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August 28, 2023

Megan Campbell

Child Care Program Specialist

U.S. Department of Health and Human Services

Office of Child Care, Administration for Children and Families

330 C Street, S.W.

Washington, DC 20201

Re: Docket ID ACF-2023-0003

Dear Ms. Campbell,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 240 national organizations to promote and protect the civil and human rights of all persons in the United States, we write in response to the Department of Health and Human Services' notice of proposed rulemaking published in the Federal Register on July 13, 2023 to propose to amend the Child Care and Development Fund (CCDF) regulations.<sup>1</sup>

The Child Care and Development Block Grant (CCDBG) Act's Child Care and Development Fund (CCDF) program is critical in ensuring that children and families, especially those from marginalized backgrounds, have access to financial assistance for child care.<sup>2</sup> Leadership and action from the Biden-Harris administration can — and must — invest in early care and education programs that transform the lives of young children, their families, and others who care for them (including early educators, such as child care workers).

As the civil and human rights community, we care deeply about ensuring that children and families have access to comprehensive, diverse, and inclusive early care and education (ECE) settings and creating and maintaining an equitable early care and education system for children, families, and providers.<sup>3</sup> In order to address the present and ongoing

<sup>1</sup> Federal Register notice: Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF): <https://www.federalregister.gov/documents/2023/07/13/2023-14290/improving-child-care-access-affordability-and-stability-in-the-child-care-and-development-fund-ccdf>

<sup>2</sup> 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. Office of the Assistant Secretary for Planning and Evaluation, "Factsheet: Estimates of Child Care Eligibility & Receipt for Fiscal Year 2019," September 2022, <https://aspe.hhs.gov/reports/child-care-eligibility-fy2019>

<sup>3</sup> The civil rights community came together to develop and release "Civil Rights Principles for Early Care and Education," a roadmap for policymakers concerned with advancing equity and protecting civil rights for young children, their families, and caregivers in an education system that offers meaningful equal opportunity and success for all children, especially those who have been historically marginalized. The Leadership Conference on Civil and Human Rights. *Civil Rights Principles for Early Care and Education*.

<https://civilrightsdocs.info/pdf/education/Civil-Rights-Principles-for-Early-Care-and-Education.pdf>

challenges of the early child care and education system, we need a comprehensive approach that secures ample child care supply and capacity while ensuring there are quality options available for all families — regardless of immigration status — when and where they need them.

In response to the Office of Child Care’s (OCC) proposal to amend the CCDF regulations, and on behalf of the civil and human rights community, we offer the following recommendations:

**Cap copayments for families above 150 percent of Federal Poverty Level, encourage the waiver of copayments for families below this threshold or who have a child with a disability.**

Prior to the COVID-19 public health crisis, lack of affordable child care presented significant challenges for Black and Latino mothers who are more likely to be the sole or primary breadwinners for their families and who disproportionately occupy low-wage jobs with inconsistent or nonstandard schedules, making child care a struggle.<sup>4</sup> Without access to affordable child care, many parents — especially women — are unable to participate in the labor force or advance in their careers. 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, since the cost of child care is a barrier to access especially for families with low incomes.<sup>5</sup> While requiring states to cap their copayment fees at 7 percent is a good start, states need increased and sustained funding to lower the costs for families even more.<sup>6</sup>

We also 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. States would 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.<sup>7</sup>

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<sup>4</sup> Center for American Progress, *The Child Care Crisis Is Keeping Women Out of the Workforce* (March 2019), available at: <https://www.americanprogress.org/article/child-care-crisis-keeping-women-workforce/>; Schilder, D., Willenborg, P., Lou, C., Knowles, S. and Jaramillo, J. (July 2021). “Comparing potential demand for nontraditional-hour child care and planned policies across states.” Urban Institute. Available at: <https://www.urban.org/sites/default/files/publication/104601/comparing-potential-demand-for-nontraditional-hour-child-care-andplanned-policies-across-states.pdf>; Bateman, N. and Ross, M. “Why has COVID-19 been especially harmful for working women?” (October 2020). Brookings Institute. Available at: <https://www.brookings.edu/essay/why-has-covid-19-been-especially-harmful-for-working-women>

<sup>5</sup> Gina Adams and Eleanor Pratt, “Assessing Child Care Subsidies through an Equity Lens: A Review of Policies and Practices in the Child Care and Development Fund,” Page 41, September 2021, <https://www.urban.org/sites/default/files/publication/104777/assessing-child-care-subsidies-through-an-equity-lens.pdf>; 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).

