CLASP
policy solutions that work for low-income people

Office of Child Care
Attention: Cheryl Vincent
370 L'Enfant Promenade, SW.
Washington, DC 20024

Re: ACF Docket No. 2013-0001

Dear Ms. Vincent,

The Center for Law and Social Policy (CLASP) is grateful for the opportunity to comment on new proposed regulations for the Child Care and Development Fund (CCDF). CLASP supports the framework put forward by the Office of Child Care to make changes to CCDF to better support child development and school readiness; increase the health and safety of children in child care; and to make CCDF more family-friendly and fair to providers.

While we support the framework laid out by OCC, CLASP is concerned that many of the provisions within the proposed regulations would impose significant costs on states, as well as child care providers with limited capacity to secure additional funds. Not only have states been grappling with tight budgets, many state and local government offices are operating with significantly reduced staff and resources and simply cannot do any more with existing funds. Child care providers need increased resources to meet higher standards. Implementing costly standards, without new resources, may require some states to redirect resources and cut back on the number of children receiving child care assistance. This would be in direct opposition to the goals laid out in the NPRM of improving the health and safety of children as many parents, without access to subsidies, would have no choice but to use lower-cost, poor-quality and unsafe care arrangements in order to work.

While we support increasing the health and safety of children in all settings, including those in licensed-exempt care, we are concerned that CCDF must retain the ability to support low-income families' work. New research from the Urban Institute finds that among low-wage workers, more than 1 in 4 (28 percent), work the majority of their hours on a nonstandard schedule. More than ever, low-income workers will need child care around the clock and in many cases will rely on home-based providers to care for their children while they work. CCDF policy should continue to support care that meets the needs of the low-income workforce.

Please find below our comments on specific sections of the proposed rule. In some instances our recommendations are intended to minimize the costs of compliance with certain proposed provisions given the budgetary situation and the risk of severely limiting access to child care for low-income working families.

Comments

98.14(a)(1). Plan process

In addition to the list of programs for coordination, we recommend adding the Child and Adult Care Food Program, an important support for child care programs and vital part of the early childhood system, and the maternal, infant, and early childhood home visiting programs authorized under section 511 of the Social Security Act, another vital part of the early childhood systems that ensures that more children have the opportunity to grow up healthy, safe, ready to learn, and able to become productive members of society through visits with parents in children in their home.

OCC should also encourage Lead Agencies to coordinate with other essential work support benefit programs, such as the Supplemental Nutrition Assistance Program (SNAP) and Medicaid/SCHIP. There is significant overlap between these benefit programs and CCDF clients, and the nutrition and health services they provide are critically important to the healthy development of children and economic stability of their parents.

98.16 Plan provisions

98.16(g)(6) Plan provisions - Job Search
We support the proposal to expand the definition of working to require states to allow parents to receive child care assistance during at least some period of job search. Low-income work is disproportionately associated with high turnover employment and job instability. Allowing parents to retain their child care assistance after a job loss will both help parents find new employment and support continuity of care for their children. We also recommend that Lead Agencies not be required job search verification due to the difficulty in providing job search activities.

98.16(h) Plan provisions – Continuity of care

We support the Office of Child Care in their efforts to promote continuity of care for children and make the subsidy system more family-friendly. Under this paragraph we offer several comments:

1. In addition to the policies noted in the introduction to the NPRM, which can reduce eligibility and application processing time, OCC should clarify that Lead Agencies are permitted to grant presumptive eligibility for a short time period to families, or subsets of families, as the Lead Agency determines appropriate. This policy, under appropriate circumstances, supports a parent's immediate child care needs in order to begin employment while application materials are being verified.

2. As noted in the Introduction, this proposed rule includes provisions to make the CCDF program more "family friendly" by reducing unnecessary administrative burdens on families. While some Lead Agencies have taken steps to reduce the burden on families applying for and receiving subsidies, others continue to have significant hurdles in place. Lead Agencies may have onerous requirements, such as requiring fingerprinting of clients or child support cooperation requirements, which may deter parents from seeking assistance. OCC should be explicit that these policies are *not* in line with intended reforms to make the system more family friendly and that states should implement policies that facilitate, rather than prevent, parent's access to child care assistance that helps them go to work and support their families.

98.16(t). Payment practices
We support the proposal requiring states to describe how they will achieve timely reimbursement to child care providers and explain how their payment practices support provision of high-quality child care and promote the participation of child care providers in the subsidy system. We recommend that the regulations include a definition of "timely" reimbursement and examples of provider payment practices for states to adopt that would advance these objectives—for example, practices that promptly notify

providers of changes in parents' eligibility status, reimbursement for days during children's absences and holidays, and reimbursement to cover registration fees and other fees charged to private-paying parents.

