks, shelters, churches/places of worship, advocacy groups, and other community-based spaces.

Information included in any posting or manual resource should include: how parents and providers were engaged in the process, the multiple ways the information will be shared, and the actual policies and sliding fee scale presented in a straightforward and consumable way. As previously mentioned, Lead Agencies should clarify components related to copayment scales such as household size, frequency in which families pay (i.e., monthly, weekly, per child, etc.), and other information on the Lead Agency's posted scale.

### Building Supply with Grants and Contracts to Expand Parent Choice

- § 98.30(b)(1) **Require states and territories to provide some child care services through grants and contracts** as one of many strategies to increase the supply and quality of child care, including at

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<sup>5</sup> Park, Maki, Jacob Hofstetter, and Ivana Tú Nhi Giang. 2022. *Overlooked but Essential: Language Access in Early Childhood Programs*. Washington, DC: Migration Policy Institute.

a minimum, using some grants or contracts for infants and toddlers, children with disabilities, and nontraditional hour care.

We are supportive of the proposal to require states and territories to use some grants and contracts for child care services, at a minimum for infants and toddlers, children with disabilities, and nontraditional-hour care. We appreciate the recognition that there is a serious shortage of child care, particularly for these populations. However, we strongly recommend that the proposed rule also include children experiencing homelessness and children with child welfare involvement as required populations for whom grants and contracts must be used as a strategy to increase the supply and quality of child care. A national study of 20 states found that only 2.5% of infants and toddlers experiencing homelessness were enrolled in CCDF. Using grants and contracts to increase the supply of child care for children experiencing homelessness and children with child welfare involvement care could help remedy these barriers.

We recommend that the proposed rule require states and territories to design their grants and contracts and the application process for grants and contracts so that they are available and accessible to all types of child care providers, including small child care centers, licensed and regulated family child care homes, and family, friend, and neighbor care providers that meet the state's or territory's requirements for participation in the CCDBG program; grants and contracts should also be available to networks that support home-based child care providers. ACF should conduct outreach to community providers, including family, friend, and neighbor and home-based child care providers, who may lack the capacity to apply for grants but may be well-suited to serve DLLs, including translating funding opportunities. Parents often prefer home-based settings for their very young children and children with disabilities because of the familiarity, one-on-one attention these settings offer, and home language spoken. Parents working nontraditional hours are also often more comfortable having their child cared for by a relative or in another home-based setting during late night, overnight, or early morning hours. Grants and contracts should reflect and respond to these preferences in order to build a supply that truly meets families' and children's needs.

The proposed rule should also provide a clear definition of grants and contracts so that states and territories are not fulfilling this requirement in name only. To have a real impact on the supply of child care, contracts and grants should provide a structure that is substantially different than an individual voucher. Grants and contracts should not only provide prospective payment and payment based on enrollment—which would be required for vouchers as well under the proposed rule—but also offer other advantages to the grantee/contracting program, such as higher payment rates; a commitment that the resources will be provided for an extended period of time; and technical assistance (including in the application process), coaching, monitoring, and other supports to help the grantee/contractor open a new child care program or expand an existing program, recruit and retain child care teachers and other staff, meet CCDBG and/or licensing standards, offer specialized care (such as care for children with disabilities or care during nontraditional hours), and continually improve quality.

#### Improving Parent Choice in Child Care and Strengthening Payment Practices to Child Care Providers

- § 98.45(m)(1) **Require states to pay prospectively (not as a reimbursement) and § 98.45(m)(2) based on enrollment not attendance**, or some alternative proposed by the Lead Agency and approved by the OCC. Those that say they cannot pay prospectively must provide evidence that their proposed alternative reflects private pay practices for most child care providers in the state, territory, or Tribe and does not undermine the stability of child care providers participating in the CCDF program.

As part of a commitment to bringing additional providers into the subsidy system to increase family choice and ensuring that programs are supported by payments that are consistent, timely, and reflect the true costs of quality care, we are very supportive of the requirement to pay providers prospectively. This practice increases stability, supports the ECE workforce across settings, and aligns with the payment practices of the vast majority of programs that serve families paying out of pocket. Twenty-eight states took steps to pay



based on enrollment or use contracts to provide direct services using COVID-19 funding and a majority of states opted to use CCDBG funding to provide grants to child care providers during the COVID-19 pandemic to help support their businesses throughout periods of reduced enrollment or temporary closure.

