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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 98

RIN 0970-AD02

Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)

AGENCY: Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule makes regulatory changes to the Child Care and Development Fund (CCDF). These changes lower child care costs for families participating in CCDF, improve the program's child care provider payment rates and practices, and simplify enrollment in the child care subsidy program. The final rule also includes technical and other changes to improve clarity and program implementation.

DATES: *Effective:* [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Temporary Waivers: States and Territories that are not in compliance with the provisions of this final rule on the effective date may request a temporary waiver for an extension of up to two years if needed to come into compliance. For Tribal Lead Agencies, ACF will determine compliance through review and approval of the FY 2026-2028 Tribal CCDF Plans that become effective October 1, 2025.

FOR FURTHER INFORMATION CONTACT: Megan Campbell, Office of Child Care, 202-690-6499 or megan.campbell@acf.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This final rule is being issued under the authority granted to the Secretary of Health and Human Services by the CCDBG Act of 1990, as amended (42 U.S.C. 9857, *et seq.*), and section 418 of the Social Security Act (42 U.S.C. 618).

II. Background

The Child Care and Development Block Grant Act (CCDBG), hereafter referred to as the "Act" (42 U.S.C. 9857 *et seq.*), together with section 418 of the Social Security Act (42 U.S.C. 618), authorize the Child Care and Development Fund (CCDF), which is the primary federal funding source devoted to supporting families with low incomes afford child care and to increasing the quality of child care for all children. CCDF plays a vital role in supporting child development and family well-being, facilitating parents' employment, training, and education, and improving the economic well-being of participating families. Families with children under age 5 and incomes below the federal poverty line who pay for child care spend 36 percent of their income on child care on average, which leaves insufficient funding for food, housing, and other basic costs.[1] Households with incomes just above the federal poverty level spend more than 20 percent of their income on child care, on average. [2] Even school-age care can amount to 8 to 11.5 percent of family income. [3] Without help paying for child care, the cost can drive parents to exit the workforce or seek out less expensive care, which may be unlicensed or unregulated, have less rigorous quality or safety standards, and be less reliable.[4] In fiscal year (FY) 2021, the most

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[1] Madowitz, M. et al. (2016). Calculating the Hidden Cost of Interrupting a Career for Child Care. Washington, DC: Center for American Progress. https://www.americanprogress.org/article/calculating-the-hidden-cost-of-interrupting-a-career-for-child-care/.

[2] National Survey of Early Care and Education Project Team (2022): E. Hardy, J.E. Park. 2019 NSECE Snapshot: Child Care Cost Burden in U.S. Households with Children Under Age 5. OPRE Report No. 2022-05, Washington DC: Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS). https://www.acf.hhs.gov/opre/report/2019-nsece-snapshot-child-care-cost-burden-us-households-children-under-age-5.

[3] Landivar, L. C., Graf, N. L., & Rayo, G. A. (2023). Childcare prices in local areas: Initial findings from the national database of childcare prices. Women's Bureau Issue Brief. U.S. Department of Labor, Washington, DC. Issued January.

[4] Hill, Z., Bali, D., Gebhart, T., Schaefer, C., & Halle, T. (2021) Parents' reasons for searching for care and results of search: An analysis using the Access Framework. OPRE Report #2021–39. Washington, DC: Office of Planning,

current available data, CCDF helped nearly 800,000 families and more than 1.3 million children under age 13 with financial assistance for child care each month.[5] CCDF also promotes the quality of child care for all children, requiring CCDF Lead Agencies to spend at least 12 percent of their CCDF funding each year on activities to improve child care quality for all children in care.

Access to affordable high-quality child care has numerous short- and long-term benefits for children, families, and society, supporting child and family well-being in a manner that fuels prosperity and strengths communities and the economy. Child care is a necessity for most families with young children and reliable access leads to better parental earnings and employment and supports parents' educational attainment[6]. Specifically, maternal employment increases in response to more available and more affordable child care[7] and drops when child care becomes more expensive for families[8]. Moreover, children with stably employed parents are far less likely to experience poverty than children whose parents have less consistent employment.[9] The positive effects of high-quality child care are especially pronounced for families with low incomes and families experiencing adversity.[10] High-quality child care

Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. https://www.acf.hhs.gov/opre/report/parents-reasons-searching-early-care-and-education-and-results-search-analysis-using.

[5] Unpublished FY 2021 ACF administrative data.

[6] Gault, B. and Reichlin Cruse, L. (2017). Access to Child Care Can Improve Student Parent Graduation Rates. Washington, DC: Institute for Women's Policy Research. https://iwpr.org/iwpr-general/access-to-child-care-can-improve-student-parent-graduation-rates/.

[7] Herbst, C. (2022). "Child Care in the United States: Markets, Policy, and Evidence." Journal of Policy Analysis and Management. https://doi.org/10.1002/pam.22436.; Herbst, C., and E. Tekin, 2011. "Do Child Care Subsidies Influence Single Mothers' Decision to Invest in Human Capital?" Economics of Education Review 30, no. 5: 901–12. https://doi.org/10.1016/j.econedurev.2011.03.006.

[8] Landivar, L.C., Graf, N.L., and Altamirano Rayo, G. (2023). Childcare Prices in Local Areas: Initial Findings from the National Database of Childcare Prices. Women's Bureau Issue Brief. U.S. Department of Labor. https://www.dol.gov/sites/dolgov/files/WB/NDCP/508_WB_IssueBrief-NDCP-20230213.pdf.

[9] Thomson, D., Ryberg, R., Harper, K., Fuller, J., Paschall, K., Franklin, J., & Guzman, L. (2022). Lessons From a Historic Decline in Child Poverty. Bethesda, MD: Child Trends. https://www.childtrends.org/publications/lessons-from-a-historic-decline-in-child-poverty.

[10] Bustamante et al. (2022). Adult outcomes of sustained high-quality early learning child care and education: Do they vary by family income? *Child Development, 93(*2), 502-523. https://srcd.onlinelibrary.wiley.com/doi/10.1111/cdev.13696.; Davis Schoch, A., Simons Gerson, C., Halle, T., & Bredeson, M. (2023). Children's learning and development benefits from high-quality early care and education: A summary of the evidence. OPRE Report #2023-226. Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

environments can also be important for children's cognitive, behavioral, and socio-emotional development, helping chart a pathway to success in school and beyond.[11]

Despite the importance of access to high-quality child care to children, families, communities, and our country's economic growth, child care remains a fundamentally broken system due to chronic underinvestment. As a result of this underinvestment, the child care system relies on a very poorly compensated workforce and unaffordable parent fees, causing most families to struggle to find or afford high-quality child care that meets their needs.[12] There are not enough child care programs to serve families who need care and many programs do not offer care during the hours or days families require.[13] More than half of families in the United States live in communities where potential demand for child care outstrips supply by at least three to one.[14] In the 2019 National Household Education Survey on Early Childhood Program Participation, parents of children under the age of 6 reported the lack of available child care as the second biggest barrier to finding child care, with cost being the first.[15]

The COVID-19 public health emergency exacerbated these challenges, highlighting both the fragility of the child care sector and the central role child care plays in the broader economy.[16] Numerous child care programs closed their doors permanently between the widespread onset of COVID-19 in March 2020 and the federal supports in the American Rescue Plan (ARP) in 2021. With ARP Child Care Stabilization funding, HHS invested $24 billion in the child care sector to help child care providers keep their doors open and to provide child care

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[11] Shonkoff, J. P., & Phillips, D. A. (Eds.). (2000). *From neurons to neighborhoods: The science of early childhood development.* National Academy Press.
[12] U.S. Department of the Treasury (September 2021). The Economics of Child Care Supply in the United States, https://home.treasury.gov/system/files/136/The-Economics-of-Childcare-Supply-09-14-final.pdf.
[13] Federal Reserve Bank of St. Louis. The Economic Impact of Child Care by State. https://www.stlouisfed.org/community-development/child-care-economic-impact.
[14] Malik, R. et al., (2018). America's Child Care Deserts in 2018. Washington, DC: Center for American Progress. https://www.americanprogress.org/article/americas-child-care-deserts-2018/.
[15] Cui, J., and Natzke, L. (2021). Early Childhood Program Participation: 2019 (NCES 2020-075REV), National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC. http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2020075REV.
[16] Connecticut Association for Human Services. (July 2022). Child Care at a Breaking Point: The Cost for Parents to Work https://cahs.org/pdf/child-care-survey-report7-15-22.pdf.; Powell, L. and Kravitz, D. (August 2022). "Michigan's child care crisis is worse than policymakers have estimated," *Chalkbeat Detroit.* https://detroit.chalkbeat.org/2022/8/31/23329007/michigan-child-care-crisis-deserts-worse-policymakers-day-care.

workers with higher pay, bonuses, and other benefits. These efforts helped over 225,000 child care programs serving as many as 10 million children across the country; saved families with young children who rely on paid child care approximately $1,250 per child per year; and helped hundreds of thousands of women with young children enter or re-enter the workforce more quickly, increasing the labor force participation and employment of mothers of young children by an additional 3 percentage points.[17]

Despite these investments, workforce shortages resulting in part from a tight labor market and a fundamentally broken child care market that forces low wages continue to put additional strains on child care supply across the country.[18]

In the years since the 2014 reauthorization of the Act (P.L. 113-186) and the accompanying regulations in 2016 (81 FR 67438, Sept. 30, 2016), CCDF Lead Agencies have worked hard to strengthen child care policies and practices to make the child care subsidy system more affordable and accessible to families and to support the continuity of care for children and working families. However, regulatory changes to the CCDF program are needed to address some of the programmatic and systemic challenges described here and to ensure the program properly addresses the needs of children and families it serves. Though significant new investments and fundamental system reform are needed to fully realize affordable high-quality child care for all who need it, it is clear more must be done now within the federal child care program to help parents with low incomes that participate in the CCDF program access affordable high-quality child care that meets their families' needs.

III. Executive Summary

[17] https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/07/fact-sheet-historic-biden-harris-administration-investments-in-child-care-recovery-lowered-costs-for-millions-of-families-helped-speed-the-return-to-work-of-hundreds-of-thousands-mothers-and-grew-t/

[18] ASPE unpublished analyses using U.S. Bureau of Labor Statistics, Current Employment Statistics – CES.

The final rule amends the CCDF regulations to: (1) lower families' costs for child care, to increase access to child care and improve family well-being; (2) strengthen CCDF payment practices to child care providers, to expand parents' child care options and better support child care operations; and (3) reduce program bureaucracy for families, to make it easier for families to enroll in CCDF. The rule also makes some technical and other changes for improved clarity.

Currently, some families participating in CCDF have co-payments that are a significant and destabilizing financial strain on family budgets and a barrier to participating in the CCDF program and maintaining employment.[19] Many current CCDF provider payment rates and practices limit parent choice in child care arrangements, destabilize provider operations, contribute to supply issues, disincentivize provider participation in CCDF, and do not adequately cover the cost of care. This final rule includes important changes to the CCDF program to help participating families access the child care they need and better support child care providers in the essential work they do.

Lowering Families' Costs for Child Care

Once implemented, HHS projects that the rule will lower the cost of child care for over 100,000 families participating in CCDF, improving family well-being and economic stability and better supporting parent employment. First, this final rule requires States and Territories to establish co-payment policies for families receiving CCDF assistance to be no more than 7 percent of family income to help ensure family co-payments are not a barrier to accessing child care. HHS established 7 percent of a family's income as the benchmark for an affordable co-payments in 2016[20] based on data from the U.S. Census Bureau that showed on average families spent 7 percent of income on child care, but that poor families on average spent approximately

[19] Landivar, L.C., Graf, N.L., & Rayo, G.A. (2023). Childcare Prices in Local Areas: Initial Findings from the National Database of Childcare Prices. U.S. Department of Labor.; 81 FR 67515 (https://www.govinfo.gov/content/pkg/FR-2016-09-30/pdf/2016-22986.pdf).
[20] 81 FR 67515

four times the share of their income on child care compared to higher income families.[21] According to ACF data, average CCDF co-payments in 11 States exceed 7 percent of family income,[22] 20 States have policies that allow some family co-payments above 7 percent (which can even rise as high as 27 percent of family income),[23] and 16 States do not have clear policies in place to restrict co-payments to any percentage of family income.[24] CCDF family co-payments increased at a rate higher than inflation between 2005-2021, with an average 18 percent increase (after adjusting for inflation) for families during this period.[25]

The Act requires States and Territories to establish and periodically revise co-payment policies that are "not a barrier to families receiving" CCDF assistance. (42 USC 9858c(5)). High co-payments can be a significant and destabilizing financial strain on family budgets, a barrier to families participating in the CCDF program, and a barrier to parent employment.[26] Unaffordable co-payments can limit family participation in the CCDF program, cause parents to cut work hours or exit the workforce entirely, and may lead families to patch together informal, unregulated care that is less expensive, less reliable, and less likely to meet children's

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[21] Laughlin, Lynda. 2013. Who's Minding the Kids? Child Care Arrangements: Spring 2011. Current Population Reports, P70-135. U.S. Census Bureau, Washington, DC. https://www2.census.gov/library/publications/2013/demo/p70-135.pdf

[22] FFY 2021 ACF-801 data report.

[23] FFY 2022-2024 CCDF State Plans.

[24] Ibid.

[25] ASPE tabulations of the ACF–801 database. FY 2005 to FY 2018 were tabulated using the public- use files. FY 2019 to FY 2021 were tabulated using the restricted-use files. FY 2021 data were preliminary.

[26] Landivar, L.C., Graf, N.L., & Rayo, G.A. (2023). Childcare Prices in Local Areas: Initial Findings from the National Database of Childcare Prices. U.S. Department of Labor. https://www.dol.gov/sites/dolgov/files/WB/NDCP/508_WB_IssueBrief-NDCP-20230213.pdf.; 81 FR 67515 (https://www.govinfo.gov/content/pkg/FR-2016-09-30/pdf/2016-22986.pdf).; National Survey of Early Care and Education Project Team (2022): Hardy, E. Park, J.E.. 2019 NSECE Snapshot: Child Care Cost Burden in U.S. Households with Children Under Age 5. OPRE Report No. 2022-05, Washington DC: Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS). https://www.acf.hhs.gov/opre/report/2019-nsece-snapshot-child-care-cost-burden-us-households-children-under-age-5.; Scott, E. K., Leymon, A. S., & Abelson M. (2011). Assessing the Impact of Oregon's 2007 Changes to Child-Care Subsidy Policy. Eugene, Oregon: University of Oregon. https://health.oregonstate.edu/early-learners/research/assessing-impacts-oregon%E2%80%99s-2007-changes-child-care-subsidy-policy.; Grobe, D., Weber, R., Davis, E. & Scott, E. (2012). Struggling to Pay the Bills: Using Mixed-Methods to Understand Families' Financial Stress and Child Care Costs. *Contemporary Perspectives in Family Research (6),* 93-121. https://health.oregonstate.edu/sites/health.oregonstate.edu/files/sbhs/pdf/struggling-to-pay-the-bills-using-mixed-methods-to-understand-families-financial-stress-and-child-care-costs.pdf.; Morrissey, T. W. (2017). "Child care and parent labor force participation: a review of the research literature." *Review of Economics of the Household* 15.1: 1-24. https://link.springer.com/content/pdf/10.1007/s11150-016-9331-3.pdf.

developmental needs. Even families receiving child care subsidies continue to experience substantial financial burden in meeting their portion of child care costs.[27] According to a 2023 survey of families that participated in CCDF without a co-pay, 56 percent of parents reported that they would disenroll their children from the subsidized child care program if co-payments were required.[28] Surveyed parents explained that needing to pay a co-payment would cause strain on their family budget, with one parent explaining, "I would have to choose which minimum necessities to afford that month – rent, utilities, or food...the choice is impossible," and another sharing, "I would not be able to work."[29] We retain the 7 percent cap in this final rule because we believe amounts in excess of this threshold pose a barrier to child care access in the CCDF program. ACF notes that 7 percent of family income is not affordable for many families participating in CCDF. ACF encourages Lead Agencies to adopt lower co-payment caps and minimize or waive co-payments when possible and this rule makes it easier to do so.

The rule makes it easier for Lead Agencies to waive co-payments for additional families, specifically for families living at or below 150 percent of the federal poverty level, families with children in foster and kinship care, families with children with disabilities, families experiencing homelessness, and children enrolled in Head Start or Early Head Start. ACF believes making it easier for Lead Agencies to waive parent co-payments for these populations will increase uptake of an existing program flexibility and lower child care costs for more families participating in CCDF, especially those with lower incomes and vulnerable children, as well as making it easier to coordinate with Head Start and Early Head Start. Lead Agencies report that families with low

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[27] Scott, E. K., Leymon, A. S., & Abelson M. (2011). Assessing the Impact of Oregon's 2007 Changes to Child-Care Subsidy Policy. Eugene, Oregon: University of Oregon. https://health.oregonstate.edu/ early-learners/ research/ assessing-impacts-oregon%E2%80%99s-2007-changes-child-care-subsidy-policy.; Grobe, D., Weber, R., Davis, E., & Scott, E. (2012). Struggling to Pay the Bills: Using Mixed-Methods to Understand Families' Financial Stress and Child Care Costs. *Contemporary Perspectives in Family Research (6),* 93–121. https://health.oregonstate.edu/ sites/ health.oregonstate.edu/ files/ sbhs/ pdf/ struggling-to-pay-the-bills-using-mixed-methods-to-understand-families-financial-stress-and-child-care-costs.pdf.
[28] EveryChild California. (April 2, 2023). EveryChild CA Family Fee Survey Results. https://www.everychildca.org/news/everychild-ca-family-fee-survey-results
[29] Ibid.

incomes in their jurisdictions are still struggling to afford child care, even when they receive child care subsidies.[30] Eliminating child care costs for additional families will better support parents' education, training, and work opportunities and families' financial stability and well-being. As just noted, co-payments, even very low co-payments, remain a barrier for some families to make ends meet, especially families struggling to afford housing costs.[31] This policy will shift costs that currently burden participating families to Lead Agencies and does not impact the total payment made to the child care provider.

These new flexibilities should not discourage States and Territories from taking steps to eliminate or significantly reduce co-payments for additional families who do not fall within one of the categories listed in this rule for pre-approved waiving of co-payments. Lead Agencies may still propose a higher income threshold for waiving co-payments, at their discretion, utilizing existing authority in the statute.