Sec. 98.16(v)(2) Review and Assessment of data
We recommend that OCC require states to collect and use data from monitoring visits to identify areas of recurring non-compliance and to focus training and technical assistance efforts for child care and licensing staff. In this way, states can use increased on-site monitoring as a tool for continuous quality improvement, not just an enforcement mechanism. Accordingly, we suggest the following addition to Sec. 98.16(v)(2) in italics:

> (2) A report describing any changes to State regulations, enforcement mechanisms, or other State policies addressing health and safety based on an annual review and assessment of serious injuries or deaths of children occurring in child care (including both regulated and unregulated child care centers and family child care homes) *and analysis of health and safety compliance and violations.*

98.20 A child's eligibility for child care services

98.20(a)(3)(ii). Vulnerable children
We support this provision giving states the flexibility to expand the definition of children in need of protective services to include specific populations of vulnerable children to be eligible for child care assistance even if their guardian has an income exceeding the federal maximum or does not meet work participation requirements. This provision recognizes the particular challenges for these children and the importance of helping them receive stable, supportive child care, independent of their guardian's work status or income level, and the importance of reducing barriers to assistance for these children.

98.20(b). Twelve month eligibility period
We support this proposal that states re-determine a child's eligibility for child care services no sooner than 12 months following the initial determination or most recent re-determination, with an option for states to permit families who initially meet the eligibility criteria to remain eligible for the full year without reporting changes. This provision will ease burdens on parents, who often do not have time to repeatedly recertify their continued eligibility for child care assistance while balancing work and family demands. It also helps limit disruptions in care for children, who greatly benefit from stability in their child care arrangements. It reduces administrative burdens and administrative costs for states as well.

Additionally, it supports efforts in states to align child care subsidy programs with other work support programs, including nutrition assistance and health insurance programs, to reduce the cumulative burden on families of re-determining eligibility for multiple programs several times throughout the year. Nearly all (49) states offer a 12 month renewal period and 23 states offer 12 months continuous eligibility for Medicaid. More than half of the states also have 12-month certification periods for SNAP, which also requires a six-month interim review.

While we support this proposal, we offer several recommendations for clarifying and improving this requirement in ways that would allow for better alignment across programs:

1. While aligning eligibility periods can be an important precursor to integrating or linking redetermination processes for eligible families across programs, aligning recertification *dates* further helps families so that they will only have to recertify and provide information at one time for multiple programs. This works neatly for a family applying for benefits for the first time. A family found eligible for child care and Medicaid, for example, could be authorized at one time for both benefits and the next redetermination for both child care and Medicaid would occur at

the same time in twelve months. However, for families that apply for a second benefit while already receiving one benefit, synchronization may work a bit differently. In this case, it may work best to have the family initially authorized for a *shorter* eligibility period for the second benefit in order to match the recertification dates with the first benefit. Several states that have aligned redetermination dates across programs report that initial authorized periods for child care are often shortened in order to accomplish the synchronization of redetermination dates.

In keeping with the goal of encouraging greater coordination across programs, we recommend an addition to the rule as written. States should be permitted to use an eligibility period of less than 12 months during the initial period of the family's eligibility *only if necessary* to align with another program. For example, if a family is receiving benefits through another program when they apply for child care assistance and are due to renew their eligibility for that program in two months, the state could require the family to renew their child care assistance eligibility at the same time that they renew their other benefits, so the recertification cycles of both programs are synchronized from that time forward.

2. Some states have already taken steps to align child care with SNAP, which requires a 6 month interim review when 12 months of benefits are authorized. OCC should clarify that states have the flexibility to follow the SNAP simplified report (SR) model, which would allow states to conduct an interim review – not a full redetermination – to ensure that major changes in eligibility (i.e. a family income rising above 85% of SMI) would be reported.

We also recommend that the regulations specify in this section that families retain the right to report changes in work status or income that would benefit them—for example, an increase in work hours that would enable them to receive assistance for more hours of child care, or a decrease in income that would result in a lower copayment.