- § 98.45(g) **Clarifies that Lead Agencies may pay providers an amount higher than they charge private paying parents when the CCDF agency established payment rate is above the providers' private pay price.**

We are very supportive of the codification of the language ensuring that all providers are paid at the CCDF agency established rate, even when that rate exceeds their private pay price. This practice will support the continued stability of providers and have the potential to mitigate providers leaving the subsidy system in pursuit of higher or more stable wages. Clarification and additional guidance is welcome.

#### Reducing Bureaucracy for Better Implementation

- § 98.21 At a Lead Agency's option, **a child may be considered presumptively eligible for up to three months** and begin to receive child care subsidy prior to full documentation and eligibility determination.

We appreciate the proposal regarding the use of presumptive eligibility for children, while their eligibility for subsidies is being fully determined. This proposed rule encourages states to employ a transformative solution that seeks to minimize bureaucratic barriers for families in need.

It is illogical and cruel that the families most in need of assistance are often the ones without the time and resources to document their need, and therefore face the highest barriers to enrolling in programs. Low-income households, which are disproportionately households of color due to racism and discrimination, are more transient, and low-income workers often face volatile work hours and fluctuations in income. The country's persistent "digital divide" makes some families much less likely to have access to broadband internet at home to virtually apply for benefits.<sup>6</sup>

We also support that the proposed rule further ensures providers are paid for services rendered, regardless of eligibility determination. Specifying that payments to providers will not be deemed improper payments if a child is ultimately determined to be ineligible and will not be subject to disallowance—except in cases of fraud or intentional program violation—is a significant step toward ensuring that providers are supported, and states can utilize the necessary resources to create a presumptive eligibility policy.

#### Eligibility Verification

- § 98.21(g)(1) and (2) At the Lead Agency's option, **enrollment in other benefit programs or documents or verification used for other benefit programs may be used to verify eligibility** for CCDF.

Programs that place burdensome administrative requirements on enrollees, such as the need for significant documentation to prove eligibility or frequent reverification of income, create significant barriers to low-income children and families receiving child care benefits that promote children's healthy development and household economic security. Documentation challenges make it particularly hard for immigrant families to successfully enroll in available programs. Immigrant parents may not have identification for themselves or their children, may face language barriers, or may fear immigration-based consequences if they provide identification from their country of origin. We appreciate that the Department clarified § 98.21(g)(1) and (2) to permit Lead Agencies to examine the eligibility criteria of other public benefit programs in their jurisdictions to predetermine which benefits programs have eligibility criteria aligned with

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<sup>6</sup> Vogels, Emily. A. "Digital divide persists even as americans with lower incomes make gains in tech adoption." Pew Research Center. The Pew Charitable Trusts. June 22, 2021. <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>

CCDF. This allows families to satisfy specific components of CCDF eligibility such as income eligibility, work, participation in education or training activities, or residency without additional documentation.

Additionally, we support that if the eligibility criteria for other benefit programs within the Lead Agency's jurisdiction are aligned with CCDF requirements, this can satisfy CCDF eligibility requirements in full for those families or establish CCDF eligibility policies using the criteria of other public benefits programs. Eligibility policies such as these are especially useful in reducing the administrative burden for families navigating multiple eligibility processes by reducing the amount of information gathering and application processes families must complete. Additionally, these eligibility policies streamline and simplify the verification process for Lead Agencies.' We also encourage ACF to implement categorical eligibility, like used for Head Start and Early Head Start, for additional populations including but not limited to families enrolled in Temporary Assistance for Needy Families (TANF), families with children enrolled in Head Start or Early Head Start, families experiencing homelessness, families at risk of becoming homeless, families involved with the state child welfare agency, children in foster care, and teen parents, as well as child care workers as this benefit may help recruit and retain employees.