Strengthening CCDF Payment Practices to Child Care Providers and Increasing Families' Options

This final rule will strengthen Lead Agency payment rates and practices to more than 150,000 child care providers to better cover the cost of care, increase the financial stability of child care providers that accept CCDF subsidies, and encourage more providers to accept subsidies. These policies will expand available child care options to parents participating in CCDF so they can find child care that meets their families' needs. Despite the importance of

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[30] Rohacek, M., & Adams, G. (2017). Providers in the child care subsidy system. Washington, DC: Urban Institute. https://www.urban.org/sites/default/files/publication/95221/providers-and-subsidies.pdf.

[31] Scott, E. K., Leymon, A. S., & Abelson M. (2011). Assessing the Impact of Oregon's 2007 Changes to Child-Care Subsidy Policy. Eugene, Oregon: University of Oregon. https://health.oregonstate.edu/early-learners/research/assessing-impacts-oregon%E2%80%99s-2007-changes-child-care-subsidy-policy.; Grobe, D.,Weber, R., & Davis, E. & Scott, E.. (2012). Struggling to Pay the Bills: Using Mixed-Methods to Understand Families' Financial Stress and Child Care Costs. *Contemporary Perspectives in Family Research (6),* 93-121. https://health.oregonstate.edu/sites/health.oregonstate.edu/files/sbhs/pdf/struggling-to-pay-the-bills-using-mixed-methods-to-understand-families-financial-stress-and-child-care-costs.pdf.; Anderson, T. et al. (January 2022). Balancing at the Edge of the Cliff: Experiences and Calculations of Benefit Cliffs, Plateaus, and Trade-Offs. Washington, DC: Urban Institute. https://www.urban.org/research/publication/balancing-edge-cliff.

access to high-quality child care to children, families, and communities, there is not enough child care to serve families who need it.[32] A 2018 analysis found that 51 percent of families with children under age 5 lived in a "child care desert"—an area where there are three times as many children under age 5 than there are spaces in licensed settings.[33] A 2019 analysis of 35 States found only 7.8 million child care slots for the 11.1 million children under the age of 5 with the potential need for child care.[34] Parents have long struggled to find child care that meets their needs, and the decline in child care options, especially family child care homes, has perpetuated the problem. Between 2012 and 2019, the number of family child care providers decreased by 25 percent[35] without a complementary increase in center-based programs.[36]

A key contributor to this lack of supply is that child care providers usually operate with profit margins of less than 1 percent.[37] To remain open, child care providers must keep costs low enough so families are not priced out of care, but because labor is the main business expense, most providers can only remain operational if they pay low wages and offer minimal benefits for this essential and skilled work overwhelmingly done by women and disproportionately by women of color.[38] These working conditions lead to high turnover, with an estimated 26 to 40 percent of the child care workforce leaving their job each year.[39] Children in underserved

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[32] Federal Reserve Bank of St. Louis. The Economic Impact of Child Care by State. https://www.stlouisfed.org/community-development/child-care-economic-impact.

[33] Malik, R. et al., (2018). America's Child Care Deserts in 2018. Washington, DC: Center for American Progress. https://www.americanprogress.org/article/americas-child-care-deserts-2018/.

[34] Smith, L., Bagley, A., and Wolters, B. (November 2021). Child Care in 35 States: What we know and don't know. Washington, DC: Bipartisan Policy Center.

[35] Datta, A.R., Milesi, C., Srivastava, S., Zapata-Gietl, C. (2021). NSECE Chartbook - Home-based Early Care and Education Providers in 2012 and 2019: Counts and Characteristics. OPRE Report No. 2021-85, Washington DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. https://www.acf.hhs.gov/opre/report/nsece-hb-chartbook-counts-and-characteristics.

[36] Datta, A.R., Gebhardt, Z., Zapata-Gietl, C. (2021). Center-based Early Care and Education Providers in 2012 and 2019: Counts and Characteristics. OPRE Report No. 2021-222, Washington DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. https://www.acf.hhs.gov/sites/default/files/documents/opre/cb-counts-and-characteristics-chartbook_508_2.pdf.

[37] U.S. Department of the Treasury. (2021). The Economics of Child Care Supply in the United States. https://home.treasury.gov/system/files/136/The-Economics-of-Childcare-Supply-09-14-final.pdf.

[38] Ibid.

[39] Ibid.

geographic areas especially have less access to high-quality child care options and parents struggle to find high-quality child care that is reliably available and affordable.[40]

CCDF must do more to help address supply challenges and ensure parents have a wide range of child care choices that meet their needs, a core purpose of the program. The final rule includes key changes to address some of the challenges experienced by families and providers participating in CCDF. The rule: (1) requires Lead Agencies to pay providers prospectively and based on child enrollment to align with generally accepted payment practices in the private market and better reflect the fixed costs of child care; (2) requires Lead Agencies to use some grants and contracts for direct services, at a minimum for children in underserved geographic areas, infants and toddlers, and children with disabilities; and (3) clarifies that Lead Agencies are allowed and encouraged to pay child care providers the full established payment rate, even if it is higher than the price the provider charges privately paying families.

First, the rule requires Lead Agencies use timely and enrollment-based payment practices for child care providers to align with generally accepted payment practices in the private sector. The Act requires States and Territories to certify that "the payment practices of child care providers in the State that serve children who receive [CCDF] assistance … reflect generally accepted payment practices of child care providers in the State that serve children who do not receive [CCDF] assistance …, so as to provide stability of funding and encourage more child care providers to serve children who receive [CCDF] assistance…" (42 USC 9858c(c)(2)(S)). The Act also requires States and Territories to show how they "provide for timely payment for child care services provided under [CCDF]" (42 USC 9858c(c)(4)(B)(iv)). The revisions promulgated by this rule will help account for some of the fixed costs of providing child care, support better provider stability, and increase child care options for families participating in CCDF. Generally accepted payment practices for parents who do not receive subsidies (which are most parents) require a set fee, are based on a child's enrollment, and are paid in advance of

[40] Ibid.

when services are provided. This is necessary because the fixed costs of providing child care, including staff wages, rent, and utilities do not decrease when a child is absent and must be budgeted prior to service delivery. The Act requires Lead Agencies to use generally accepted payment practices, because it makes it easier for child care providers to serve children receiving assistance from CCDF and fosters equal access to child care for participating parents, which is a central purpose of the CCDF program. Providers often mention delayed payments and their destabilizing effect on child care operations as a key reason why they do not participate in the CCDF program.[41] But according to FY 2022-2024 CCDF State and Territory Plans, only eight States and Territories pay prospectively and only 36 pay providers based on enrollment. Providers in States that pay based on attendance either absorb the lost revenue associated with a child's occasional absences or choose not to participate in the subsidy system, which limits parent choices. An August 2023 survey of child care providers found 80 percent of child care center directors/administrators and family child care owners/operators who responded to the survey would be more likely to serve families using subsidies if the State paid based on enrollment rather than attendance, and 73 percent said they would be more likely if the State paid prospectively.[42]

Second, the rule requires Lead Agencies to use some grants and contracts for direct child care services to enable CCDF to better address child care supply issues for participating families. The Act requires States and Territories to offer parents of eligible children the option to either "enroll such child with a child care provider that has a grant or contract for the provision of such services; or to receive a child care certificate" (42 USC 9858c(c)(2)(A)). Grants and contracts represent agreements between the subsidy program and child care providers to designate slots for

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[41] U.S. Department of Health and Human Services. Office of the Inspector General. (August 2019). States' Payment Rates Under the Child Care and Development Fund Program Could Limit Access to Child Care Providers (Report in Brief OEI-03-15-00170). https://oig.hhs.gov/oei/reports/oei-03-15-00170.pdf.
[42] https://www.naeyc.org/sites/default/files/wysiwyg/user-73607/naeyc_nprm_comments.final.pdf.

subsidy-eligible children and are an important tool for building child care supply.[43] However, 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 percent of children receiving subsidy via a grant or contract.[44] Sufficiently funded grants and contracts for direct services are more likely to increase stability for child care providers than certificates, helping them remain in business, and thereby maintaining or increasing the supply of child care. [45] One survey of providers found 80 percent of center-based directors and administrators and family child care owner/operators would be interested in applying for grants or contracts to serve populations identified in the final rule.[46] An evaluation of an infant and toddler contracted slot pilot in Pennsylvania found that participating programs experienced increased classroom quality and had greater financial stability than providers solely paid through certificates. Contracts led to more stable enrollment for infants and toddlers receiving child care subsidies.[47] They also found evidence that providers were better able to hire and retain qualified staff and establish better coordination between local and State systems. Georgia also used grants and contracts to build the supply of care for infants and toddlers. Providers reported an increase in enrollment of children from families who would have normally struggled to pay for care because the program was better able to connect the

[43] Child Care Technical Assistance Network. (October 2021). Implementation Guide: Strategies to Support Use of Contracts and Grants for Child Care Slots. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care. https://childcareta.acf.hhs.gov/sites/default/files/new-occ/resource/files/implementation_guide_use_of_contracts_508.pdf; Morrissey, T. and Workman, S. (August 4, 2020). Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care. Washington, D.C.: Center for American Progress. https://cdn.americanprogress.org/content/uploads/2020/08/03112628/Grants-and-Contracts.pdf

[44] https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-2.

[45] Slicker, G., Barbieri, C.A., and Hustedt, J.T. (2023) The role of state subsidy policies in early education programs' decisions to accept subsidies: evidence from nationally representative data. Early Education and Development, DOI: 10.1080/10409289.2023.2244859. https://www.tandfonline.com/doi/full/10.1080/10409289.2023.2244859.; Weber, R.B. and Grobe, D. (2015), Contracted slots pilot program evaluation. https://health.oregonstate.edu/sites/health.oregonstate.edu/files/early-learners/pdf/research/contracted_slots_pilot_evaluation_-_executive_summary.pdf; Giapponi Schneider, K., Erickson Warfield, M., Joshi, P., Ha, Y., & Hodgkin, D. (2017). Insights into the black box of child care supply: Predictors of provider participation in the Massachusetts child care subsidy system. https://www.sciencedirect.com/science/article/abs/pii/S0190740917300750

[46] https://www.naeyc.org/sites/default/files/wysiwyg/user-73607/naeyc_nprm_comments.final.pdf.

[47] Dorn, C. (August 2020). Infant and Toddler Contracted Slots Pilot Program: Evaluation Report. Pennsylvania Office of Childhood Development and Early Learning. https://s35729.pcdn.co/wp-content/uploads/2020/11/IT-Pilot-Evaluation-Report_PA_Final.V2.pdf.

families with a contract-funded subsidy.[48] They also reported that the higher reimbursement rate paid with the contracts was closer to the true cost of providing care and allowed providers to invest in quality improvements.

The rule specifically requires Lead Agencies to use some grants and contracts for children in underserved geographic areas, infants and toddlers, and children with disabilities—populations that the statute identifies Lead Agencies must develop and implement strategies to increase the supply and quality of care. 42 U.S.C. § 9858c(c)(2)(M). Finding care for infants and toddlers and children with disabilities is particularly difficult for parents. Higher operational costs per child, the need for specialized training, and physical space needs generally require additional funding and planning and make supply issues particularly acute. At the same time, these populations constitute a sizable portion of the population of children potentially eligible for CCDF: infants and toddlers constitute about one-third of children receiving CCDF,[49] and 17 percent of children have a developmental disability.[50] For infants and toddlers, the potential demand far exceeds the available supply. A 2020 analysis of 19 States and the District of Columbia, representing close to 40 percent of the U.S. population, found there were at least three infants or toddlers for every child care slot for children under three in 80 percent of the counties analyzed.[51] For children with disabilities, data from the 2016 Early Childhood Program Participation Survey showed that 34 percent of parents of children with disabilities had at least some difficulty finding child care compared to 25 percent of parents of children without

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[48] Sotolongo, J., et al. (May 2017). Voices from the Field: Providers' Experiences with Implementing DECAL's Quality Rated Subsidy Grant Pilot Program. Chapel Hill, NC: Child Trends. https://www.decal.ga.gov/documents/attachments/VoicesFromtheField.pdf.
[49] Unpublished FY 2021 ACF Administrative Data.
[50] Cogswell, M.E., Coil, E., Tian, L.H., Tinker, S.C., Ryerson, A.B., Maenner, M.J, Rice, C.E., Peacock, G. (2022). Health Needs and Use of Services Among Children with Developmental Disabilities—United States, 2014–2018. Morbidity and Mortality Weekly Report. 71(12):453–458.
[51] The White House (March 2023). Economic Report of the President. https://www.whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf

disabilities.[52] Despite Lead Agencies' obligation to develop strategies to serve this population, approximately twenty states report serving no children with disabilities.[53]

Third, the rule clarifies that Lead Agencies are allowed and encouraged to pay child care providers the full agency-established payment rate to account for the actual cost of care, even if it is higher than the price the provider charges private pay families. The Act requires States and Territories to "certify that payment rates for the provision of child care services for which [CCDF] assistance is provided … are sufficient to ensure equal access for eligible children to child care services that are comparable to child care services in the State or substate area involved that are provided to children whose parents are not eligible to receive [CCDF] assistance." (42 USC 9858c(c)(4)). States and Territories must also set rates in accordance with market rate surveys that reflect "variations in the cost of child care services by geographic area, type of provider and age of child," and take into consideration "the cost of providing higher quality child care services that were provided … before November 19, 2014." (42 USC 9858c(c)(4)(B)).

Because child care providers' *price* for services reflects what private-pay families enrolling in their programs can afford and not necessarily the (higher) *cost* of providing services, payment rates are artificially constrained by affordability, particularly in low-income neighborhoods. Under CCDF, Lead Agencies set payment rates using a market rates survey or a cost-based alternative methodology, but some Lead Agencies pay below their established rate to match the constrained price a provider charges parents paying privately. Not only does this practice contribute to instability in the child care sector, it also creates pressure on providers to raise rates on private pay families. The rule codifies this existing flexibility to pay above the private rate to encourage more Lead Agencies to adopt this practice, which will promote equal

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52 Novoa, C. (2020). The child care crisis disproportionately affects children with disabilities. Washington, DC: Center for American Progress. https://www.americanprogress.org/article/child-care-crisis-disproportionately-affects-children-disabilities.
53 https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-21

access for participating families, increase parent options in care arrangements, and help increase the number and percentage of children from families with low incomes in high-quality child care settings, all central purposes of the Act.

Easier Enrollment for Families Through Reduced Bureaucracy

Finally, this rule includes changes to encourage easier enrollment and re-enrollment processes for families applying for child care subsidies. First, this rule establishes parameters for Lead Agencies that choose to implement presumptive eligibility with the goal of reducing barriers for Lead Agency uptake for this existing program flexibility and helping more families receive child care assistance faster. The rule also requires Lead Agencies to implement eligibility policies and procedures that minimize disruptions to parent employment, education, or training opportunities. These rules align with section 658E(c)(2)(N) the Act, requiring States and Territories to develop procedures and policies that "ensure that working parents…are not required to unduly disrupt their employment in order to comply with the State's or designated local entity's requirements for redetermination of eligibility for [CCDF] assistance." (42 USC 9858c(c)(2)(N)).

These changes will help address what can be a slow and difficult process for initial CCDF eligibility determination.[54] Burdensome application processes discourage families from applying for child care assistance, delay access to child care, and cause substantial stress to parents.[55] They can also derail or delay employment, education, or training, harm family economic well-being, and lead parents to pay for care that is either unaffordable, unregulated, or lower quality. [56] Evidence suggests presumptive eligibility can be implemented with relatively low levels of financial risk for Lead Agencies, and the potential benefits for families are

[54] Lee, R., Gallo, K., Delaney, S., Hoffman, A., Panagari, Y., et al. (2022). Applying for child care benefits in the United States: 27 families' experiences. US Digital Response. https://www.usdigitalresponse.org/projects/applying-for-child-care-benefits-in-the-united-states-27-families-experiences.
[55] Adams, G., Snyder, K., & Banghart, P. (2008). Designing subsidy systems to meet the needs of families: An overview of policy research findings. Washington, DC: Urban Institute. https://www.urban.org/research/publication/designing-subsidy-systems-meet-needs-families.
[56] Ibid.

substantial.[57] Families reported it helped them obtain full verification documents more easily and that providers were more willing to enroll children because payments were already guaranteed.

Flexibility for Tribal Lead Agencies

For the most part, Tribal Lead Agencies are exempt from the new requirements included in this final rule, but the rule includes two important new flexibilities for Tribes. First, it updates the definition for major renovation in a manner that will reduce the types of projects for which Tribal Lead Agencies must submit applications. Second, it provides all CCDF Tribal Lead Agencies the flexibility to waive parent co-payments for all parents receiving CCDF assistance. These exemptions and flexibilities are discussed in Subpart I.

On July 27, 2023, ACF released a Request for Information (RFI) to seek extensive input on whether existing CCDF requirements, regulations, and processes are appropriate for Tribal Nations to implement CCDF in a manner that best meets the needs of the children, families, and child care providers in their Nations and communities and that properly recognizes the principals of strong government-to-government relationships and Tribal sovereignty. The public comment period ended January 2, 2024, and ACF hosted multiple listening sessions and two Tribal consultations to solicit comments. ACF will consider the need for potential further regulatory changes as part of this broader RFI effort.

Effective Dates.

This final rule will become effective 60 days from the date of its publication. Compliance with provisions in the rule will be determined through ACF review and approval of CCDF Plans, including CCDF Plan amendments, as well as through federal monitoring, including on-site monitoring visits as necessary.

We recognize that at the time of publication of this final rule, States and Territories are in the process of completing their FFY 2025-2027 CCDF Plans, which are due July 1, 2024. With

[57] Ibid.

the issuance of this final rule, any State or Territory that does not fully meet the requirements of these regulations, will need to revise its policies and procedures to come into compliance. We are allowing Lead Agencies to request temporary transitional waivers for up to two years to ensure there is enough time to execute the steps necessary to be in compliance with this final rule. This final rule revises the process to request temporary transitional waivers on the updated provisions in this final rule as described at § 98.19. This waiver authority does not extend past two years. We also note that requests for extensions through legislative or transitional waivers will only be considered for provisions substantively updated in this final rule. ACF will use federal monitoring in accordance with § 98.90.

Tribal Lead Agencies will describe any changes made in response to this final rule in new triennial Plans for FFY 2026-2028, with an effective date of October 1, 2025. Tribes that have consolidated CCDF with other employment, training, and related programs under Public Law 102-477, are not required to submit separate CCDF Plans, but will be required to demonstrate compliance with this final rule in their next Public Law 102-477 Plan submission, along with associated documentation.

Costs, benefits, and transfer impacts.