<sup>6</sup> 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.

<sup>7</sup> States would also benefit from flexibilities to waive copayments or encouragement to develop eligibility policies for families enrolled in other programs and belonging to particular populations that could benefit from child care assistance.

**Ensure grants and contracts application processes are meaningfully accessible to all types of child care providers.**

Prior to the pandemic, high quality early care and education settings in the United States were unacceptably scarce, disproportionately affecting Black and Latino families.<sup>8</sup> ECE settings must reflect the needs of individual children, families, and communities, including center-based programs, family child care homes, school-based programs, and family friend and neighbor care serving children from birth until enrollment in kindergarten. Families must be provided assistance in overcoming barriers to participation, including transportation, translation, and accommodations. Children with disabilities must be provided with the individualized services and support that they need in inclusive settings.

We applaud the proposal to require states and territories to use grants and contracts for child care services, at a minimum for infants and toddlers, children with disabilities, and nontraditional-hour care. To support the needs of individual children, families, and communities, OCC must amend the CCDF regulations to 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 center-based programs, family child care homes, and family, friend, and neighbor care.<sup>9</sup>

**Pay providers prior to services, ensure all providers are paid at agency established rate.**

Historically, there have been significant disparities in compensation for early care workers, specifically for women of color who are undervalued and paid less than their White peers.<sup>10</sup> Further, most providers can only charge what families in their area can afford, which often translates to near-poverty wages for early educators — who are nearly all women and disproportionately women of color,<sup>11</sup> and are among the lowest paid workers in the economy.<sup>12</sup> ECE settings must be good places to work where staff are treated fairly with dignity and respect, with fair and equitable compensation and appropriate staffing levels, and where staff are supported in creating positive environments for diverse children and families.

In order to ensure that families have access to additional providers, OCC must amend the CCDF regulations to pay providers prior to giving child care services so that payments are consistent, timely, and reflect the true costs of quality care. This payment practice increases stability, supports the ECE

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<sup>8</sup> Center for American Progress, *The Coronavirus Will Make Child Care Deserts Worse and Exacerbate Inequality* (June 2020), available at <https://www.americanprogress.org/article/coronavirus-will-make-child-care-deserts-worse-exacerbate-inequality/>

<sup>9</sup> Parents often prefer home-based settings for their very young children and children with disabilities because of the familiarity and one-on-one attention these settings offer. 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.

<sup>10</sup> Austin, L.J.E., Edwards, B., Chávez, R., Whitebook, M. (2019). *Racial Wage Gaps in Early Education Employments*. Berkeley, CA: Center for the Study of Child Care Employment, University of California, Berkeley. Available at: <https://cscce.berkeley.edu/racial-wage-gaps-in-early-education-employment/>; "In a sector in which most of the workers are women and poorly paid, comparing the wages and opportunities for women of color to their white peers reveals wage gaps that cannot be explained away by job titles or the status accorded to working with certain age groups of children, as discussed above. This is especially true for African American early educators, who experience a wage gap even when the ages of children served are considered. African American early educators who work with infants and toddlers earn \$0.77 less per hour on average than other infant-and-toddler teachers; among preschool teachers, this wage gap widens to \$1.71 per hour."