### Application Processes

- § 98.21(f)(1) **The Lead Agency shall establish procedures and policies for eligibility that minimize disruptions to employment, education, or training**, including the use of online applications and other measures, to the extent practicable; and ensure that parents are not required to unduly disrupt their education, training, or employment in order to complete the eligibility determination or redetermination process.

We strongly encourage the Department to require Lead Agencies to implement eligibility policies and procedures that minimize disruptions to parental employment, education, or training opportunities to the extent possible. Research has shown that burdensome application processes hinder a family's ability to receive much-needed care. Documentation challenges make it particularly hard for immigrant families to successfully enroll in available programs. Immigrant parents may not have identification for themselves or their children, may face language barriers, or may fear immigration-based consequences if they provide identification from their country of origin.

Although we are pleased to see the Department acknowledge challenges families face, we also support its recognition that the solution is not merely encouraging Lead Agencies to have an online application for assistance. The Department should require that all Lead Agencies offer both paper and online applications at minimum, and in multiple languages to comply with language access requirements, but also encourage states to reduce any undue burden placed on families when seeking assistance by revising their policies and procedures. ACF should include instructions in its final rule to Lead Agencies on how to address compliance with language access requirements and promote equitable service to LEP families. This can include recommended best practices, technical assistance, and toolkits for states and local recipients to support meeting language access requirements. Toolkits for state agencies or providers should include examples of translated applications under CCDF.

While the Department has provided extensive technical assistance, particularly in the form of the model application, it should also consider clarifying which questions in the application are required and which are not. For example, the Department should clarify in the final rule that the hours of care do not have to match the hours of the eligible activity, thus Lead Agencies that are asking families to provide documentation of their work or school hours are doing so unnecessarily and adding additional barriers for families to access assistance.' Furthermore, the Department should encourage Lead Agencies to have flexible documentation requirements for income verification for people with informal employment or gig workers.

Finally, although we recognize the importance of online applications, it is crucial for the Department to also recognize the significance of broadband access in today's digital age. The majority of individuals, especially

those from underserved communities, rely heavily on mobile phones as their primary means of accessing the internet. As such, the Department should require Lead Agencies to ensure online application systems are designed to be mobile-friendly and available in multiple languages. Recognizing the prevalence of mobile internet access can lead to more inclusive policies and user-friendly interfaces that cater to the needs of a diverse population. By acknowledging this reality, the Department can contribute to bridging the digital divide and ensuring that all families, regardless of their technological resources and languages spoken, can easily access the application and services they require.

#### Additional Children in Families Already Receiving Subsidies

- § 98.21(d) **The Lead Agency shall establish policies and processes to incorporate additional eligible children in the family** (e.g., siblings or foster siblings), including ensuring a minimum of 12 months of eligibility between eligibility determination and redetermination for children previously determined eligible and for new children who are determined eligible, without placing undue reporting burden on families.

We support the effort to clarify that the minimum 12-month eligibility requirement applies when children are newly added to the case of a family already participating in the subsidy program. Codifying this requirement will help to make sure there is consistent implementation of the policy and will help reduce confusion among Lead Agencies, families, providers.

Additionally, we support the encouragement for Lead Agencies to align eligibility periods to the newest child's eligibility period for families with multiple children accessing assistance. However, we acknowledge that the recommended process to extend the eligibility period for the existing child beyond 12 months may require additional funding. Yet the resulting reduction in administrative burden for the Lead Agencies and for families may mitigate the additional costs. Furthermore, we support the recommendation for Lead Agencies to leverage existing family eligibility verification information and only requiring the minimum necessary information for the additional child.

Simplifying the application process for additional children can reduce significant barriers for families that are already accessing child care assistance and increase capacity for Lead Agencies that have already reviewed a family's application information.

#### Conclusion

We appreciate your work to improve the accessibility and affordability of child care for families across our country, even in the absence of additional, necessary funding, as well as the opportunity to provide feedback and comments on your proposals. Thank you for your consideration of these comments for the proposed rulemaking. If you have any questions, please contact Averip Pakulis at [averip@firstfocus.org](mailto:averip@firstfocus.org).

Sincerely,



Bruce Lesley  
President, First Focus on Children