Changes made by this final rule will have the most direct benefit for the nearly 800,000 families and 1.3 million children who use CCDF assistance to pay for child care. Families who receive CCDF assistance will benefit from lower parent co-payments, more parent choice in care arrangements, and simplified eligibility determination processes, which will increase child care access and affordability. Greater access and affordability will improve the ability of families to participate in the labor market and benefit the overall economy. Research has demonstrated that increased access to child care increases maternal labor force participation.[58] In particular, child care subsidies have been found to increase employment among single mothers.[59]

Providers will benefit from this rule's payment practice requirements that support providers' financial stability, including prospective payments based on enrollment and payments that more closely reflect the cost of providing high-quality care, which could lead to higher wages for providers and their staff.[60] This rule will also yield benefits in terms of child development outcomes. The provisions in this rule expand child care access and some children who might have not received subsidized care under the current rule (*e.g.,* those whose parents could not pay the co-pay) would receive subsidized care under this new final rule. For these children, they are likely to receive higher quality care than they otherwise would have. Research demonstrates clear linkages between high quality child care and positive child outcomes, including school readiness, social-emotional outcomes, educational attainment, employment, and earnings.[61]

The cost of implementing changes made by this rule would vary depending on a Lead Agency's specific situation and implementation choices. ACF conducted a regulatory impact analysis (RIA) to estimate costs, transfers, and benefits of provisions in this final rule,

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[58] Morrissey, T. W. (2017). "Child care and parent labor force participation: a review of the research literature." *Review of Economics of the Household* 15.1: 1-24. https://link.springer.com/content/pdf/10.1007/s11150-016-9331-3.pdf.

[59] Blau, D., Tekin, E. (2007). The determinants and consequences of child care subsidies for single mothers in the USA. Journal of Population Economics 20, 719–741. https://doi.org/10.1007/s00148-005-0022-2.; Morrissey, T.W. 2017. Child care and parent labor force participation: a review of the research literature. Review of Economics of the Household 15, 1–24. https://doi.org/10.1007/s11150-016-9331-3.; Shonkoff, J. P., & Phillips, D. A. (Eds.). (2000). *From neurons to neighborhoods: The science of early childhood development.* National Academy Press.; Herbst, C. (2017). Universal Child Care, Maternal Employment, and Children's Long-Run Outcomes: Evidence from the US Lanham Act of 1940. Journal of Labor Economics, 35 (2). https://doi.org/10.1086/689478.

[60] Borowsky, J., et al (2022). An equilibrium model of the impact of increased public investment in early childhood education. Working Paper 30140. http://www.nber.org/papers/w30140.

[61] Deming, D. 2009. "Early Childhood Intervention and Life-Cycle Skill Development: Evidence from Head Start." American Economic Journal: Applied Economics, 1 (3): 111-34.; Duncan, G. J., and Magnuson, K. 2013. "Investing in Preschool Programs." Journal of Economic Perspectives, 27 (2): 109-132; Heckman, J., and Kautz, T. "Fostering and Measuring Skills Interventions That Improve Character and Cognition." In The Myth of Achievement Tests: The GED and the Role of Character in American Life. Edited by James J. Heckman, John Eric Humphries, and Tim Kautz (eds). University of Chicago Press, 2014. Chicago Scholarship Online, 2014. https://doi.org/10.7208/chicago/9780226100128.003.0009.; Weiland, C., Yoshikawa, H. 2013. "Impacts of a Prekindergarten Program on Children's Mathematics, Language, Literacy, Executive Function, and Emotional Skills." Child Development, 86(6), 2112-2130.

considering current State and Territory practices. Due to limitations in data, we did not include Tribal Lead Agency practices in the RIA. We evaluated major areas of policy change, including reduced parent co-payments, paying providers based on enrollment, paying providers prospectively, paying providers the full subsidy rate, presumptive eligibility for families, and streamlined family eligibility processes. In response to feedback received during the public comment period, we have further refined these estimates for the final rule, making key changes including adding a systems' cost to account for necessary information technology changes and updating calculations to use the most recent CCDF administrative data. Due to limited data related to children with disabilities in the relevant policy areas, for the purposes of this RIA, we did not conduct separate cost estimates specific to children with disabilities.

Based on the calculations in the RIA, we estimate the quantified annualized impact of the rule to be about $206.6 million in transfers, $13.1 million in costs, and $15.3 million in benefits. Further detail and explanation can be found in the RIA.

Severability.

The provisions of this final rule are intended to be severable, such that, in the event a court were to invalidate any particular provision or deem it to be unenforceable, the remaining provisions would continue to be valid. The changes address a variety of issues relevant to child care. None of the provisions in the final rule contained herein are central to an overall intent of the final rule, nor are any provisions dependent on the validity of other, separate provisions.

IV. Development of Regulation

Throughout the period since 2016 when the last CCDF Rule was published, HHS has learned from Lead Agencies, families, and child care providers; assessed the evolving child care landscape; examined the successes and challenges in the reauthorized Act's implementation; and tracked the impact and implications of the COVID-19 public health emergency on the child care sector. The policies in this final rule are informed by these lessons and are designed to improve on the work of the past and build a stronger CCDF program that more effectively supports the development of children, the economic well-being of families, and the stability of child care providers.

ACF published a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 13, 2023, (88 FR 45022) proposing revisions to CCDF regulations. We provided a 45-day comment period during which interested parties could submit comments in writing electronically.

ACF received 1,796 comments, of which 1,639 were unique comments, on the proposed rule (public comments on the proposed rule are available for review on *www.regulations.gov)*, including comments from state human services and educational agencies, Tribal Nations and Tribal organizations, national, state, and local early childhood and family-focused organizations, including, child care resource and referral agencies, faith-based organizations, provider organizations, as well as labor unions, child care providers, parents, individual members of the public, and members of the U.S. Congress. We were pleased to receive comments from 29 State and local governments and 13 Tribes and Tribal organizations. Some commenters coordinated comments and policy recommendations so that their comments were signed by multiple entities, and there were some member organizations that each submitted the same comments separately. We also processed form comments from hundreds of individuals, including parents and child care staff. Public comments informed the development of content for this final rule.

Changes in this final rule affect the State, Territory, and Tribal agencies that administer the CCDF. ACF has and will continue to consult with State, Territory, and Tribal agencies and provide technical assistance throughout implementation.

This final rule maintains the structure and organization of the current CCDF regulations. The preamble in this final rule discusses the changes to current regulations and contains certain clarifications based on ACF's experience in implementing the prior final rules. Where language of previous regulations remains unchanged, the preamble explanation and interpretation of that language published with all prior final rules also is retained, unless specifically modified in the preamble to this rule. (See 57 FR 34352, Aug. 4, 1992; 63 FR 39936, Jul. 24, 1998; 72 FR 27972, May 18, 2007; 72 FR 50889, Sep. 5, 2007; 81 FR 67438, Sept. 30, 2016).

V. General Comments and Cross-Cutting Issues

This final rule includes substantive changes in several key policy areas in the CCDF regulations. We received comments on all the significant proposed changes and made some revisions in this final rule in response to these comments. We discuss specific comments in the section-by-section analysis later in this final rule.

The vast majority of the 1,639 unique public comments were supportive of the proposals and validated their future benefits to children, families, and child care providers. Each major proposal received much more support than opposition. Commenters strongly supported the need to lower child care costs for families, noting the importance of ensuring co-payments are not a barrier to child care access. Commenters also strongly supported the need for CCDF payment practices to providers that would better cover the cost of care, help stabilize operations, and incentivize child care providers to accept families with child care subsidies.

Some supporters also expressed concerns about potential unintended consequences of the rule without additional resources, called for additional guidance and technical assistance on the proposed changes, recommended consideration of the implementation timeline, and stressed the need for major long-term funding increases for child care beyond regulatory changes. Some supporters expressed concerns that without additional investments to accompany a final rule, the costs of the proposal inadvertently could be passed on to child care providers or result in fewer families receiving subsidies, particularly in the context of supplemental COVID-19 funding coming to a close.

We seriously considered concerns about cost and recognize that the final rule contains provisions that will require some States and Territories to direct CCDF funds to implement specific provisions. Many Lead Agencies have already implemented some of the provisions in this final rule. In addition, each year, approximately $11.6 billion in federal funding is allocated for CCDF. The activities to implement requirements in this final rule are all allowable costs in the CCDF program. Changes made by this final rule represent a commitment to ensuring the goals of the 2014 reauthorization of the Act are realized, including making child care more affordable and accessible to families and improving stability for child care providers. ACF will continue our regular work of supporting CCDF Lead Agencies through guidance and technical assistance in partnership with the CCDF-funded Child Care Technical Assistance Network.

Several commenters noted that Lead Agencies will need time to implement the requirements included in this final rule, including time to take administrative or legislative actions, and some commenters noted the potential misalignment between the timing of publication of this final rule and submission to OCC of the FFY 2025-2027 CCDF State and Territory Plans. Some commenters suggested delaying the FFY 2025-2027 CCDF Plans or having an additional comment period to cover an amendment process for the rule's requirements. ACF is aware that some provisions in the final rule will require a range of internal processes for Lead Agencies before full implementation and that other provisions will require IT and data system changes that can take some time. Therefore, we are allowing Lead Agencies to request temporary transitional waivers for extensions of up two years if needed to implement provisions of the rule. The waivers are discussed in greater detail elsewhere in this preamble.

We considered several options to align the timing of the FFY 2025-2027 State and Territory Plans and the effective and compliance dates of this final rule. We have chosen not to adjust the CCDF Plan timeline because all changes included in this final rule have been incorporated into the forthcoming final FFY 2025-2027 CCDF State and Territory Plan Preprint – which outlines the required elements of a plan submission. The FFY 2025-2027 CCDF State and Territory Plans must be submitted to ACF by July 1, 2024 and will be effective October 1, 2024.

Finally, we received comments from several national organizations focused on school-age and out-of-school time care, requesting we include additional data related to school-age care. We have incorporated this data in the preamble.

VI. Section-by-Section Discussion of Comments and Regulatory Provisions

We received comments about changes we proposed to specific subparts of the regulation. Below, we identify each subpart, summarize the comments, and respond to them accordingly.

Subpart A—Goals, Purposes, and Definitions

§ 98.2 Definitions

The final rule includes three technical changes to definitions at § 98.2 and the addition of two new definitions. In this section, italics indicate defined terms.

Major Renovation

This final rule defines *major renovation* as any renovation with a cost equal to or exceeding $350,000 in federal CCDF funds for child care centers and $50,000 in federal CCDF funds for family child care homes, with annual adjustments for inflation posted on the OCC website. Renovations that exceed these thresholds but do not make significant changes to the structure, function, or purpose of the child care facility while improving the health, safety and/or quality of child care services are considered minor renovation. This definition applies to all CCDF Lead Agencies and will be used to determine which projects are considered major renovation and which are therefore not permitted with State or Territorial CCDF or may be permitted for Tribal Lead Agencies with prior approval from ACF in accordance with § 98.84(b). As before, CCDF prohibits States and Territories from using CCDF funds for *major renovation*. Tribes may continue to request to use their CCDF funds for construction and major renovation

(Section 658O(c)(6), 42 U.S.C. 9858m(c)(6)). In response to comments described below, this definition provides greater flexibility to Lead Agencies than the definition proposed in the NPRM.

Comment: A few commenters were fully supportive of the original proposal and noted it would provide a more informative definition, but most commenters on this proposal expressed support while also requesting more clarity and raising significant concerns about regional variations in construction costs, focusing on the impact of the change on Tribal Lead Agencies. They noted that the previous definition provided needed flexibility for Tribal programs to address their facility needs.

Response: We retain the proposed change to the definition of *major renovation* to be based on the cost of renovations for better clarity and consistent implementation but have incorporated components from the prior definition to better distinguish between minor and major renovations. The previous definition for *major renovation,* established in the 1998 CCDF regulation, focused exclusively on the type of change to the facility.[62] The definition from the 1998 CCDF rule has led to confusion in the field, insufficient flexibility and inconsistent guidance for Lead Agencies and child care providers.

The final rule accounts for Tribal comments on the benefits of keeping the description of structural change from the previous definition by taking a combined approach for the definition, such that renovations exceeding the cost threshold that do not make changes to the structure, function, or purpose of the child care facility while improving the health, safety and/or quality of child care services are still considered minor renovations. This will provide greater flexibility than what we originally proposed to properly address geographical differences among Tribal Lead Agencies and to help avoid increased burden for Tribal Lead Agencies making minor

[62] 63 FR 39980 (https://www.govinfo.gov/content/pkg/FR-1998-07-24/pdf/98-19418.pdf).

renovations that are costly due to higher-than-average construction prices in their region.[63] Moreover, in general, this rule provides greater flexibility for Tribal Lead Agencies to make needed renovations by eliminating the need for construction applications in some instances.

This final rule also provides more flexibility for States and Territories to use CCDF funds for allowable minor renovations. This clarification may be particularly helpful for Territories who only recently started receiving mandatory funds and may be looking for opportunities to use those funds to increase and improve the supply of child care in their areas.

Comment: Some commenters noted that the proposed threshold for major renovation of $250,000 for child care centers and $25,000 for family child care homes was too low and did not account for geographic variations in construction and materials costs, suggesting specific higher thresholds, including $350,000 for centers and $50,000 for family child care homes. While commenters expressed concerns about relying on a specific threshold, they were generally supportive of the proposal for annual adjustments to the threshold based on economic indicators.

Response: In response to comments, we increased the thresholds from the levels proposed in the NPRM ($250,000 for centers and $25,000 for family child care providers) to $350,000 for centers and $50,000 family child care providers in the final rule. We retained the proposal to adjust the thresholds annually based on inflation and post that information on the OCC website.

Comment: A few commenters expressed concern about the proposed definition of collective renovation proposed in the NPRM, which stated, "Renovation activities that are intended to occur concurrently or consecutively, or altogether address a specific part or feature of a facility, are considered a collective group of renovation activities." These commenters argued

[63] https://www.cbre.com/insights/reports/united-states-construction-market-trends.

that applying the proposed renovation thresholds to collective renovations could undermine development and financial planning and needed a more nuanced approach.

Response: We appreciate commenters providing additional information and input on defining collective renovations in the regulatory language. Given the complexity of defining collective renovations and the potential unintended consequences, the final rule does not include a definition of collective renovation.

State

The final rule amends the definition of *State* to mean "any of the States and the District of Columbia and includes Territories and Tribes unless otherwise specified." The change conforms this definition with the new definition of *Territory* included in this final rule. This change is technical and does not make substantive changes to requirements for States, Territories, or Tribes.

Comment: A commenter noted that Tribes should not be included in the definition of *State*.

Response: We share the commenter's concern with including Tribes in the definition of *State*. However, we are declining to remove Tribes from the definition of *State* at this time. Removing Tribes from the definition of State may impact the requirements for Tribal Nations, and we do not want to make such policy changes without the opportunity for public comment. As discussed earlier, ACF released a Tribal RFI on July 27, 2023 to solicit extensive feedback on the regulations and processes for Tribal CCDF programs. As ACF considers the information gathered through the RFI process, we may consider potential regulatory changes, including revising the definition of *State.*

Territory

This final rule adds a definition of *Territory* to mean "the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands." This new definition aims to streamline the CCDF regulations, particularly where Territory funding and allocations are discussed but does not change policy requirements for Territories. We did not receive comments on this change and have retained the definition as proposed.

Territory and Tribal Mandatory Funds

This final rule updates definitions to include the terms *Territory mandatory funds* and *Tribal mandatory funds* to reflect changes made to CCDF mandatory and matching funds in the ARP Act of 2021 (Pub. L. 117-2). Section 9801 of the ARP Act amended section 418 of the Social Security Act (42 U.S.C. 618(a)(3)) by permanently increasing the matching funding for States (including the District of Columbia), changing the tribal set-aside for mandatory funds from between 1 and 2 percent of funds to a flat $100 million each fiscal year, and appropriating CCDF mandatory funds ($75 million) to Territories for the first time.[64] To align the CCDF regulation with the new Territory mandatory funding statute, the final rule adds a new definition for *Territory mandatory funds* at § 98.2 to mean "the child care funds set aside at section 418(a)(3)(C) of the Social Security Act (42 U.S.C. 618(a)(3)(C)) for payments to the Territories" and revises the definition for *Tribal mandatory funds* to be "the child care funds set aside at section 418(a)(3)(B) of the Social Security Act (42 U.S.C. 618(a)(3)(B)) for payments to Indian Tribes and tribal organizations." We did not receive comments on this technical change and have retained the definition as proposed.

Subpart B—General Application Procedures

[64] For additional information about changes made to CCDF mandatory and matching funds in the ARP Act of 2021, see CCDF-ACF-IM-2021-04 https://www.acf.hhs.gov/occ/policy-guidance/arp-act-increased-mandatory-and-matching-funds.

Subpart B of the regulations describes some of the basic responsibilities of a Lead Agency as defined in the Act. A Lead Agency serves as the single point of contact for the child care subsidy program, determines the basic use of CCDF funds and priorities for spending CCDF funds, and promulgates the rules governing overall administration and oversight.

Under Subpart B, this final rule makes changes to CCDF Plan provisions, including related to assessing child care supply and parameters for requesting temporary extensions for certain provisions.

§ 98.13 – Applying for Funds

This final rule includes a technical change to the regulatory citation at § 98.13(b)(4) from 45 CFR 76.500 to 2 CFR 180.300 to accurately reflect current regulations at 2 CFR 180.300 governing grants management. We did not receive comments on this change.

§ 98.16 Plan Provisions

Submission and approval of the CCDF Plan is the primary mechanism by which ACF works with Lead Agencies to ensure program implementation meets federal regulatory requirements. All provisions required to be included in the CCDF Plan are outlined in § 98.16. The additions and changes to this section correspond to changes throughout the regulations, which provide explanation and responses to comment for later in this rule.

Technical Change. This final rule includes a technical change at § 98.16(ee) as redesignated. The previous regulatory language incorrectly said, “verity eligibility.” This was an error, and the final rule is corrected to read “verify eligibility.” We did not receive comments on this change.

Presumptive Eligibility. The final rule adds a provision at new paragraph § 98.16(h)(5) to require Lead Agencies to describe if they have implemented presumptive eligibility and, if applicable, to describe their presumptive eligibility policies and procedures, and how they ensure minimal barriers for families and safeguard funds for eligible children. The NPRM proposed additional reporting components at § 98.16(h)(5). This final rule keeps the reporting requirement but includes it as part of the ACF-800 annual administrative data report at § 98.71 instead of under the CCDF Plan. Comments are addressed later under the related requirement at § 98.21(e).