Based on the above comments, we recommend the following additions (in italics) to the proposed text:

(b) A Lead Agency shall re-determine a child's eligibility for child care services no sooner than 12 months following the initial determination or most recent re-determination, subject to the following:
(1) During the period of time between re-determinations a Lead Agency, at its option, may consider a child to be eligible pursuant to some or all of the eligibility requirements specified in paragraph (a), if the child met all of the requirements in paragraph (a) on the date of the most recent eligibility determination or re-determination.
(2) *A Lead Agency may collect information on changes in circumstance that may impact eligibility through the use of a simplified interim report at 6 months so long as a full redetermination is not conducted.*
(3) The Lead Agency shall specify in the Plan any requirements *or allowances* for families to report changes in circumstances that may impact eligibility between re-determinations.
(4) In such a circumstance as the Lead Agency is seeking to align redetermination dates for child care services with another public benefit program, the Lead Agency may make an initial determination of less than 12 months in order to match the initial redetermination date for child care services with that of the next redetermination date for the other program. At the initial redetermination, the child care service would be authorized for a full 12 months.

98.20(d). Developmental needs of children

We commend the requirement that Lead Agencies take into account the developmental needs of children when determining children's eligibility for services as well as the clarification that lead agencies are not restricted to limiting authorized child care services based on work, training or educational schedule of the parent. However, we recommend separating these two provisions into two separate clauses to clarify that, while they are related, these are two independent concepts that may be acted on separately:

> (d) Lead Agencies must take into consideration the developmental needs of children when authorizing child care services.
>
> (e) Lead agencies are not restricted to limiting authorized child care services based on the work, training, or educational schedule of the parent(s).

In some cases, considering the developmental needs of the child may lead states to authorize care that is different from the hours of parents' work. For example, if a parent works part-time, a child may be authorized for full-time care in order to enroll in a high quality program that would not otherwise be available. However, as noted in the NPRM, Lead Agencies will have broad flexibility carrying out this provision and there will be multiple ways this requirement might be met specific to the circumstance of the individual state as well as the skills and tools available to those determining children's eligibility. A broad interpretation of "developmental need" will allow for considerations that may not have to do with authorized hours of care. For example, states may consider developmental need through case management for a family facing some particular difficulties in accessing care; by connecting children to nutrition assistance and health insurance coverage through the child care assistance enrollment process; by facilitating enrollment in a child care setting that provides comprehensive services a child would benefit from; or other options.

98.33 Consumer education

We support the intent of this section to provide additional information to parents about the quality of their child care options. Too often parents lack information about quality care or about standards that child care providers are required to meet in order to operate. We believe a consumer education website should be required of states with information in easy-to-understand language and in non-English languages to the extent practicable. Lead Agencies should be encouraged to use additional means of educating parents, such as online media, pediatrician's offices and health clinics, and radio and television advertising.

The provision as written [98.33(b)], however, puts a very large burden on states to create transparent systems of quality (i.e. Quality Rating and Improvement Systems) at a time that states have few resources to expand quality initiatives. While nearly every state has a QRIS in development or at pilot stage, the vast majority of such systems include only a small proportion of child care providers in a state. Creating an extensive system of quality indicators, or expanding existing QRIS statewide and into all types of subsidized child care settings, is something that should be done with appropriate resources to support the infrastructure and help providers meet higher standards. Additionally, at a time when economic circumstances have resulted in a lack of staff at the state and local levels and a lack of capacity, in general, creating a system of quality indicators or expanding QRIS may not be feasible in some states.

In 2011, CLASP and the National Women's Law Center convened a group of child care center directors from eight states with statewide QRIS. While the directors were clear that QRIS offered an important roadmap for strengthening the quality of care, they were also clear that programs need resources to make and sustain progress. While some state QRIS provide significant support to providers, others provide little or no help to meet higher standards. QRIS are labor- and resource-intensive systems that to be effective

must be adequately funded. States should not be encouraged or required to build these systems without directing significant resources.

Even if a state uses an alternative system to comply with the proposed requirement, there will be significant new administrative and other costs for the state, as well as for providers that would be required to compile and submit data to the state. We believe that states would spend significant resources implementing such a system that ultimately may not increase consumer education.

Instead of requiring states to adopt a complete system of new indicators, we recommend allowing states to instead meet the objective of better informing parents by making information that they already collect, such as the components of the state's child care licensing requirements, and ratings of providers in existing QRIS more readily available to parents in easy-to-understand language. States that are developing and piloting QRIS can be encouraged to build up these systems incrementally; requiring them to do this too quickly will result in weakly funded quality systems that will not have the necessary supports to increase quality.