<sup>11</sup> McLean, C., Austin, L.J.E., Whitebook, M., & Olson, K.L. (2021). *Early Childhood Workforce Index – 2020*. Berkeley, CA: Center for the Study of Child Care Employment, University of California, Berkeley. Retrieved from <https://cscce.berkeley.edu/workforce-index-2020/report-pdf/>

<sup>12</sup> Ibid.

workforce across settings, and aligns with the payment practices of the vast majority of programs that serve families paying out of pocket.<sup>13</sup> We applaud the proposal to ensure 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 help the retention of providers in CCDBG programs.

**Allow temporary assistance for families, facilitate categorical eligibility to enable easier and faster enrollment.**

The pandemic brought to light how essential child care and early education are to our country, while also revealing profound flaws and disparities. We know that America's existing child care market is unsustainable. Most parents can't afford the price of care, and too many families live in areas without access to quality care options at all. The disproportionate burden borne by families of color can be felt across the whole early child care and education system, including with child care enrollment. The impact of long-term closures of early childhood settings, which were necessary to protect the safety and health of communities, significantly exacerbated long-standing inequities in our educational system.<sup>14</sup>

We appreciate the proposal to allow families to receive temporary child care assistance for up to three months while their eligibility for subsidies is determined.<sup>15</sup> This proposed rule allows states the option to provide eligible families with prompt support, ensuring that families can engage in work or educational pursuits, as well as support enhanced child development outcomes. These changes would bring more families into the system, which would require additional funding to actually serve them.<sup>16</sup> We also appreciate that the proposal clarifies language to permit CCDF 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 CCDF.<sup>17</sup> If the eligibility criteria for other benefit programs within the Lead Agency's jurisdiction are completely aligned with CCDF requirements, this should satisfy CCDF eligibility requirements in full for those families or establish categorical eligibility.<sup>18</sup>

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<sup>13</sup> 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. Office of Child Care, "COVID Investments in Child Care: Supporting Children, Families, and Providers," May 25, 2023, <https://www.acf.hhs.gov/occ/infographic/covid-investments-child-care-supporting-children-families-and-providers>

<sup>14</sup> Child Care Aware of America, *Demanding Change: Repairing our Child Care System* (February 2022), available at <https://www.childcareaware.org/demanding-change-repairing-our-child-care-system/>

<sup>15</sup> As written in this proposed rule, a presumptive eligibility policy would allow families to receive immediate access to child care services for up to three months, while their eligibility for the program is being determined; How Presumptive Eligibility Can Help Families Access Child Care, CLASP, May 2023, <https://www.clasp.org/publications/fact-sheet/how-presumptive-eligibility-can-help-families-access-child-care/>

<sup>16</sup> Easier enrollment processes will require more funding to serve additional families. This acknowledgement is important in considering which policies will be most feasible for each state to implement and that states may have to consider additional funding streams to support child care programs.

<sup>17</sup> 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.

<sup>18</sup> Categorical eligibility is 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, categorical eligibility policies streamline and simplify the verification process for Lead Agencies; Expanding Access to Child Care Assistance: Opportunities in the Child Care and Development Fund, CLASP, June 2023, <https://www.clasp.org/publications/report/brief/expanding-access-child-care-development-fund/>; Confronting the Child Care Eligibility Maze: Simplifying and Aligning with Other Work Supports, CLASP, December 2013, <https://www.clasp.org/publications/report/brief/confronting-child-care-eligibility-maze-simplifying-and-aligning-other/>

As you amend the CCDF regulations to deliver meaningful investments that will address racial inequities and support the families and communities that need it most, the Biden-Harris administration should prioritize children and families facing the greatest barriers to their educational success. The impending expiration of American Rescue Plan Act (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 incredibly challenging for states and territories to fully and faithfully implement the changes in the proposed rule without tradeoffs.

Thank you for your consideration of our recommendations. If you have any questions or need additional information, please contact Steven Almazán, K12 education senior program manager at The Leadership Conference on Civil and Human Rights, at [almazan@civilrights.org](mailto:almazan@civilrights.org).

Sincerely,

The Leadership Conference on Civil and Human Rights  
The Leadership Conference Education Fund