Supply of Child Care. The final rule amends §98.16(x) and adds new paragraphs at (y) and (z) to clarify section 658E(c)(2)(M) of the Act (42 U.S.C. 9858c(c)(2)(M)), which addresses the lack of supply of child care for certain populations, how Lead Agencies will identify shortages, and how grants or contracts will be used. The final rule separates former paragraph (x) into three provisions to better convey data requirements and strategies to meet the statutory requirement for Lead Agencies to take steps to increase the supply of child care services for children in underserved geographic areas, infants and toddlers, children with disabilities, and children who receive care during nontraditional hours. At revised paragraph (x), we continue to require Lead Agencies to include in their CCDF Plans a description of the supply of care relative to the population of children requiring care regardless of subsidy participation, including specifically care for infants and toddlers, children with disabilities as defined by the Lead Agency, children who receive care during nontraditional hours, and underserved geographic areas. Lead Agencies must also list the data sources used to identify the shortages.

At new paragraph (y), the final rule requires Lead Agencies to describe their strategies and actions to address supply shortages identified in paragraph (x) and specifically to improve parent choice for families eligible to participate in CCDF, including for care during nontraditional hours (y)(1), infant and toddler care (y)(2), and care for children with disabilities (y)(3), and in underserved geographic areas (y)(4). This description must include the Lead Agency’s method for tracking progress to increase the supply and support parental choice for families eligible for CCDF. Supply building for each of these types of care is specifically required by the statute because of the high need and, as the final rule reinforces, states must take steps to ensure these populations have access to child care.

At new paragraph (z), the final rule requires Lead Agencies to describe how they will use grants or contracts to build supply for children participating in CCDF in underserved geographic areas, for infants and toddlers, and for children with disabilities. The final rule makes clear in paragraph (y)(1) that Lead Agencies must increase the supply of nontraditional hour care for children participating in CCDF, but paragraph (z) of this section and § 98.30(b) do not require Lead Agencies to use grants or contracts as a mechanism for building supply for this type of care.

This final rule also adds paragraph (aa) to require Lead Agencies to provide a description of their activities to improve the quality of child care services for children in underserved geographic areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and children who receive care during nontraditional hours. This is an existing requirement that was previously included in paragraph (x) of this section.

Comments: Commenters were supportive of collecting additional information and data on the supply of available child care, especially to identify the supply shortages that will inform the use of grants or contracts to increase supply.

Response: Lead agencies need clear data and strategies to address gaps in the supply of child care. Therefore, we have revised (x) and (y) to collect additional information about the data States and Territories use to identify supply shortages and the strategies used to address them and added (z) to specifically address how some of these supply shortages will be addressed through grants and contracts. This final rule will allow Lead Agencies and ACF to better identify supply shortages and determine how Lead Agencies are addressing them through various methods, including with grants or contracts. In agreement with commenters, we revised the proposed provisions to require that Lead Agencies assess the need for care among the subgroups identified (*i.e.,* children in underserved geographic areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and those needing care during nontraditional hours) and then determine what proportion of that need for children in underserved geographic areas, infants and toddlers, and children with disabilities would be served with grants or contracts. As stated, Lead Agencies may also use this data to use contracts or grants for those families who would benefit from nontraditional hour care.

Comments: Some commenters were concerned the proposed removal of "If the Lead Agency chooses to employ grants and contracts to meet the purposes of this section, the Lead Agency must provide CCDF families the option to choose a certificate for the purposes of acquiring care" at § 98.16(x) meant that ACF intended to give preference to the use of grants or contracts over certificates.

Response: We appreciate commenters noting the sentence was removed in the NPRM. This omission was an error, and in response to these comments, ACF has added language at § 98.16(z). The regulations do not give preference to the use of grants or contracts over certificates. The final rule expands parents' options by requiring some usage of grants or contracts for direct services.

§ 98.19 Requests for Temporary Waivers

In response to comments expressing concerns Lead Agencies would not be able to implement this rule's changes within the 60-day effective date, this final rule amends the temporary *transitional and legislative waivers* at § 98.19(b)(1), which are authorized by section 658I(c) of the Act (42 U.S.C. 9858g(c)). The rule extends the waivers at (i) from a one-year initial period to up to a two-year period and amends (ii) to specify that the *transitional and legislative waivers* cannot be extended and are limited to two years. The final rule also revises § 98.19(f) to clarify that waiver extensions only apply where permitted. These revisions do not change the existing parameters associated with the *transitional and legislative waivers*, including that waivers must be approved by the Secretary and are conditional and dependent on progress towards implementation of the changes included in this final rule and should be narrowly targeted to those provisions with a specific legislative or administrative barrier. ACF expects that such requests will be limited in scope and tied to a specific timeline for implementation. Lead Agencies will be expected to demonstrate they have a plan to implement the requirement for which they are granted a waiver and must provide regular progress updates.

We emphasize that Lead Agencies are expected to move quickly to implement the critical policy changes included in this final rule. Parents urgently need relief from high co-payments and more child care options and child care providers urgently need more stabilizing payments and practices. However, we are allowing for the use of *transitional and legislative waivers* for the new provisions because we recognize that some changes will require legislative, regulatory changes, and/or IT systems investments that can delay full implementation. As noted above, *transitional and legislative waivers* will only be considered for changes made in this final rule.

Subpart C—Eligibility for Services

This subpart establishes parameters for Lead Agency child eligibility determination and re-determination procedures. This final rule includes changes related to incorporating additional children into the family, presumptive eligibility, subsidy enrollment and applications, and verifying CCDF eligibility using other programs.

§ 98.21 Eligibility Determination Processes

Additional Siblings. This final rule clarifies at § 98.21(d) that the minimum 12-month eligibility requirement described in § 98.21(a) applies when children are newly added to the case of a family already participating in the subsidy program. This is not a new policy: Section 658E(c)(2)(N) (42 U.S.C. 9858c(c)(2)(N)) of the Act and § 98.21(a) do not provide exceptions to the 12-month minimum eligibility requirement. However, the lack of clarity in the 2016 final rule created confusion for Lead Agencies and inconsistent implementation leading to additional children (*e.g.,* newborn or school age child needing after school care) in the family sometimes receiving less than 12 months of care before redetermination. The final rule addresses the confusion around the policy. A conforming change at § 98.16(h)(4) requires Lead Agencies to describe their policy related to additional children in the CCDF Plan.

In cases where multiple children in the same family have initial eligibility determined at different points in time, we encourage Lead Agencies to align eligibility periods to the new child's eligibility period so that all the children's re-determinations can occur at the same point in time to limit burden on the family and the Lead Agency. This alignment can be done by extending the eligibility period for the existing child or children beyond 12 months. Lead Agencies are not required to conduct a full eligibility determination when adding an additional child to the family's case and recommends the Lead Agency leverage existing eligibility verification about the family and require only necessary information about the additional child (*e.g.,* proof of relationship, provider payment information).

Comment: Most commenters on this provision endorsed ACF's recommendation to align the eligibility periods of all the family's children to the additional child's eligibility period so re-determinations can occur at the same point in time. A few expressed concerns about logistical barriers and technical changes required for systems to track eligibility at the child-level rather than the family-level. In addition, one Lead Agency asked for clarification of the expectations of this policy.

Response: We are encouraged that most commenters on this proposed change endorsed extending the eligibility period for children in a family already receiving child care subsidies to align with an additional child's eligibility period. Under the Act in Section 658E(c)(2)(N)(i), once determined eligible, children must receive a minimum of 12 months of child care services, unless family income rises above 85 percent of state median income (SMI) or, at Lead Agency option, the family experiences a non-temporary cessation of work, education, or training. Lead Agencies that implement policies that result in eligibility periods of less than 12 months for additional children would be out of compliance with the minimum 12-month eligibility requirement. We have made no change to the proposed language.

Lead Agencies have the flexibility to establish eligibility periods longer than 12 months, a flexibility that allows the eligibility period for existing children to align with an additional child's eligibility period. Alternatively, Lead Agencies may track separate eligibility periods for each individual child in the family receiving child care subsidies, though ACF discourages this approach because it can confuse families and be administratively burdensome for families, providers, and Lead Agencies.

Comment: Commenters supported our recommendation to leverage existing family information to verify an additional child's eligibility for child care subsidies.

Response: As we described in the proposal, our intention is to reduce the administrative burden for families and Lead Agencies. We encourage Lead Agencies to implement additional policies that require only the minimum amount of information from families to verify an additional child's eligibility. Lead Agencies may assume that family information collected at the time of an existing child's eligibility determination (*e.g.*, family income, working or attending job training or educational program) applies to an additional child's eligibility.

Comment: Commenters supported adding the requirement for Lead Agencies to describe their additional child policies in their triennial CCDF Plans.

Response: We agree that including a description of additional children or sibling policies in the CCDF Plans will lead to more transparency, more consistent implementation, and reduce confusion among families, providers, and Lead Agencies. No changes were made to the proposed language.

Presumptive Eligibility. This final rule adds a provision at § 98.21(e) to clarify that, at a Lead Agency's option, a child may be considered presumptively eligible for subsidy prior to full documentation and verification of the Lead Agency's eligibility criteria and eligibility determination. Presumptive eligibility is an important tool Lead Agencies can use to reduce burden on families and ensure timely access to reliable child care assistance. At least six CCDF Lead Agencies currently allow presumptive eligibility. The rule makes changes to encourage more Lead Agencies to implement presumptive eligibility by improving clarity about CCDF rules, including that payments made with CCDF funds are allowable for any child ultimately determined eligible except in cases of fraud or intentional program violations.

Therefore, this final rule clarifies that Lead Agencies may define a minimum presumptive eligibility criteria and verification requirement for considering a child eligible for child care services for up to three months, while full eligibility verification is underway. To be determined presumptively eligible, a child must be plausibly assumed to meet each of the basic federal requirements, and at the Lead Agency's option, the basic requirements defined in the Lead Agency's CCDF Plan, in accordance with § 98.20 (*i.e.,* age; income; qualifying work, education, or training activity or receiving or needing to receive protective services; and child citizenship). Lead Agencies have the flexibility to collect minimal information to determine presumptive eligibility and are not required to fully verify the simplified eligibility information at the time of presumptive eligibility determination.

The final rule further specifies that federal CCDF payments may be made for presumptively eligible children and those payments, up to the point of final eligibility determination, will not be considered an error or improper payment 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 so long as the payment was not for a service period longer than the period of presumptive eligibility. Lead Agencies adopting presumptive eligibility are required to implement a minimum verification process that incorporates criteria that reduces the likelihood of error and fraud. A conforming change at § 98.71(b)(5) requires Lead Agencies implementing presumptive eligibility to track and report in their annual aggregate administrative report the number of presumptively eligible children ultimately determined to be fully eligible, the number for whom the family does not complete the documentation for full eligibility verification, and the number who turn out to be ineligible. We recommend Lead Agencies use these and other sources of data to ensure funds are safeguarded for eligible children and negative impacts on providers are minimized. In addition, the final rule includes a conforming change at § 98.16(h)(5) requiring Lead Agencies to describe their presumptive eligibility policies and procedures in their CCDF Plans, including information on how they ensure minimal barriers for families and safeguard funds for eligible children.

The change at § 98.21(e) allows Lead Agencies to use presumptive eligibility to provide quicker access to child care assistance for families, while reducing perceived financial risk and administrative burden for the Lead Agency by clarifying that CCDF funds may be used to cover presumptive eligibility payments if appropriate safeguards are in place. This policy further reduces financial risk by requiring Lead Agencies to limit the presumptive eligibility period to three months, to set presumptive eligibility criteria and minimum verification requirements that ensure families receiving care during a period of presumptive eligibility are feasibly eligible and minimize the likelihood that they are later found to be ineligible for CCDF, and to track the number of families who do not submit documentation and both the number of children ultimately determined eligible and ineligible. We note that the three-month period is a maximum presumptive eligibility period. Lead Agencies may establish presumptive eligibility policies for shorter periods and establish distinct periods for families to submit documentation and for Lead Agencies to process applications, provided that the combined duration does not exceed three months. Lead Agencies must end assistance for families once they are determined to be ineligible, even if that determination is completed in under three months.

As part of the proposed changes associated with implementing presumptive eligibility, the NPRM proposed adding a new paragraph at § 98.21(a)(5)(iv) that included a final determination of ineligibility after an initial determination of presumptive eligibility as one of the limited reasons a Lead Agency may choose to end assistance before the end of the 12-month eligibility period. We have not included this change in the final rule. As proposed, this language suggested that it was Lead Agency option whether to terminate assistance for a child once they were found ineligible. Rather, as stated above, Lead Agencies must end federal CCDF assistance once a child is determined to be federally ineligible according to § 98.21(a).

Effective internal controls around presumptive eligibility processes are important to safeguard funds for CCDF eligible children. As described in § 98.21(e)(5), when a Lead Agency is under a corrective action plan for error rate reporting, ACF will consider contextual factors around the error rate findings and other sources of information to determine if the Lead Agency can continue to use CCDF funds for direct services under presumptive eligibility. ACF recommends that Lead Agencies have a continuous quality assurance process to ensure their presumptive eligibility policies meet the needs of their eligible population while also ensuring effective internal controls.

When children are newly added to the case of a family already participating in the subsidy program (*e.g.,* new siblings) as discussed at § 98.21(d), Lead Agencies may implement presumptive eligibility for the additional child while waiting for necessary additional information (*e.g.,* proof of relationship, provider payment information), but, as discussed earlier, ACF recommends that Lead Agencies leverage existing family eligibility verification as much as possible to determine the additional child's presumptive and full eligibility and add the additional children to the program.

Comment: Most comments received on this proposal supported the presumptive eligibility provisions. Some commenters requested ACF clarify if the intent of presumptive eligibility is a strategy to reduce stress for families already enrolled or to increase the number of families entering the subsidy system. A few commenters opposed the proposal due to concerns about limited funding and supply, as well as increased work for eligibility staff.

Response: We are pleased by the support for the presumptive eligibility provisions. The primary intention of presumptive eligibility policies is to minimize family burden to quickly access child care services for children who are feasibly federally eligible for CCDF. We understand that Lead Agencies will need to consider potential benefits and costs when deciding whether to institute a presumptive eligibility policy and when crafting such policies. As a reminder, Lead Agencies are not required to adopt presumptive eligibility, and, for those who do, there are significant flexibilities to establish specific policies and procedures, as discussed in more detail below. As stated before, there is evidence of the substantial benefit to families if Lead Agencies implement presumptive eligibility, and the modifications to this policy in the final rule are meant to ensure that the level of risk to the Lead Agency is minimal in doing so. Therefore, Lead Agencies are encouraged to consider presumptive eligibility policies among other strategies to reduce barriers to enrollment, particularly for vulnerable populations, including families experiencing homelessness.

Comment: We requested comment on whether three months was an appropriate length of time for presumptive eligibility. We also asked for data on the average amount of time it currently takes to process applications. We received many comments endorsing three months as an appropriate length of time. One commenter indicated that 90 days for verification seemed too long and recommended 60 days as a more reasonable timeframe, but also acknowledged that some situations including self-employment and homelessness may warrant more time for verifications. One State Lead Agency recommended flexibility to determine an appropriate length up to three months. Two commenters recommended a timeline for families to submit documentation to be separate from a timeline for Lead Agencies to process applications. Data received around the average amount of time taken to process applications was varied: estimates ranged from one month, two months, or more to process applications.

Response: We appreciate commenters providing data and support for the proposed timeframe and have decided to retain the three-month presumptive eligibility period. If a Lead Agency chooses to allow presumptive eligibility, they may establish shorter timeframes, but cannot exceed three months. ACF encourages Lead Agencies to consider the timing for the families they serve to submit documentation and for application processing when making decisions about the total length of time within a three-month period they would like to establish for their presumptive eligibility policies and processes.

Comment: Multiple commenters endorsed allowing Lead Agencies flexibilities for implementing presumptive eligibility, including defining criteria for awarding presumptive eligibility and setting a period shorter than three months. Other commenters argued that presumptive eligibility should be a requirement, not a state option. Other commenters expressed concerns about unintended consequences on other policies or processes, including concerns about existing wait times that approach the three-month limit for presumptive eligibility and enrollment in other benefits programs.

Response: We agree with commenters that Lead Agencies should have flexibility in whether and how they implement presumptive eligibility and have kept these flexibilities in the final rule. While the potential benefit to families could be substantial with its adoption, Lead Agencies are not required to use presumptive eligibility and will not be subject to penalties if they do not offer it. Lead Agencies also have the flexibility to define the documentation and verification necessary to determine a child's presumptive eligibility in such a way to increase the likelihood that eligible families are receiving presumptive eligibility. For example, Lead Agencies may choose to use eligibility criteria for a family's enrollment in another benefits program as verification for presumptive eligibility for CCDF benefits (see a discussion of how enrollment in other benefits programs applies to full eligibility verification below).

Lead Agencies also have flexibility to establish the duration of presumptive eligibility, provided it does not extend beyond 3 months, or how frequently a family could be approved for presumptive eligibility. Much like the flexibilities for full eligibility determination, Lead Agencies have the flexibility of defining when presumptive eligibility begins, such as allowing presumptive eligibility on the date it is determined or on the date that the child care services begin. Lead Agencies also have flexibility on for whom they allow it (*e.g.*, children with disabilities, children receiving or needing to receive protective services, other priority populations), though we would recommend that Lead Agencies thoughtfully consider why presumptive eligibility would be allowed for some groups and not others.

We understand several Lead Agencies already use presumptive eligibility, and our intention is not to require burdensome changes to existing presumptive eligibility policies. However, we do expect that Lead Agencies implementing presumptive eligibility, both those with new and existing policies, regularly evaluate the effectiveness of their presumptive eligibility policies and employ the flexibilities in such a way to ensure that CCDF funding is safeguarded for eligible children.

Comment: Multiple commenters endorsed the requirement to track and assess the number of presumptively eligible children who are ultimately determined ineligible as a commitment to accountability and continuous improvement. A few commenters recommended also requiring Lead Agencies to track the number of presumptively-eligible families who do not submit paperwork to prove their eligibility. Another commenter recommended gathering disaggregated demographic data related to tracking presumptive eligibility to reveal equity gaps in access and requiring Lead Agencies to report the child care supply by specific demographic variables (*e.g.,* race and ethnicity, geographic location, disability).