98.41 Health and Safety Requirements

98.41(a)(2)(i). Background Checks

We support the provision to strengthen background checks for child care providers in order to ensure children's well-being and safety in child care. However, the final rule should make clear that states must provide appropriate protections for child care providers, including the right to appeal findings, to ensure that they are not permanently penalized as the result of inaccurate information. The provision should offer providers a pathway to appeal background check findings. Other systems, such as CMS guidelines for home health aides, recommend individual assessment rather than a list of disqualifying offenses, as individual cases vary dramatically. Given state capacity, this may not be feasible, but should be allowable.

While waiting for clearance, providers should be permitted to work under the supervision of an employee who has been cleared by a background check. In addition, the preamble to the final regulations should emphasize the importance of timely processing of background checks and encourage Lead Agencies to work closely with state entities responsible for such checks to ensure that the process is as efficient as possible. States should also be required to provide up to three months retroactive pay for family child care and license-exempt providers who care for children while waiting for the background checks to be completed and are then cleared.

The agency has requested comment on whether background checks should apply to individuals in family child care homes serving children receiving child care assistance. We recommend that all individuals age 18 and over in licensed family child care homes be subject to background checks.

We recommend that background checks be required for all full- and part-time employees and contract workers in child care centers, including administrative, food service, and maintenance personnel on site while children are in care, regardless of whether they provide direct care to children.

In addition, we recommend that OCC clarify that states be allowed to use CCDBG funding to cover the cost of the background checks for legally exempt providers, so that the cost of the background checks is not a barrier for these providers, who can meet an important need for many families, such as families working nontraditional hours.

Finally, we recommend that ACF examine whether any of the required background checks are duplicative, and if duplication is uncovered, no longer require providers to undergo such checks.

98.41(a)(3) Training

We applaud the Office of Child Care for establishing minimum health and safety training requirements. Far too many children are in care with providers who lack basic health and safety information. We support the recommendation to require pre-service training and also allow Lead Agencies to allow the training to be completed during an initial service period (i.e. orientation). We recommend that states determine what training is essential for completion prior to caring for children (such as First Aid and CPR) but allow providers to complete some training requirements while caring for children under supervision.

We believe the content of training is more important than setting a required number of hours. Lead Agencies may be encouraged to have a plan in place for approving training content and the expertise of training providers to ensure there is accountability and quality in training. Training must also be accessible for providers through many approaches, including online training, community-based training and training that articulate to credentials and degrees. To the extent practicable, trainings should be offered in multiple languages.

98.41(d)(1). Onsite Monitoring

We agree with the intent of the regulations to ensure that children in CCDF-funded care are healthy and safe. On site monitoring is an important part of ensuring safe child care settings.
Routine monitoring of child care providers can increase the likelihood that key health and safety regulations are implemented correctly and consistently. Unannounced visits are an important component of an effective monitoring system as research suggests that monitors are more likely to observe that best practices are not consistently followed when inspections are unannounced.

The agency has requested comments on the frequency of on-site monitoring. We recommend that all licensed CCDF-providers be subject to annual, on-site, unannounced monitoring. We recommend that license-exempt providers also be subject to on-site, unannounced monitoring but that the frequency be left to state discretion. Research shows that the average length of subsidy duration may be as short as 3-7 months. Some flexibility on this requirement will allow states to target license exempt providers with longer histories in the CCDF program, rather than those only receiving subsidies for a few months and also ensures that there are not unfair limitations on parents' choice of providers and their ability to go to work immediately as a job becomes available. Families may choose license-exempt providers for a variety of reasons, including a lack of licensed care in their community and the ability to arrange care quickly to meet employment and work scheduling needs.

We recommend the proposed rules include language that clarifies what the monitoring visit is intended to check for, such as health and building inspections, since it is different from a standard licensing visit.

We agree with the proposed rule requiring that health and safety inspections be completed prior to serving children receiving child care assistance in licensed child care facilities, including family child care homes. Given the dual goals of CCDBG to support both children's health and safety and low-income parents' economic sufficiency and concerns about state monitoring capacity, we recommend that the regulations allow a license-exempt provider to care for a child receiving child care assistance for up to 60 days before the initial health and safety inspection so that a parent who needs child care to start work or retain employment is able to begin using that child care immediately. We recommend that the regulations

require states to describe in their plans how they will complete the initial visits in a timely basis in order to meet parental choice.

As noted in the NPRM, some states use differential monitoring, also known as risk assessment monitoring, to determine the frequency of inspections for licensed providers. Differential monitoring may be a useful tool for targeting more frequent monitoring and technical assistance to help some providers with compliance but it should not replace routine inspections of all licensed providers. While more frequent inspections of providers with poor compliance records may be effective, providers with good compliance records also need attention to ensure that compliance with licensing regulations is maintained.