Response: In response to these comments, the final rule adds a requirement at § 98.71(b)(5) for Lead Agencies that choose to offer presumptive eligibility in their CCDF program to report in the ACF-800 (annual aggregate report) the number of presumptively eligible children ultimately determined eligible, the number for whom the family does not complete documentation, and the number who are determined ineligible. This was initially proposed as an addition to the CCDF Plan Preprint at § 98.16(h)(5), but we have determined the ACF-800 is a more appropriate reporting mechanism for this information. Although we considered requiring additional disaggregated demographic and supply data to evaluate equity in presumptive eligibility, we are not making other changes so as to minimize administrative burden and encourage Lead Agency uptake. Nonetheless, we encourage Lead Agencies to collect these types of data to better assess whether their presumptive eligibility policies and procedures support equitable access to child care across the populations of eligible children they serve.

Comment: Multiple commenters expressed concerns about disruptions in care if a presumptively-eligible family is found ineligible, and the potential harm to children, families, and providers. One commenter questioned if Lead Agencies could use full eligibility determination processes with multiple sets of criteria when determining eligibility for children receiving child care services under presumptive eligibility. Another commenter asked how presumptive eligibility would interact with paying providers in advance of delivery of care if a final ineligibility determination were made after a payment was issued but before the period of service closes.

Response: Presumptive eligibility is intended to support feasibly eligible children to receive child care benefits more quickly than waiting for a complete review of full eligibility, but Lead Agencies are expected to execute full eligibility determination and use the same opportunities for verification for families who do not enter the program with presumptive eligibility. We understand concerns about the potential negative impact on families and providers if a child is ultimately found to be ineligible after receiving benefits under a presumptive eligibility period or if the presumptive eligibility period ends prior to a final determination, but the benefits of presumptive eligibility benefits to families are considerable.

If a child is found to be ineligible due to eligibility requirements established by the Lead Agency, but still qualifies under federal requirements (*i.e.*, if the Lead Agency sets income eligibility below 85 percent of SMI, but the family income is still lower than the federal threshold), the Lead Agency could implement a policy allowing CCDF funds to be used to provide child care benefits for the remainder of the presumptive eligibility period for up to three months. The prohibition on using CCDF funds to provide child care assistance to children who are not eligible under federal limits does not preclude the Lead Agency from using other funds, such as State general revenue funds or federal funds like Social Services Block Grant funds, to provide a grace period of care for families to make other arrangements before their child care benefits end. We note that State funds used to provide subsidies for children who do not meet federal eligibility requirements cannot be used to meet the required maintenance of effort or State portion of the CCDF match.

Regarding interactions between presumptive eligibility and provider payment policies, the requirement for provider payment policies to reflect generally-accepted payment policies at § 98.45(m) applies to payments for children receiving care during a period of presumptive eligibility. This includes being paid prospectively and based on enrollment not attendance If a child is ultimately determined to be federally ineligible for CCDF, the Lead Agency cannot require the child care provider to return funds if the child was properly enrolled, except for in cases of fraud.

Comment: One commenter expressed concerns that a corrective action finding for improper payments would preclude a Lead Agency from adopting presumptive eligibility unless the cause of the errors is related to the Lead Agency's ability to perform presumptive eligibility for purposes of CCDF.

Response: Our intent was to use error rate findings as a proxy for sufficient internal controls to adequately execute the increased complexity of incorporating presumptive eligibility, not abruptly deny a Lead Agency's ability to offer presumptive eligibility because of unrelated error rate findings. As a result of this comment, we revised this language in the final rule to allow for a more considered approach to determining if a Lead Agency has effective internal controls to justify a more complex eligibility policy that includes presumptive eligibility. While we retain the authority to deny a Lead Agency with a corrective action finding for improper payments the option to implement presumptive eligibility if warranted by an analysis of the Lead Agency's internal controls, the revised language allows flexibility for ACF to evaluate the contextual factors around the error rate reporting as well as other sources of data to approve the use of presumptive eligibility policies and develop a robust corrective action plan in partnership with the Lead Agency that will ensure funds are safeguarded for CCDF eligible children.

Comment: Several commenters endorsed the proposal that payments to providers would not be deemed improper payments if a child is ultimately determined to be ineligible after the full determination process. During our consultation with Tribal Leaders and Tribal communities, one Tribal Leader expressed concern about whether Tribal Lead Agencies would be responsible for funds determined to be spent in cases of fraud and intentional program violations.

Response: We agree with the commenters and retained this language in the final rule to be explicit that if a child meets the Lead Agency defined policies for presumptive eligibility enrollment and verification, then the child is considered eligible for CCDF during the period of presumptive eligibility. A final determination of ineligibility for CCDF would not retroactively alter this initial period of eligibility or require the Lead Agency to return CCDF funds to ACF, nor would a family or provider who acted in good faith be responsible for these payments. CCDF funds are allowed to be used to pay for provider payments as long as the child meets the requirements for presumptive eligibility, has not been determined ineligible to receive CCDF benefits from the Lead Agency, and has not been receiving CCDF benefits under presumptive eligibility for more than three months. The final rule adds a clarification that these flexibilities apply so long as the payment for services for a presumptively eligible child was not for a period longer than the period of presumptive eligibility.

In cases of fraud or intentional program violation, the requirements for presumptive eligibility remain the same as for full eligibility. Regulations at § 98.60(i) require Lead Agencies to recover child care payments that are the result of fraud. The payments shall be recovered from the party responsible for committing the fraud. For other overpayments that do not result from fraud, the Lead Agency has flexibility under federal rules regarding whether to recoup the funds.

Comment: We received a few comments related to best practices for communicating with and supporting families navigating the presumptive eligibility process to avoid unwarranted findings of being ineligible.

Response: The commenters' suggestions align with the consumer education goals of CCDF as well as with the newly amended redesignated provision at § 98.21(f), aimed to reduce family burden around application processes. Lead Agency requirements for consumer education at § 98.33 and application processes are applicable to presumptive eligibility child care services. Therefore, we did not make any additional changes based on these comments.

Comment: A commenter requested clarification about whether the intent is to allow presumptive eligibility when adding a child to an existing family receiving subsidy or only during the initial application period for the household.

Response: Our primary intent is for Lead Agencies to implement presumptive eligibility for a family's initial application for child care subsidies to hasten their access to child care benefits. As discussed above, we encourage Lead Agencies to implement additional child policies that require the minimum amount of information to verify an additional child's eligibility. However, incorporating presumptive eligibility policies while waiting to verify that minimum information (*i.e.,* proof of relationship, provider payment information) is consistent with our goals of reducing bureaucratic hurdles for families.

Reducing Family Burden in Application Processes: To make it easier for eligible families to access child care services, and in alignment with provisions of the Act requiring States and Territories to develop procedures and policies that "ensure that working parents … are not required to unduly disrupt their employment in order to comply with the State's or designated local entity's requirements for redetermination of eligibility for [CCDF] assistance," (42 USC 9858c(c)(2)(N)) the final rule at § 98.21(f) as redesignated, requires Lead Agencies to implement eligibility policies and procedures that minimize disruptions to parent employment, education, or training opportunities, to the extent practicable. Policies that lessen the burden of CCDF administrative requirements on families applying for child care assistance increase access to child care and can improve families' economic well-being. Parents report that some of the biggest challenges are long waits at inconvenient times to apply in-person and gathering and submitting the necessary documents.[65] Not surprisingly, parents also report online application options can be more convenient, less stressful, and prove especially useful in reducing the burden of document submission.

Thus, the final rule provides that Lead Agencies seek strategies to reduce these administrative burdens on families, including, to the extent practicable, by offering an online subsidy application option. Currently, only 33 States offer online subsidy applications. OCC released a CCDF model application in 2022, which includes practices for defining, collecting, and verifying eligibility information, using best practices that limit burden on families.[66] Lead Agencies without online subsidy applications will be expected to demonstrate in their CCDF Plans why implementation of an online subsidy application is impracticable. Nevertheless, OCC urges Lead Agencies that do not yet offer online applications to consider doing so given the substantial benefit to families and the Lead Agencies' ability to benefit from the model application developed by OCC.

Additionally, as Lead Agencies consider ways to lessen the burden on families seeking assistance from CCDF, they are encouraged to develop screening tools to help families determine whether they are eligible for CCDF assistance, or other publicly available benefits (*e.g.,* Temporary Assistance for Needy Families (TANF) or Supplemental Nutrition Assistance Program (SNAP)) and then link directly to applications for these programs.[67]

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[65] Lee, R., Gallo, K., Delaney, S., Hoffman, A., Panagari, Y., et al. (2022). Applying for child care benefits in the United States: 27 families' experiences. US Digital Response. https:// www.usdigitalresponse.org/projects/applying-for- child-care-benefits-in-the-united-states-27-families- experiences

[66] https://childcareta.acf.hhs.gov/full-model-application.

[67] Meade, E., Gillibrand, S., & Weeden, J. (2023). Lost in the Labyrinth: Helping Parents Navigate Early Care and Education Programs, Washington, D.C.: New America Foundation. https://www.newamerica.org/new-practice-lab/briefs/lost-in-the-labyrinth-helping-parents-navigate-early-care-and-education-programs/.

Comment: Most commenters supported the proposal related to simplified enrollment and easing burden of application processes and offered additional proposals to support the goal. Several commenters who supported the proposal also urged ACF to require all Lead Agencies offer, at a minimum, both paper and online applications. In addition, commenters offered suggestions about how to increase accessibility and availability of applications for families seeking child care subsidies. Some commenters recommended that online applications be accessible via mobile devices given families' reliance on mobile phones to access online content. Some commenters also recommended that applications be available in multiple languages and through verbal and case note documentation for non-English speaking applicants, accessible for individuals with disabilities, in plain language or at an appropriate literacy level, and subject to usability testing where feasible. We received several comments calling for in-person or individualized support to help parents through the application process and one commenter mentioned the importance of customer service training. Several commenters offered suggestions to cross-link the application with other resources so that prospective families can have access to information on additional resources as well. These suggestions included linking the application to the consumer education and provider search websites and making information about services for families experiencing homelessness more prominent in the materials. Commenters also suggested making more flexible documentation requirements for income verification for people with informal employment or gig workers and for grandfamilies and the use of documents like tax returns and pay stubs to verify eligibility.

Response: We recognize burdensome application processes discourage families from applying for child care assistance, delay access to child care, and can cause substantial stress to parents. While we decline to require Lead Agencies use mobile-friendly or linked applications, we strongly encourage Lead Agencies to carefully consider implementing processes that make it easier for families to access and navigate enrolling in CCDF, including mobile-friendly applications. As previously noted, States and Territories that do not use online applications will be required to describe why it is impracticable in their CCDF Plans.

We also remind Lead Agencies that CCDF expenditures for the establishment and maintenance of child care information systems, including the development of an online application, are an allowable CCDF expenditure and are not considered child care administrative activities and thus do not apply to the administrative activities cap for CCDF funds. Likewise, activities that provide one-on-one support for families in submitting applications and providing access to transparent and easy to understand consumer education resources are considered quality expenditures. We also recommend Lead Agencies consider flexibilities for families that may have difficulties obtaining standard documentation. Lead Agencies have considerable flexibility in establishing the eligibility and verification requirements for families. We recommend Lead Agencies consider a wide range of circumstances in which families may be able to verify their eligibility.

Comment: Several commenters requested that we reiterate existing flexibilities meant to ease administrative burdens and support continuity of care that were not addressed in the NPRM. Some commenters specifically called for the final rule to clarify that hours of care do not have to match the hours of the eligible activity.

Response: We appreciate the recommendations to remind Lead Agencies of their considerable flexibilities in implementing their CCDF programs but did not make additional changes to the rule. Section 98.21(g) of the rule remains unchanged from current regulations and explicitly states that Lead Agencies are not required to limit authorized child care services strictly based on the work, training, or educational schedule of the parent(s) or the number of hours the parent(s) spend in qualifying activities. We therefore reiterate that Lead Agencies do not have to match the hours of care for a child participating in CCDF with the parent's work, training, or education schedule, which may limit participating children's access to high-quality settings and does not support the fixed costs of providing care so it can contribute to provider instability and reluctance to serve families with subsidies.

Eligibility Verification through Other Programs: This final rule describes at § 98.21(g), as redesignated, some Lead Agency options to simplify eligibility verification. Families receiving child care assistance are likely to be receiving or eligible to receive services from other benefits programs and coordination with other benefit programs can simplify eligibility determinations, ensure families can access all available benefits, and better support family well-being. Using enrollment in other benefit programs to verify CCDF eligibility reduces duplication of effort on the part of families and streamlines the eligibility determination process for Lead Agencies, thereby reducing burden on both sides. Such policies can also reduce the amount of time families have to wait to access child care services while Lead Agencies process eligibility determinations that are redundant to determinations made by other benefit programs. This policy is also a logical next step if Lead Agencies act on the encouragement in this final rule to develop screening tools to help families determine whether they are eligible for CCDF assistance, or other publicly available benefits (*e.g.,* TANF or Supplemental Nutrition Assistance Program (SNAP)). Twenty-three States and Territories currently use documentation from and enrollment in other benefit programs to determine CCDF eligibility for at least one eligibility component, based on data from the FFY 2022-2024 CCDF State and Territory Plan.

This final rule clarifies in § 98.21(g)(1) and (2), as redesignated, that Lead Agencies have flexibility to use enrollment in other benefit programs to satisfy specific components of CCDF eligibility without additional documentation (*e.g.,* income eligibility, work, participation in education or training activities, or residency) or to satisfy CCDF eligibility requirements in full if eligibility criteria for other benefit programs is completely aligned with CCDF requirements. In § 98.21(g)(2), Lead Agencies are expressly permitted to examine eligibility criteria of benefit programs in their jurisdictions to predetermine which benefit programs have eligibility criteria aligned with CCDF. Once programs are identified as being aligned with CCDF income and other eligibility requirements, Lead Agencies have the option to use the family's enrollment in such public benefit program to verify the family's CCDF eligibility according to § 98.68(c) or to limit the documentation required to fulfill CCDF eligibility if the programs are not in complete alignment. For example, income eligibility for TANF cash assistance (42 U.S.C. 601 et seq.) meets the federal CCDF income eligibility requirements and enrollment in either program could demonstrate income eligibility for CCDF without any additional documentation from a family. Due to State, Territory, and Tribal variation in eligibility thresholds by individual benefit programs, the first step to streamlining eligibility is for Lead Agencies to use their own jurisdiction-specific information on income eligibility to determine if a child is eligible for subsidy based on enrollment in that other program.

Comment: Commenters were generally supportive of encouraging Lead Agencies to verify eligibility through families' enrollment in other benefits programs, noting several Lead Agencies were already implementing or preparing to use this flexibility to varying degrees. Some commenters appreciated the flexibility for Lead Agencies to self-identify which verification requirements aligned between CCDF and other benefits programs. Many commenters supported the flexibility that if the eligibility criteria for other benefit programs within the Lead Agency's jurisdiction are completely 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.

Response: We are encouraged by support for reducing bureaucratic barriers for families and Lead Agencies and the benefits that streamlining program will have for families. In response, we retained the proposed language.

Comment: One commenter cautioned against adding requirements to CCDF eligibility verification that increase the bureaucratic burden for families and providers.

Response: We agree with the commenter, which is why this rule seeks to reduce bureaucratic and paperwork burdens for families and Lead Agencies in determining a child's eligibility to receive child care subsidies. CCDF regulations at § 98.20(b)(4) allow the Lead Agency to establish additional eligibility conditions or priority rules so long as they do not "impact eligibility other than at the time of eligibility determination or re-determination." We recommend Lead Agencies reconsider families' engagement with other benefits programs, such as child support, as preconditions for CCDF eligibility as this likely increases the bureaucratic burden for families and Lead Agencies. Moreover, when Lead Agencies use data from other benefits programs to verify CCDF eligibility requirements, Lead Agencies must ensure that the information is only acted upon at eligibility determination or re-determination and cannot be used to discontinue child care subsidies during the eligibility period. For example, a Lead Agency that requires child support cooperation as an additional CCDF eligibility requirement, can only assess cooperation at the time of CCDF eligibility determination or re-determination and cannot use failure to cooperate as a reason to discontinue child care subsidies between eligibility determination or re-determination.

Technical Change: This final rule corrects a grammatical error by adding the word "on" at § 98.21(a)(2)(iii). The revised language now reads, "If a Lead Agency chooses to initially qualify a family for CCDF assistance based *on* a parent's status of seeking employment or engaging in job search" (emphasis added). We did not receive comments on this correction.

Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities

Subpart D of the regulations describes parental rights and responsibilities and provisions related to parental choice, including parental access to their children, requirements that Lead Agencies maintain a record of parental complaints, and consumer education activities carried out by Lead Agencies to increase parental awareness about the range of available child care options. This final rule amends this subpart to require Lead Agencies use some grants or contracts for direct services, post information about sliding fee scales on consumer education websites, and it clarifies requirements on posting full monitoring reports and aggregate data.

§ 98.30 Parental Choice

Section 98.30(b) clarifies section 658E(c)(2)(A) of the Act (42 U.S.C. 9858c(c)(2)(A)), which identifies the use of grants or contracts as a key element of parental choice of child care providers. This statutory provision states that a parent shall have the option "to enroll such child with a child care provider that has a grant or contract for the provision of such services," or to receive a child care certificate. As well, section 658E(c)(2)(M) (42 U.S.C. 9858c(c)(2)(M)) requires Lead Agencies to "develop and implement strategies (which may include … the provision of direct contracts or grants to community-based organizations …) to increase the supply and improve the quality of child care services" for certain underserved populations. Only 10 States and Territories report using any grants and contracts for direct services, and only six States and Territories report supporting more than 5 percent of children receiving subsidy via a grant or contract even though they are required by the Act and can be one of the most effective tools to build supply in underserved geographic areas and for underserved populations.[68] Therefore, the final rule at § 98.30(b) clarifies the statutory requirement by stating that States and Territories are required to provide some direct child care services through grants or contracts, including at a minimum, using some grants or contracts for children in underserved geographic areas, infants and toddlers, and children with disabilities. The final rule requires some use of grants or contracts for each of these populations because of the particularly stark supply issues that lead to minimal parent choice. ACF encourages Lead Agencies to also consider other populations that may benefit from grants or contracts, including care for children during nontraditional hours.

Comment: Commenters strongly supported the proposal to require Lead Agencies use some grants and contracts for direct services, noting they support a more stable and equitable child care system, and many requested additional clarifications and suggested revisions. A

[68] https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-2.

bicameral Congressional comment also supported this provision and specifically noted ACF's authority to require some use of grants or contracts.

Response: We appreciate the validation of the importance of this policy and have retained the requirement for Lead Agencies to use some grants or contracts for direct services and have made some changes based on commenter suggestions described below. Grants and contracts for direct services can play a critical role in increasing parent options for child care, particularly in underserved geographic areas and for underserved populations like infants and toddlers and children with disabilities. They increase stability for child care providers and encourage them to participate in the subsidy program. Since insufficient child care supply greatly limits parents' choices in child care arrangements, requiring some use of grants or contracts to help more parents find the child care they need.

Comment: The NPRM proposed to require the use of grants and contracts at least to provide some child care services for infants and toddlers, children with disabilities, and children who need care during nontraditional hours. Some commenters recommended requiring Lead Agencies to use grants or contracts for additional underserved or under-resourced communities and populations, and several commenters recommended removing the requirement to use grants or contracts for nontraditional hour care because families may use license-exempt home-based care for nontraditional hours either because they prefer it or because few child care centers and family child care providers operate outside of traditional business hours. Commenters indicated grants or contracts are less appropriate for license-exempt home-based child care.

Response: Based on these comments, the final rule adds "children in underserved geographic areas" to the list of groups required to be served with grants or contracts and removes the requirement to use grants or contracts for nontraditional hour care. Some parents prefer informal care by family or friends, often in the child's home, during nontraditional hours of care.[69] While it is important to address the stark supply issues for this type of care, commenter feedback and additional review of existing State policies leads us to believe mechanisms other than grants or contracts, such as higher payment rates, engaging with home-based child care networks, and partnering with employers that have employees working nontraditional hours, may also be effective for increasing the availability of care during nontraditional hours. As delineated in § 98.16(y), Lead Agencies must take action to build availability of nontraditional hour care for families participating in CCDF. Though the rule does not require it, we encourage Lead Agencies to consider whether contracted slots for extended hour care in the morning and evening would be a useful strategy for improving parent choice in care that meets their needs.

Comment: Some commenters requested clarification as to whether each group listed needed to be served with grants or contracts or if serving only one of the listed groups would satisfy the requirement.

Response: The final rule leaves in place the language to require each of three identified groups (*i.e*., children in underserved geographic areas, infants and toddlers, and children with disabilities) be served with grants or contracts. The significant supply shortages in each of these types of care limit parents' child care options and would benefit from grants or contracts.

Comments: Some commenters wanted clarification as to what is meant by "some" grants or contracts and if ACF has a specific threshold in mind, stressing the importance of using data to determine the number of grants or contracts for direct services. Some of these commenters thought we should set a minimum threshold and others recommended against setting a minimum or maximum threshold or a formula for calculating the appropriate percentage of grant or contracts slots.

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[69] Adams, G. et al., "Executive Summary: What Child Care Arrangements Do Parents Want during Nontraditional Hours?": https://www.urban.org/projects/informing-policy-decisions-about-nontraditional-hour-child-care.

Response: ACF declines to set thresholds for “some” grants or contracts in this rule and encourages Lead Agencies to implement the provision sufficiently to improve supply for these types of care. However, in response to comments requesting clarification about the number of grants or contracts, we revised the language in paragraphs § 98.16 (x) and (y) to improve transparency around Lead Agency policies and require Lead Agencies to provide data on the extent to which they are serving subsidy-eligible children across the identified groups. Additionally, ACF revised the language in paragraph (y) to clarify that Lead Agencies should describe in their CCDF Plan what proportion of shortages identified in § 98.16(x) would be filled with grant or contracted slots.

Comment: Commenters recommended ACF include additional populations of children and families to be served by grants or contracts while others noted new requirement should not shift attention from one underserved group to another.

Response: ACF strongly encourages Lead Agencies to use grants or contracts for additional groups recommended by commenters, but declines to require Lead Agencies use this strategy to serve additional populations. Additional groups recommended by commenters include children experiencing homelessness, children involved with the child welfare system (including those in foster care and kinship care), adolescent parents, out-of-school time care/school age, dual language learners, 2-generation programs, children whose parents have been incarcerated, providers in rural or remote communities, and areas with an insufficient supply of licensed child care. ACF further encourages Lead Agencies use data collected through supply analysis to direct grants or contracts towards identified areas of need.

Comment: Commenters recommended that ACF specify Lead Agencies use grants or contracts across different child care settings, including family child care and networks of home-based care providers.

Response: ACF strongly encourages Lead Agencies to define and use an equity-focused distribution process for grants or contracts that includes family child care and small child care centers to support parents having a range of child care options. Many Lead Agencies successfully used such a process to target and distribute ARP Act Stabilization Grant funds. While grants or contracts are traditionally seen as a strategy for center-based care, some Lead Agencies have effective grants or contracts with family child care providers and home-based provider networks.[70]Additionally, research shows that families utilize family child care settings for infants and toddlers at higher rates than older children.[71]

Comment: Some commenters wanted clarification about the intended definition of "grants and contracts," if the requirement was specific to direct services, and if best practices for contracting and equity could be included in a definition.

Response: We provide clarification on the definition of grants or contracts and direct services at § 98.50. We agree with commenters that grants or contracts for direct service slots should at a minimum adhere to the same requirements as certificates, including paying providers prospectively. While the final rule does not include additional regulatory language to this effect, new and existing regulations at § 98.45(m) apply to both grant or contracted slots and certificates, and therefore reaffirms these expectations. In addition, we strongly encourage Lead Agencies to design their grants or contracts with best practices in mind. Specifically, we strongly encourage Lead Agencies to pay a rate based on cost of care, offer higher rates for grant or

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[70] Bipartisan Policy Center. (January 2021). Payment Practices to Stabilize Child Care. https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2021/01/BPC-ECH_Payment-practices_RV5.pdf.; Bromer, J., Ragonese-Barnes, M. & Porter, T. (2020). Inside family child care networks: Supporting quality and sustainability. Chicago, IL: Herr Research Center, Erikson Institute. https://www.erikson.edu/wp-content/uploads/2020/12/Inside-FCC-networks-Case-Studies-2020.pdf.

[71] Datta, A.R., Milesi, C., Srivastava, S., & Zapata-Gietl, C. (2021). NSECE Chartbook- Home-based Early Care and Education Providers in 2012 and 2019: Counts and Characteristics. OPRE Report No. 2021-85, Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. https://www.acf.hhs.gov/opre/report/home-based-early-care-and-education-providers-2012-and-2019-counts-and-characteristics.

contracted slots, and provide opportunities for additional technical assistance, coaching, mentoring, and other supports to child care programs.

Comment: A few commenters, including one member of Congress, opposed this requirement and expressed concerns that any requirement for grants or contracted slots reduced parent choice, specifically because faith-based providers may not be able to receive grants or contracts.

Response: ACF disagrees with the contention that requiring grants or contracts for populations that the statute itself requires Lead Agencies to prioritize would reduce parent choice. Section 658E(c)(2)(M) of the Act clearly states that direct contracts or grants are a strategy to increase the supply and quality of child care for underserved populations, including infants and toddlers, children with disabilities, and children who need child care during nontraditional hours. Some parents do not have meaningful choice currently,[72] and integrating some grants and contracts into direct service options will expand parents' choices. Nothing in federal law prohibits faith-based child care providers from receiving grants or contracts to provide direct child care services. Faith-based providers receiving grants or contracts are restricted from using the funds for sectarian purposes or activities, including sectarian worship or instruction (42 USC 9858k(a). Further, because families must still be offered the option of a certificate or voucher, this rule will not limit a family's ability to choose a faith-based provider and we do not expect the requirement to materially reduce the amount of funding available to faith-based child care providers through certificates or vouchers.

Comment: Some commenters suggested ACF allow Lead Agencies to opt-out of the requirement for grants or contracts if they could demonstrate there was no need or desire for grants or contracts.

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[72] RAPID, (2022) "Overdue: A new child care system that supports children, families and providers," https://static1.squarespace.com/static/5e7cf2f62c45da32f3c6065e/t/63a1d9582916181ff4b729be/1671551320275/overdue_new_child_care_system_factsheet_dec2022.pdf.

Response: For the reasons listed above, including limitations in parents' choice in child care arrangements for some parents participating in CCDF, significant supply shortages, and research demonstrating the benefits of grants or contracts on supply and for providers, we decline to accept this recommendation.

§ 98.33 Consumer and Provider Education

Clarifying full monitoring reports and aggregate data. This final rule adds § 98.33(a)(4)(ii) to clarify what information Lead Agencies must post on consumer education websites. Section 658E(c)(2)(D) of the Act (42 U.S.C. 9858c(c)(2)(D)) requires monitoring and inspection reports of child care providers be made available electronically to the public. Previous regulations at § 98.33(a)(4) require Lead Agencies to post "full monitoring and inspection reports, either in plain language or with a plain language summary," but the regulation did not define a "full monitoring and inspection report." This lack of clarity has led to varied implementation, with many Lead Agencies only posting violations. While it is critical for parents to be aware of how a provider did not meet a health and safety requirement, it is also useful for parents to understand the full scope of a monitoring inspection, so they have the information needed to make informed child care decisions. Section 98.33(a)(4)(ii) through (iv) are redesignated accordingly without changes.

The final rule also amends paragraph (a)(5) to require the CCDF consumer education websites include the total number of children in care each year disaggregated by the type of child care provider because it provides necessary context for parents and the public to understand the aggregate data on serious injuries and fatalities in child care settings. § 98.33(a)(5) requires Lead Agencies to post the annual aggregate number of deaths and serious injuries by provider type and licensing status and instances of substantiated child abuse that occurred in child care settings each year, for eligible child care providers, on the State or Territories child care website. Lead Agencies are required to post the total number of children in care by provider category and licensing status. However, the requirement to include the total number of children in care by provider category and licensing status was only included in the preamble to the 2016 CCDF final rule and not the regulatory language itself (81 FR 67477). This omission has led to confusion and unclear expectations for Lead Agency compliance. We also separate the existing requirements in paragraph (a)(5) without change into multiple subprovisions to improve clarity.

Comment: Commenters supported the proposed clarification to the definition of "full monitoring and inspection report" at § 98.33(a)(4)(ii).

Response: We received no other comments on § 98.33(a)(4)(ii) and have retained the language as proposed in the NPRM.

Comment: Commenters supported the requirement for States to post the total number of children in care to their consumer education websites. Several commenters proposed that States be required to post the number of children in care by child age, licensing status, and quality rating, noting these data are needed to understand the supply of care available to families.

Response: Though we agree this disaggregated data would provide useful information about child care supply and could help parent decision-making, we understand some States may not have the capacity to publish this information. Therefore, we retained the language as proposed to ensure this new requirement does not add additional burden to States.

Comment: A few Lead Agencies commented that posting the total number of children in care would be burdensome for States. These commenters had concerns about how often Lead Agencies would be expected to collect this data and from which types of providers they would need to collect these counts. Additionally, commenters noted that collecting this data could necessitate changes to State computer tracking systems.

Response: States are already required to post this data under CCDF and ACF has created multiple technical resources to help States publish these counts on their websites.[73] Lead Agencies already must post the total number of children in care by provider category and licensing status on their consumer education websites and the language changes at § 98.33(a)(5) only clarify that these data, along with the counts of deaths or serious injuries, are posted annually for all eligible providers. For licensed care, States and Territories can provide an estimated number of children in care based on the capacity of licensed program, rather than actual enrollment or attendance numbers. ACF will continue to offer flexibilities if States do not have a way to estimate the number of children in license-exempt care. The language was retained as proposed.

Posting sliding fees scales. To help ensure families are aware of co-payment policies, the final rule retains a new requirement at § 98.33(a)(8) that States and Territories post information about their co-payment sliding fee scales. Section 658E(c)(2)(E) of the Act (42 U.S.C. 9858c(c)(2)(E)) requires Lead Agencies to collect and disseminate consumer education information that will promote informed child care choices for parents of eligible children, the public, and providers. Consumer education is a crucial part of parental choice because it helps parents better understand their child care options and incentivizes providers to improve the quality of their services. Since Congress expanded the Act's focus on consumer education in 2014, all States and Territories have launched consumer education websites providing parents and the general public with critical information about child care in their community and improving transparency around the use of federal child care funds. However, many of these

[73] Child Care State Capacity Building Center. (September 29, 2023). Consumer Education Website Requirements Infographic. U.S. Department of Health and Human Services, Administration for Children and Families. Office of Child Care. https://childcareta.acf.hhs.gov/sites/default/files/new-occ/resource/files/consumer_education_website_requirements.pdf.; Child Care State Capacity Building Center. (August 2021). Template for Displaying Serious Injuries, Deaths, and Instances of Substantiated Child Abuse in Child Care. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care. https://childcareta.acf.hhs.gov/sites/default/files/new-occ/resource/files/aggregate_data_template_for_posting_serious_injuries.pdf.

websites still overlook key areas that impact family decisions about child care and applying for child care subsidies. For example, it remains difficult for parents in many communities to learn about co-payment rates in the subsidy program and what their family might expect to pay. Therefore, the final rule requires Lead Agencies to post current information about their system of cost-sharing (co-payments) based on family size and income. Under this new requirement, Lead Agencies are required to post about their sliding fee scale for parent co-payments, including policies related to waiving co-payments and estimated co-payment amounts for families at § 98.33(a)(8).

Comment: Commenters recognized and supported the need for the proposed consumer education requirement at § 98.33(a)(8). In general, they expressed that requiring Lead Agencies to post clear information about their co-payment policies improves access to information that is useful for families making decisions about child care.

In response to our request for comments on the type of information related to co-payments that should be included on consumer education websites, the majority of commenters on this proposal stated that consumer education websites should explain how co-payments are calculated and how co-payments might differ based on the type of provider a family chooses. Other commenters proposed that websites should include information about weekly or monthly amounts that families might pay, as well as details about co-payments when enrolling multiple children, changing a co-payment amount, and populations for which co-payments are waived entirely.

Response: This new provision at § 98.33(a)(8) clarifies that consumer education websites must help families determine the co-payment amount that they can expect to pay. We agree that it may be valuable for parents to see this information broken into weekly and/or monthly amounts, and States have the flexibility to use this approach. It may also be helpful for consumer education websites to include details about how co-payment amounts are impacted when multiple children are enrolled and outline the State-specific process for requesting a change to a co-payment amount. We appreciate these recommendations and reiterate that Lead Agencies have flexibility to inform parents about what they should expect to pay in the way that best makes sense within the context of their policies and processes. The final rule clarified with the added requirement at § 98.33(a)(8) that State websites must provide information about waiving co-payments, and we agree with commenters that posted information about populations for which co-payments are waived (*e.g*., incomes are at or below 150 percent of the poverty level, children with disabilities) is necessary to meet this requirement.

Comment: We requested comments specifically on the type of information related to eligibility that should be included on the consumer education websites. One commenter recommended that additional eligibility information should be included on websites, specifically information about the hours required for full-time care and about the education and/or work requirements for parents participating in CCDF.

We also received recommendations for consumer education websites that were unrelated to co-payment or eligibility policies. Several commenters suggested that websites should provide information about child care waitlists, license-exempt care, Head Start eligibility, program contact information, and the language proficiency of child care staff.

Response: We appreciate the consumer education proposals related to eligibility and agree that posting about the hours required for full-time care and about the education and/or work requirements for CCDF are examples of best practices. To ensure that Lead Agencies continue to have flexibility, we opted not to make any regulatory changes to the consumer education section related to eligibility.

Comment: Some commenters recommended co-payment information posted as part of the new requirement at § 98.33(a)(8) be available to families in multiple languages. Several commenters recommended we require Lead Agencies post sliding fee scale information in multiple languages or for websites to have a translation option. Some commenters also suggested that consumer education websites should include co-payment calculators.

Response: The regulation already requires at § 98.33(a) that consumer education websites are "easily accessible websites that ensures the widest possible access to services for families who speak languages other than English and persons with disabilities." Therefore, the information posted on the website, including the information about sliding fee scales, must be easily accessible and ensure the widest possible access to services for families who speak languages other than English. We agree that online co-payment calculators can be a helpful tool for families to access child care information, and we encourage Lead Agencies to follow the example of the States that have already implemented these tools on their websites. However, we declined to add a regulatory requirement for States to add co-payment calculators, as to maintain flexibility for States.

Comment: Commenters also suggested other information dissemination strategies in addition to the new website requirement at § 98.33(a)(8). Several commenters suggested we require States provide families a copy of the sliding fee scale that includes a plain-language explanation of how co-payments are calculated in their home language. Some commenters wanted Lead Agencies to require providers post the sliding fee scale prominently in child care facilities. They also supported the effort to expand information dissemination strategies but wanted to go further and encourage States to adopt additional forms of communication (*e.g.,* pamphlets at community-based spaces) and to utilize search engine optimization. Commenters focused on increasing access to people with low literacy and encouraged the adoption of mobile-friendly information as much as possible.

Response: We appreciated commenters providing additional suggestions for information dissemination strategies. While we opted not to add additional requirements to provide copies of the sliding fee scale to families, to post sliding fee scale information in child care facilities, to utilize search engine optimization, or to adopt additional forms of communication beyond websites, we encourage all Lead Agencies to utilize various communication methods to reach families with low-literacy or without access to computers. We encourage states to create websites that are mobile-friendly. It is essential for child care information to be accessible to all families, and we recognize that no single information dissemination strategy will work for all Lead Agencies.

Subpart E—Program Operations (Child Care Services) Lead Agency and Provider Requirements

Subpart E of the regulations describes Lead Agency and provider requirements related to applicable health and safety requirements, monitoring and inspections, and criminal background checks. It also includes provisions requiring the Lead Agency to set payment rates for providers serving children receiving subsidies that ensure equal access to the child care market and to establish a sliding fee scale that provides for affordable cost-sharing for families receiving child care assistance.

This final rule includes changes to this subpart related to family co-payments and Lead Agency payment rates and practices to providers, as well as technical changes to criminal background checks.

§ 98.43 Criminal Background Checks

Section 658H(b) of the Act (42 USC 9858f(b)) and § 98.43(b) require a child care staff member to complete a comprehensive background check to be eligible for employment by a child care provider that is licensed, regulated, or registered or eligible to participate in CCDF. The comprehensive check must include a Federal Bureau of Investigation (FBI) fingerprint check, a search of the National Crime Information Center's National Sex Offender Registry (NCIC NSOR), a fingerprint-based search of the state criminal registry, a search of the state sex offender registry, and a search of the state-based child abuse and neglect registry in the state where the child care staff member resides and each state where such staff member resided during the preceding 5 years.

Section § 98.43(d)(4) allows prospective child care staff to begin working for a child care provider after receiving results from either the FBI fingerprint check or a fingerprint check of the state criminal registry or repository in the state where the staff member resides. Staff members that are hired before all background check components required at § 98.43(b) are completed must be supervised at all times by an individual who has already received qualifying results. This process is often referred to as "provisional employment." The intent in establishing the provisional employment requirement in the 2016 Final Rule was to help staff begin work quickly while ensuring child safety by prohibiting prospective staff who have not completed the FBI or the fingerprint in-state criminal background checks from working directly with children.