We also recognize that onsite monitoring requires staffing and resources and meeting this requirement will require significant new resources from states to increase monitoring capacity. We encourage OCC to work with states to understand these costs and implement an appropriate timeline for phasing-in this requirement so that state monitoring capacity may be expanded.

98.42(c) Sliding fee scales—waiver of copayment
We support the proposed regulation to allow Lead Agencies to waive the copayment for some families. Some families with very limited incomes or other extenuating circumstances cannot afford any copayment and would be unable to use child care assistance if they were required to pay a copayment.

98.42(d) Sliding fee scales—prohibition of using cost as a factor
We support the recommendation to prohibit the use of the cost of care in determining the copayment of a family receiving child care assistance. Using cost as a factor can discourage parents from using higher-cost care, which is often higher-quality care, because it would result in a larger cost burden for them.

98.43(b)(2) Equal access—adequacy of payment rates

We support the proposal to rename the "market rate survey" as a "market price study" to more appropriately represent the data that is being captured. We strongly support the recommendation to require Lead Agencies to use a *current* market price study (MPS) when setting its payment rates.

We oppose allowing states to use an alternative methodology as a replacement for the local MPS. The local MPS is an essential benchmark that allows for accountability and comparability across states and that states can and do use in setting benchmarks for rate increases. States should not be given the option of abandoning MPS for unproven methods that may only be used to justify states' existing low market rates.

While we agree that there are inherent problems with a MPS as a rate setting mechanism, we believe that there should be a well-established alternative(s) identified *before* states move away from this method. Moreover, we believe that it would be a more effective use of resources for the OCC to fund research at the national level to identify improved rate setting approaches and methodologies that would better reflect the cost of providing quality child care, rather than encourage states to explore alternatives with limited capacity.

We also request that in the interim, while OCC is researching this topic, that OCC provide technical assistance and guidance to states on developing and conducting statistically valid and reliable market price studies and identify acceptable approaches for states to use in developing and conducting studies.

98.43(c)(2) Equal access—payment rates based on quality

We support this proposed requirement that states take into account the quality of child care when determining payment rates. However, we recommend that the preamble strongly encourage states to set adequate base rates and pay higher rates for higher-quality care that truly reflect the additional costs of achieving and maintaining higher quality levels. Currently, in four-fifths of states that offer higher rates for higher-quality care, even the highest rates are below the 75th percentile of up-to-date market rates. We recommend that the regulations strongly discourage states from lowering base rates and encourage states instead to differentiate rates by quality level by raising rates for providers at progressively higher levels of quality.

98.50 Child Care services

We applaud the change in this regulation requiring states to use direct grants for child care services. CLASP's research has found contracts an effective method for increasing the supply and quality of available care, particularly for groups where quality care is in especially short supply such as infants and toddlers and other groups of children. Contracts can also offer financial stability to providers caring for children in CCDF, which may increase the quality of care they are able to offer. Our work in this area finds that in order to meet the goal of this regulation, to use contracts to expand high quality care, contracts must be adequately funded. The effectiveness of contracts in boosting the quality and supply of care depends on adequate payment levels for providers receiving contracts.

We suggest that OCC encourage through the preamble to the regulations contracts attached to high quality standards that are paid at higher rates and that include other payment mechanisms that support provider financial stability, such as paying by enrollment, offering prospective payments, and reducing required paperwork.

Sec. 98.51(d) Activities to improve the quality of child care

We support the clarification that activities to improve the quality of child care are not restricted to children receiving CCDF assistance or providers caring for them. CCDF quality dollars play a critical role in enhancing the quality of child care for all families and the child care infrastructure as a whole.

Section 98.71: Reporting Requirements

Reporting should provide as complete a picture as possible of children receiving subsidies as well as children who are not served and on waiting lists. We recommend adding the following reporting requirements in italics:

- Section 98.71(a): *(16): whether the child has a disability or special health care need.*
- Section 98.71 (b): *(5) "the number of children on the waiting list for CCDF services to the extent practicable.*
- 98.71 *(c) At a minimum, a State or territorial Lead Agency's annual aggregate report to the Secretary, as required in Sec. 98.70(b), shall include information on the number of children served through funds spent directly from the TANF Block Grant if that data is available.*

Thank you for the opportunity to comment.

Sincerely,

Hannah Matthews
Director, Child Care and Early Education
CLASP