Since its inclusion in the 2016 CCDF Final Rule, States, Territories, Tribes, and child care providers have expressed concerns with the background check requirements, including those related to the provisional employment requirement, stating that they cause hiring delays and exacerbate staffing challenges. Many states continue to be out of compliance with one or more of the background check requirements, including provisional hiring.

While we acknowledge the operational challenges associated with the Act's background check provisions, the vast majority of the requirements are established in the Act and cannot be changed through regulations. This final rule makes a few technical changes to sections of the regulation that were previously unclear.

Responsibility for eligibility determination. This final rule makes a technical change at § 98.43(a)(1)(i) to clarify that States, Territories, and Tribes must have requirements, policies, and procedures that require the entity to make a determination of eligibility for child care staff based on the background check and cannot simply provide results to the child care provider to make the determination. This is consistent with the statutory requirement at section 658H(e)(2)(A) (42 U.S.C. 9858f(e)(2)(A)) that "[t]he State shall provide the results of the criminal background check to the provider in a statement that indicates whether a child care staff member (including a prospective child care staff member) is eligible or ineligible for employment described in subsection (c), without revealing any disqualifying crime or other related information regarding the individual." Previously there has been some confusion as to whether the Lead Agency should simply give the results to child care providers to then make the determination. Relatedly, the final rule amends § 98.43(c)(1) to clarify that it is the State, Territory, Tribe, and Lead Agency's responsibility to determine a prospective staff member's eligibility for employment as a result of the background check requirements and that a child care provider does not have a role in reviewing background check results and determining a staff member's employment eligibility. This does not preclude child care providers from using additional discretion for hiring after the State, Territory, or Tribe's determination of eligibility based on the comprehensive background check.

Comment: Commenters supported these proposed clarifications. Some expressed concerns that the change at § 98.43(a)(1)(i) when combined with the proposed change related to qualifying results at § 98.43(d)(3)(i) would change policies related to provisional employment.

Response: As discussed in more detail below, we are not making any substantive changes to requirements related to provisional hiring. Rather, this change is meant to clarify that States, Territories, and Tribes must have processes related to determining a staff member's eligibility. Previous regulatory language did not include that requirement and led to confusion about who was responsible for determining eligibility. Therefore, we kept the change as proposed.

Comment: One commenter requested clarification on whether this provision would impact existing State hiring practices, especially those that allow child care providers to make a final hiring decision *after* the State has made an employment eligibility determination based on State and federal regulations.

Response: Our intention is to clarify the role of the State, Territory, Tribe, and Lead Agency as it relates to making determinations of employment eligibility. Previous regulatory language made it unclear whether child care providers could make determinations of eligibility, and Lead Agencies had varying interpretations of this requirement. In response to comments, we revised the proposed change to also remove reference to child care providers in the introductory language at §98.43(c)(1) to reinforce that child care providers do not have a role in the employment eligibility determination process.

State, Territory, and Tribal regulations and procedures may allow a child care provider to establish its own criteria for unsuitability even *after* the State, Territory, or Tribe determines that the individual is eligible for employment based on CCDF regulations and State Code. This means that it is possible for a child care provider to decide not to hire an individual, even when that individual has been deemed eligible for employment by the state, territory, or Tribe. However, as mentioned in the 2016 Final Rule Preamble, we continue to strongly encourage States, Territories, and Tribes and child care providers to ensure that hiring practices meet the recommendations of the U.S. Equal Employment Opportunity Commission for any additional disqualifying crimes.[74]

Disqualifying Crimes. Section 658H(c) of the Act (42 U.S.C. 9858f(c)) and § 98.43(c)(1) of the regulations specify disqualifying crimes for child care staff members of providers serving children receiving CCDF assistance. The disqualification at § 98.43(c)(1)(v) is for a conviction of a violent misdemeanor as an adult against a child, including a misdemeanor involving child pornography. There has been some confusion as to whether a misdemeanor involving child pornography needed to be classified as violent or non-violent to be a considered a background check disqualifier. To address these questions, the final rule amends § 98.43(c)(1)(v) to classify any misdemeanor involving child pornography as a disqualifier under CCDF, regardless of whether the crime is classified as violent or non-violent.

[74] U.S. Equal Employment Opportunity Commission, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, https://www.eeoc.gov/laws/guidance/upload.

Comment: Commenters requested additional clarification about which misdemeanors involving child pornography must be considered disqualifying offenses under CCDF.

Response: To address comments, we revised the proposed change at § 98.43(c)(1)(v) to further clarify that *any* misdemeanor conviction involving child pornography must be considered a disqualifying crime whether considered violent or not.

Comments: One commenter requested we define the term "violent."

Response: We decline to define the term "violent" in the regulation. Section 658H(c) of the Act separately defines felonies involving child pornography as being a disqualifying "crime against children" (42 U.S.C. 9858f(c)(1)(D)(iii) and (E)). Felonies are listed at subparagraph (D) and misdemeanors are listed at subparagraph (E). Lead Agencies should define "violent" in accordance with their own State, Territory, or Tribal law.

Receiving Qualifying Results. Section 658H(d) of the Act (42 U.S.C. 9858f(d)) and § 98.43(d) of the regulations require child care providers to submit requests for background checks prior to when an individual becomes a staff member and at least once every five years. § 98.43(d)(3)(i) makes an exception if a staff member already received a background check within the past five years. The final rule amends § 98.43(d)(3)(i) to clarify those results must be qualifying results. This is consistent with how OCC has supported and overseen this provision since 2016.

In response to comments, the final rule also clarifies at § 98.43(d)(4) that a prospective staff member may begin working with children only after they receive qualifying results for either the FBI fingerprint check or the in-state fingerprint check (as long as their work with children is supervised by a staff member whose background check is complete). Simply submitting the fingerprint for the FBI check or the in-state check is not sufficient for a prospective staff member to be provisionally employed to work with children. This is consistent with how OCC has enforced and provided guidance for the provisional hire requirement since 2016, but the underlying regulation wording has caused some confusion. In both these instances, *submitting* background checks is insufficient for working with children because it is necessary to first *receive* qualifying results.

Comment: Commenters were generally supportive of the clarification in § 98.43(d)(3)(i), but some raised concerns about whether this technical change would impact the existing provisional hire flexibility at § 98.43(d)(4), which commenters noted was a critical flexibility.

Response: In this final rule, the provisional hire flexibility remains unchanged from the 2016 Final Rule: States, Territories, and Tribes may permit child care providers to provisionally hire individuals for whom there are qualifying results on either the FBI fingerprint check or the in-state fingerprint check as long as their work with children is supervised by a staff member whose background check is complete. We amended § 98.43(d)(4) for clarity in response to comments and make no substantive changes to the provisional hire rule.

§ 98.45 Equal Access

Demonstrating Equal Access. Section 98.45(b) requires Lead Agencies to summarize in their CCDF Plans the data and evidence relied on to ensure that families participating in CCDF have equal access to child care services comparable to those provided to families not eligible to receive child care assistance. The final rule amends (b)(5) to require Lead Agencies describe how co-payments "do not exceed 7 percent of income for all families." This change aligns with the new requirement at redesignated § 98.45(l)(3) to limit family co-payments to 7 percent of family income. Fuller discussion of this change, including comments and responses, are later in this preamble at § 98.45(l).

Market Rate Survey Reports. This final rule requires at new § 98.45(f)(1)(iv) that States and Territories include data on the extent to which CCDF child care providers charge amounts to families more than the required family co-payment in instances where the provider's price exceeds the subsidy payment, including data on the size and frequency of any such amounts. States and Territories have the discretion to determine how they present this data in their reports.

As States and Territories have already been required to examine this data as part of their market rate survey or approved alternative methodology, we do not expect this requirement to create new burdens for the Lead Agencies.

This requirement was not proposed in the NPRM but is being added in this final rule in response to comments noting that the new requirement capping family co-payments made it more important to have transparent and timely data about the true out of pocket costs for families receiving subsidies. The comments received are discussed at § 98.71.

Paying the Established Subsidy Rate. This final rule codifies at § 98.45(g) existing policy that allows Lead Agencies to pay eligible child care providers caring for children receiving CCDF subsidies the Lead Agency's established subsidy payment rate to account for the actual cost of care, even if that amount is greater than the price the provider charges parents who do not receive subsidy. The preamble to the 2016 CCDF Final Rule states that Lead Agencies may pay amounts above the provider's private pay rate if they are designed to pay providers for additional costs associated with offering higher-quality care or types of care that are not produced in sufficient amounts by the market. (81 FR 67514). However, this language was not included in the regulation, which has led to misunderstanding in the field and led some Lead Agencies to prohibit paying child care providers the full established payment rate.

Section 658E(c)(4) of the Act (42 U.S.C. 9858c(c)(4) and § 98.45 require Lead Agencies to set child care provider payment rates based on findings from a market rate survey or an approved alternative methodology to ensure children eligible for subsidies have equal access to child care services comparable to children whose parents are not eligible to receive child care assistance because their family income exceeds the eligibility limit. Lead Agencies must also complete a narrow cost analysis, regardless of whether they used a market rate survey or approved alternative methodology to set rates. A market rate survey is the collection and analysis of prices and fees charged by child care providers for services in the priced market, and a narrow cost analysis estimates the true cost of care, not just price. Lead Agencies must analyze price and cost data together to determine adequate child care provider subsidy rates to meet health, safety, and staffing requirements and meeting these standards relies on child care providers receiving the full established payment rate. ACF strongly encourages Lead Agencies to set payment rates high enough so that child care providers can retain a skilled workforce and deliver higher-quality care to children receiving subsidies and the policies can achieve the equal access standard required by law. The preamble to the 2016 CCDF final rule restated the importance of setting higher payment rates and recommended the 75th percentile as a benchmark to gauge equal access for Lead Agencies, stating "Established as a benchmark for CCDF by the preamble to the 1998 Final Rule (63 FR 39959), Lead Agencies and other stakeholders are familiar with [the 75th percentile] as a proxy for equal access." (81 FR 67512)

ACF has prioritized the importance of setting higher payment rates and in April 2023 determined that any payment rates set at less than the 50th percentile were insufficient to meet the equal access requirements of CCDF. ACF noted that the 50th percentile is not an equal access benchmark, nor is it a long-term solution to gauge equal access, and thus may not be considered sufficient for compliance in future cycles. But the value of setting higher payment rates is undermined if a Lead Agency does not pay the full established rate. Though allowable under CCDF, it undermines parent choice and likely limits the number of participating children in higher quality care.

Paying all CCDF providers at the Lead Agency-established rate is a key payment practice that reflects the actual cost of child care, fosters parent choice, increases child care quality, and supports better child care supply. This is existing policy under CCDF but because of its importance to achieving the main purposes of the Act, this Final Rule codifies the policy in the regulatory language to reduce confusion.

Comment: Comments on this proposal were overwhelmingly positive in support of the codification and clarification on paying the established rate, although a few commenters offered suggestions for implementation support or some reasons for caution. Commenters stated that paying the full established payment rate will increase provider stability, encourage provider participation in the subsidy program, and encourage Lead Agencies to pursue cost-based alternative methodologies and set payment rates closer to the true cost of care. Several commenters supported our assessment that paying the full established rate will help address inequities that arise when providers in low-income communities cannot raise fees because families who do not receive CCDF are not able to pay more for child care. Additionally, several comments noted that paying the established rate will also benefit middle-income families who are not eligible for CCDF because program income would increase without passing costs to parents. Moreover, commenters provided evidence from States that pay the full rate, including showing that in one State following the repeal of the law prohibiting payment above the private rate in 2019 improved access to quality child care, reduced bureaucratic requirements for the state, and removed one incentive for providers to raise rates for private pay families.

Response: We appreciate commenters' strong support for this critical policy clarification, especially related to the role it can play in addressing inequities in the child care system and its benefit to families that do not receive subsidies and have not made changes to the proposed language. While the 2016 CCDF Final Rule stated in the preamble that Lead Agencies had the ability to pay child care providers above their established private-pay tuition, it is clear from comments that this clarification in the rule is necessary to ensure Lead Agencies are aware of this option and encouraged to implement this practice.

Comment: A few commenters requested ACF articulate clearly that paying the established rate is encouraged, but not required. In addition, one commenter noted that obtaining legislative approval to pay the established rate could be challenging for Lead Agencies in States that prohibit this practice. On the other hand, a few commenters recommended ACF require Lead Agencies to pay child care providers the full rate established rate.

Response: ACF reiterates this policy is encouraged but not required and acknowledges States will have different internal processes should they decide to newly implement this policy.

Comment: Additionally, commenters emphasized paying the established rate for children receiving subsidy does not address the funding limitations faced by child care providers who serve families with different levels of income.

Response: ACF acknowledges this provision does not fully address the broader issues about the funding and stability of the child care system.

Capping Family Co-payments. Section 658E(c)(5) of the Act (42 U.S.C. 9858c(c)(5)) establishes that Lead Agencies cost-sharing and sliding fee policies cannot be a "barrier to families receiving assistance." This final rule clarifies at §§ 98.45(b)(5) and 98.45(l)(3) as redesignated that co-payments cannot exceed 7 percent of a family's income because ACF considers co-payments above that rate to be an impermissible barrier to a family receiving assistance and therefore not permissible under CCDF. If a family receives CCDF for multiple children, their total co-payment amount also could not exceed 7 percent of the family's income. We anticipate these changes will lower child care costs for many families, reduce a barrier to child care access, and improve family well-being and economic stability.

The preamble (81 FR 67515) of the 2016 CCDF Final Rule established 7 percent as the federal benchmark for an affordable co-payment for families receiving CCDF but did not make it a mandatory ceiling. According to federal fiscal year (FFY) 2022-2024 CCDF State and Territory Plans, 15 Lead Agencies have set all their co-payments to 7 percent or less. Among the rest of Lead Agencies, co-payments rise as high as 27 percent of family income. In limiting family co-payments to no more than 7 percent of household income, the child care costs for families with low incomes will better align with cost burdens for higher income families. Families with lower incomes pay a higher portion of income for child care than those with higher incomes. For example, the President's Council of Economic Advisers found that households with annual incomes below $25,000 pay between 9 and 31 percent of their income for child care, while households with annual incomes above $150,000 pay between 6 and 8 percent of their annual income for child care.[75]

In response to comments, the final rule includes a clarification at newly designated § 98.45(n)(5) to require Lead Agencies to demonstrate in their CCDF Plan that the total payment to a provider (subsidy payment amount and family co-payment) is not impacted by cost-sharing policies. Lead Agencies must continue to set payment rates at levels that provide equal access to care for families receiving child care subsidies, and ACF expects to closely monitor Lead Agency payment rates to ensure reductions in family co-payments transfer the cost to Lead Agencies and not providers.

Comment: Most commenters on this proposal supported the 7 percent limit, with many comments validating that child care co-payments can act as a barrier to child care access. Commenters, including a bicameral letter from members of Congress, reaffirmed the need to require the 7 percent cap to meet statutory equal access requirements rather than continuing to defer to Lead Agency discretion.

In general, many commenters acknowledged the negative consequences high co-payments can pose for CCDF families and providers, citing research that the cost of child care is a barrier to access at any co-payment level.[76] One commenter shared how they have witnessed how waived co-payments under COVID-19 supplemental funds benefited families, including helping them cover other bills and pay off debt. Other commenters acknowledged the importance of supporting affordable co-payments for families, and the importance of removing barriers that undermine parental choice.

Some commenters provided data on the negative economic impact that the lack of affordable child care poses for their State and the country. According to a 2023 statewide survey

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[75] https://www.whitehouse.gov/cea/written-materials/2023/07/18/improving-access-affordability-and-quality-in-the-early-care-and-education-ece-market/.

76 Adams, G., & Pratt, E. "Assessing child care subsidies through an equity lens." (2021). Urban Institute.

of 800 registered voters in Ohio, 70 percent of nonworking or part-time working mothers indicated that they would reenter the workforce or work more hours if they had access to affordable child care.[77] The same survey found 83 percent of Ohio small business owners citing child care as a barrier to hiring.[78] Similar concerns regarding child care affordability were found in Maine from a 2021 Statewide Community Needs Assessment conducted by the Maine Community Action Partnership,[79] and multiple Portland Regional Chamber of Commerce member surveys showed that lack of child care was a significant barrier to hiring, training, and retaining employees for small and large employers throughout the State.[80] Speaking to national trends, another comment highlighted data from the U.S. Chamber of Commerce showing that half of all workers and nearly 60 percent of parents cite lack of child care as their reason for leaving the workforce, and research shows that once women leave the workforce, it is challenging for them to return.[81]

Response: We have retained the prohibition on Lead Agencies setting co-payments above 7 percent of family income because such co-payments would be a barrier to child care access for families and appreciate commenters' support.

Comment: In the NPRM, we requested comment on whether 7 percent is the correct threshold for determining a barrier to child care access, including data on child care affordability. Some organizations noted that 7 percent of family income would not be affordable for many families and recommended a lower cap, while others supported the 7 percent proposal but

[77] Slideshow summarizing study findings retrieved from https://www.groundworkohio.org/_files/ugd/d114b9_956a4a95f16d44819696f1594fe98ce0.pptx?dn=POS_Groundwork%20Ohio%20Presentation%20Deck_Final.pptx.
[78] Ibid.
[79] 2021 Statewide Community Needs Assessment, Maine Community Action Partnership, December 2021. Retrieved from https://mecap.org/wp-content/uploads/2022/01/MeCAP-Statewide-Community-Needs-Assessment-Report-with-Appendices-FINAL-12032021-2.pdf.

[80] Portland Regional Chamber of Commerce, December 2021. Retrieved from https://legislature.maine.gov/testimony/resources/AFA20220303Dundon132906387075472062.pdf.
[81] Ferguson, S. & Lucy, I. "Data Deep Dive: A Decline of Women in the Workforce." U.S. Chamber of Commerce, April 27, 2022. Retrieved from https://www.uschamber.com/workforce/data-deep-dive-a-decline-of-women-in-the-workforce.

preferred we set a lower cap. Commenters also noted that some States have already taken steps to significantly limit family co-payments, including one State that plans to implement a policy that would cap co-payments to a lower standard of 1 percent of a family's income. We also received a small number of comments questioning whether 7 percent is the correct benchmark for affordability and recommending further study of affordability, and/or funding a commission of experts or creating an advisory board with parents and providers before establishing the requirement. Others supported the requirement to limit co-payments but recommended that we continue to conduct research on an appropriate affordability threshold to update the cap in the future.

Response: We retain the 7 percent cap in this final rule because we believe amounts above this threshold pose a barrier to child care access in the CCDF program. We further note that 7 percent of family income is not affordable for many families participating in CCDF and encourage Lead Agencies to adopt lower co-payment caps and minimize or waive co-payments for more families. As discussed above, families with low incomes on average pay 31 percent of their incomes for child care, while families with higher incomes pay between 6 and 8 percent. As CCDF assistance is intended to offset the disproportionate share of income that families with low incomes pay for child care, families participating in CCDF should not be required to pay a greater share of their income than higher income families.

Finally, we agree that supporting research to better understand child care cost burden and affordability for families is important. The National Academies of Sciences, Engineering, and Medicine published a consensus report in 2018 that included discussion of affordability for families that detailed the inherent complexity in defining what is affordable for families.[82] The ACF Office of Planning, Research, and Evaluation supports ongoing research on child care affordability. However, the need to lower family child care costs is urgent for those with children

[82] National Academies of Sciences, Engineering, and Medicine. (2018). Transforming the Financing of Early Care and Education. Washington, DC: The National Academies Press. https://doi.org/10.17226/24984.

in child care now. The final rule does not alter Lead Agency flexibility to set co-payment caps lower than 7 percent of family income, and we encourage Lead Agencies to ensure co-payments support affordability with lower co-payments.

Comment: We received four comments, including one from a member of Congress, opposing our proposal to lower co-payments and questioning our regulatory authority to do so.

Response: Section 658E(c)(5) of the Act requires Lead Agencies to establish and periodically revise a sliding fee scale that provides for cost-sharing for families receiving CCDF funds. The 2014 reauthorization of the Act newly clarified that CCDF cost-sharing policies should not be "a barrier to families receiving assistance" under CCDF, and as noted above, high co-payments above 7 percent are a barrier to families accessing child care assistance. Twenty-two members of Congress wrote in support of the proposal and indicated this regulatory change reflected statutory requirements.

Comment: A few commenters shared concerns that limiting co-payments for CCDF families would increase child care costs for the middle class.

Response: We anticipate that limiting co-payments for CCDF families will not change the amount the provider will receive for that child. Rather, it will transfer costs from parents who receive CCDF assistance to Lead Agencies so there is no reason to anticipate this will increase child care costs for families without subsidies, the middle class, or other families. Moreover, a recent study of child care subsidies in Minnesota demonstrated that child care subsidies increased the supply of child care while having a de minimis impact on child care costs.[83] When the supply of child care increases in a community, all families benefit because they have more options and can more easily access child care.

Comment: We received a few comments requesting clarity on the definition of family income used to implement the requirement.

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[83] Lee, Won Fy, Aaron Sojourner, Elizabeth E. Davis, and Jonathan Borowsky. 2024. "Effects of Child Care Vouchers on Price, Quantity, and Provider Turnover in Private Care Markets." Upjohn Institute Working Paper 24-394. Kalamazoo, MI: W.E. Upjohn Institute for Employment Research. https://doi.org/10.17848/ wp24-394

Response: We decline to provide a definition of family income in this final rule and continue to allow Lead Agencies the flexibility to specify how to define family income, which has implications for both a family's eligibility for CCDF assistance and the family's required co-payment amount. This flexibility allows Lead Agencies to determine how they want to define family unit and income.

Comment: A few commenters requested flexibility to set co-payments above the 7 percent requirement for CCDF families with higher incomes or with multiple children in care.

Response: We decline to permit family co-payments higher than 7 percent of family income. The 7 percent of family income co-payment cap applies regardless of the number of children in a family in need of care to minimize the likelihood that cost is a barrier to child care access for that family. In addition, families participating in CCDF have low incomes, even those with incomes on the higher end of the eligibility threshold, making 7 percent of family income a substantial financial burden. If we were to allow the requested flexibility, families at the higher end of the CCDF eligibility threshold could be faced with child care costs well above the 7 percent threshold. For example, analyses show that the average household with income between $35,000 and $49,000 spends approximately 18 percent of their income on child care for their young children. This estimate excludes households that use child care but do not pay for it. When including all households (those paying for child care and those who do not pay), the average household in this income bracket still spends 8 percent of their income on child care.[84]

Comment: We received some comments expressing concern about tradeoffs to caseload while still acknowledging the value of lowering co-payments, and we received a few comments requesting the ability to delay implementation of the requirement when a Lead Agency faces tradeoffs, such as reducing access to subsidies.

[84] Council of Economic Advisors (CEA) analysis of the 2019 National Survey of Early Care and Education (NSECE). https://www.whitehouse.gov/cea/written-materials/2023/07/18/improving-access-affordability-and-quality-in-the-early-care-and-education-ece-market/#_ftn2.

Response: The Act prohibits cost-sharing policies that would be a barrier to child care access, and it is imperative that parent co-payments are not a barrier to child care access for families participating in CCDF so we are retaining the 7 percent co-payment cap.

Comment: One comment requested that we require the Lead Agency to collect co-payments instead of providers.

Response: The Act and regulation have never specified whether the Lead Agency or child care provider should be responsible for collecting co-payments from families, and we retained this approach so Lead Agencies retain the flexibility to determine their own policies on collecting co-payments. We encourage Lead Agencies to adopt policies that support child care provider operations.

Comment: Some commenters were concerned the 7 percent cap would result in reduced payment rates to child care providers and requested additional safeguards above our commitment to ongoing monitoring of Lead Agency payment rates.

Response: As explained in the NPRM, we strongly agree that the 7 percent co-payment cap should not decrease the amount paid to the child care provider, but rather shift some of the cost from families to Lead Agencies. Under CCDF, payments to providers are a combination of the Lead Agency share and the parent share. Capping the amount of the parents' share should result in a comparable increase to the Lead Agency's share and thus has no impact on the total amount providers receive. To ensure clarity on this point, the final rule includes a new change at § 98.45(n)(5) to require Lead Agencies to demonstrate in their CCDF Plan how they ensure that they are not reducing the total payment (subsidy payment amount and co-payment) given to child care providers when implementing this requirement. ACF expects to closely monitor Lead Agency payment rates to ensure reductions in family co-payments do not shift to providers. As will be discussed later, this also applies when Lead Agencies exercise their flexibility to waive co-payments for preapproved populations of families and any additional populations proposed in the CCDF Plan.

Comment: We received mixed comments on state flexibility to allow child care providers to charge parents more than the established co-payment to cover the difference between the subsidy payment and the child care provider's private pay rate, with some comments in support of allowing additional charges, while others opposed such charges.

Response: This rule does not make any changes to the existing policies at § 98.45(b)(5) that permit child care providers to charge parents additional amounts to cover the difference between the subsidy payment and the child care provider's private pay rate, as long as the Lead Agency has demonstrated that the policy promotes affordability and access, though we agree this flexibility may present a barrier to access for some families. We strongly encourage Lead Agencies to set child care provider payment rates to cover the cost of care to minimize providers' need for such policies.

Waiving Co-payments. In the NPRM, we proposed to amend § 98.45(l)(4), as redesignated, to make it easier for Lead Agencies to waive co-payments for two additional populations—eligible families with income up to 150 percent of the federal poverty level and eligible families with a child with a disability as defined at § 98.2. We requested public comment on whether States would benefit from having the option to waive co-payments for other populations, as well as requesting commenters share potential additional categories of families for which co-payments could be waived.

This final rule amends § 98.45(l)(4), as redesignated, to allow Lead Agencies the discretion to more easily waive co-payments for specifically eligible families with incomes up to 150 percent of the federal poverty level, children who are in foster and kinship care, those experiencing homelessness, those with a child with a disability as defined at § 98.2, and those enrolled in Head Start or Early Head Start (42 U.S.C. 9831 *et seq.*). Previous CCDF regulations allowed Lead Agencies to waive co-payments for families with incomes up to 100 percent of the federal poverty level and this final rule increases that threshold to 150 percent. This rule does not alter the existing option that allows Lead Agencies to waive co-payments for families in need of protective services or to determine other factors for waiving co-payments. Lead Agencies have authority to define "other factors" – such as family income above 150 percent of the federal poverty level or any of the additional populations recommended in public comment but not included as part of this final rule (*e.g.,* families who benefit from Temporary Assistance for Needy Families (TANF), adolescent parents, and the child care and Head Start workforce).

Comment: There was strong support for allowing Lead Agencies the flexibility to waive co-payments for the proposed populations and only one comment in opposition. Supporters noted the importance of lowering child care costs for families and the one comment in opposition to the policy argued that families should be responsible for some of their child care expenses. Many comments in favor of the proposed changes also recommended we include additional populations of families for which co-payments could be waived.

Response: The final rule at § 98.45(l)(4) as redesignated, retains the proposal and includes three additional populations in response to comments: families with children in foster and kinship care, families experiencing homelessness, and families with children enrolled in Head Start or Early Head Start (42 U.S.C. 9831 *et seq.*). According to the FFY 2022-2024 CCDF State and Territory Plans, 28 Lead Agencies currently waive co-payments for children in foster care, and 16 Lead Agencies currently waive co-payments for families experiencing homelessness either by defining the group as part of their definition of families in need of protective services or as an "other factor" determined by the Lead Agency. For children enrolled in Head Start or Early Head Start (42 U.S.C. 9831 *et seq*.), seven Lead Agencies are currently waiving co-payments for this group. Changes in this final rule will allow Lead Agencies to waive co-payments for families with children in foster and kinship care, families experiencing homelessness, and families with children enrolled in Head Start or Early Head Start (42 U.S.C. 9831 *et seq.*) without needing to define criteria for waiving co-payments and requesting approval for these groups in the CCDF Plan.

As noted in the preamble of the 2016 Final Rule, waiving CCDF co-payments for families in Head Start and Early Head Start, including children served by ACF-funded Early Head Start-Child Care partnerships, is an important alignment strategy. Head Start and Early Head Start are provided at no cost to eligible families, who cannot be required to pay any fees for Head Start services. By including children enrolled in Head Start or Early Head Start (42 U.S.C. 9831 *et seq.*) as an additional population for waiving co-payments in this final rule, we are making it easier for Lead Agencies to support continuity of care for families.

The 2014 reauthorization of the Act included several provisions to improve access to high-quality child care for children and families experiencing homelessness. Co-payments could serve as an additional barrier for families experiencing homelessness to access high-quality child care for their children. Therefore, this final rule makes it easier for Lead Agencies to waive co-payments for this population without needing to define criteria for waiving co-payments and requesting approval in the CCDF Plan. This change is consistent with the statute's focus on improving CCDF services for children experiencing homelessness.

While we acknowledge the benefits of including additional categories of families, we decline to include an exhaustive list of family categories for waiving co-payments, but this should not be interpreted as discouraging States and Territories from taking steps to reduce co-payments for families who do not fall within one of the preapproved categories included in this final rule. We strongly encourage Lead Agencies to take full advantage of the flexibility retained in this final rule to tailor co-payment policy to reduce or eliminate financial barriers for families utilizing the CCDF program. According to FFY 2022-2024 CCDF State and Territory Plan data, Lead Agencies are utilizing existing flexibilities to waive co-payments through CCDF Plan approval for many of the populations recommended by commenters. For example, 20 Lead Agencies have CCDF Plan approval to waive co-payments for families who benefit from Temporary Assistance for Needy Families (TANF) and 9 Lead Agencies are approved to waive co-payments for adolescent parents. Notably, many commenters recommended waiving co-payments for members of the child care workforce. Some Lead Agencies waive or are considering waiving co-payments for child care workers, and we encourage Lead Agencies to consider whether proposing to waive co-payments for child care workers might be a helpful workforce strategy.

Comment: We received some comments that supported allowing Lead Agencies to waive co-payments for family income thresholds higher than the proposed 150 percent federal poverty level. Some comments recommended providing the ability to waive co-payments for all families.

Response: We support Lead Agencies minimizing co-payments for all families participating in CCDF and waiving co-payments for many families. We strongly encourage Lead Agencies to significantly reduce co-payments for families, including waiving co-payments for families with incomes higher than 150 percent of the federal poverty level. Lead Agencies are permitted to establish other criteria for waiving co-payments at a higher threshold in the CCDF Plan, at their discretion. Since section 658E(c)(5) of the Act (42 U.S.C. 9858c(c)(5)) requires that Lead Agencies establish a cost-sharing arrangement for families benefiting from assistance, we do not have the authority to allow Lead Agencies to eliminate the co-payment requirement for all families receiving CCDF assistance.

Comment: Some comments requested we require Lead Agencies to waive co-payments for certain populations instead of maintaining it as an option for CCDF Lead Agencies.

Response: We strongly encourage Lead Agencies to take advantage of the Act's flexibility to waive co-payments for the preapproved populations included in the final rule, as well as any populations Lead Agencies choose to describe and propose in the CCDF Plan as part of their waiving policy.

Comment: One commenter requested that we require co-payments be waived for siblings as part of the option to waive co-payments for families with children with disabilities.

Response: As was proposed in the NPRM and retained in this final rule, the option to waive co-payments for eligible families with children with disabilities applies to the entire family (including siblings). Therefore, Lead Agencies have the flexibility to waive co-payments for all children within eligible families and not just for the child with a disability. While we agree with the commenter's concerns, and we encourage Lead Agencies to take advantage of this flexibility and serve eligible families in the manner outlined in this final rule.

Comment: Some comments raised concerns about possible reductions in provider payments if co-payments are waived.

Response: Lead Agencies retain the flexibility to determine their own policies on waiving co-payments. If a Lead Agency chooses to waive co-payments for preapproved populations outlined in this final rule or propose their own populations to waive in the CCDF Plan, we expect Lead Agencies not to decrease the amount paid to child care providers as a fiscal tradeoff. To ensure clarity on this point and be responsive to commenters' concerns that costs could be shifted from families to providers, we added a requirement at § 98.45(n)(5) that Lead Agencies demonstrate in their CCDF Plan how they will ensure they are not reducing the total payment (subsidy payment and co-payment) given to child care providers when establishing their sliding fee scale. This change applies to both the 7 percent requirement described earlier and any co-payments waived at the option of the Lead Agency. We encourage Lead Agencies to adopt policies that support child care provider operations that ensure providers do not experience a reduction in resources when serving families participating in the CCDF program.

Comment: One commenter recommended that we allow co-payments to be waived for families who are a member of a Tribe or Tribal consortium being served by a State or Territory CCDF Lead Agency.

Response: We acknowledge the potential benefits of this recommendation and note a State or Territory CCDF Lead Agency is allowed to propose in their CCDF Plan to waive co-payments for families who are a member of a Tribe or Tribal consortium.

Payment Practices. This final rule makes key changes at § 98.45(m) as redesignated, to improve CCDF payment practices in ways that will make it easier for child care providers to serve children with subsidies and increase parent choices in care. Lead Agency payment practices to providers are an important aspect of equal access and support the ability of providers to participate in CCDF, better cover the cost of care, and deliver high-quality care. This is consistent with section 658E(c)(2)(S) (42 U.S.C. 9858c(c)(2)(S)) of the Act, which requires Lead Agencies to establish "payment practices of child care providers in the State that serve children who receive assistance under this subchapter [that] reflect generally accepted payment practices of child care providers in the State that serve children who do not receive assistance under this subchapter, so as to provide stability of funding and encourage more child care providers to serve children who receive assistance under this subchapter." The same provision also requires Lead Agencies, "to the extent practicable, implement enrollment and eligibility policies that support the fixed costs of providing child care services by delinking provider reimbursement rates from an eligible child's occasional absences due to holidays or unforeseen circumstances such as illness."

First, the final rule amends the language at § 98.45(m) as redesignated to require provider payment practices meet generally accepted payment practices used for families not participating in the CCDF program, unless the State or Territory can demonstrate that certain policies are not considered generally accepted payment practices in the private child care market for certain types of care. Previously, this language was only included in the regulatory text at (l)(3) when describing the requirement to pay providers based on a part-time or full-time basis and to pay for reasonable mandatory registration fees. Previous (l)(3)(i) and (l)(3)(ii) are now redesignated as (m)(3) and (m)(4). This is slightly restructured from the NPRM in response to comments that reinforced the multiple types of payment practices reflected in generally accepted payment practices for the private child care market. The rule allows narrow exceptions for different payment practices for certain types of providers, such as relative providers, because it is more typical for a private pay family to pay a relative provider on an hourly basis, or out-of-school time programs that do not typically charge private pay families for absence days. In those cases, the Lead Agency must justify that they are not generally accepted payment practices in the private child care market in the CCDF Plan as required at § 98.16(cc). However, though the rule allows Lead Agencies the option to demonstrate that in certain limited cases the policies included at (m) are not generally accepted payment practices in the private child care market, we do not expect to approve CCDF Plans that propose more than limited exceptions.

Second, the final rule amends § 98.45(m)(1) to require States and Territories ensure timely provider payments by paying providers participating in CCDF in advance of or at the beginning of the delivery of child care services to align with the Act's requirement that Lead Agencies use generally-accepted payment practices. Paying child care providers in advance or at the beginning of service provision, also known as prospective payment, is the norm for families paying privately (*e.g.,* payment for child care for month of February is due February 1st) because providers need to receive payment before services are delivered to meet payroll and pay rent. States and territories may meet this requirement at (m)(1) by paying child care providers in advance of providing child care services, (*e.g.,* paying the provider on the 27th day of the month prior to the upcoming month of service), or by paying providers on the first day of service, (*e.g.,* on Monday for that week of service).

The final rule removes the current option at previous § 98.45(l)(1) for Lead Agencies to reimburse child care providers within 21 days of receiving a completed invoice. Paying providers on a reimbursement basis places an upfront burden on providers serving families participating in CCDF and makes it difficult for providers to accept child care subsidies.

Lead Agencies have the flexibility to determine the length of the service period, and may choose to pay providers on a weekly, bi-weekly, or monthly basis, or another period as appropriate. As some families may choose to change child care providers in the middle of a service period, Lead Agencies may delay the first payment to a new provider until the start of the next service period or adjust payments to providers following the change in a child's enrollment. This flexibility helps Lead Agencies avoid paying two child care providers for the same hours of care for the same child, which is prohibited by CCDF. However, if a child was enrolled with a provider, the Lead Agency cannot require, except in cases of fraud or intentional program violation by the provider, that child care provider to return the subsidy funds they received, and these funds are not considered overpayments for purposes of error rate calculations.

Some children may need to start receiving care during a service delivery period. We do not intend to limit when a child can begin receiving child care services, and States may pay child care providers retroactively for services that began in the middle of a service delivery period. Some children may need to start receiving care during a service delivery period. For the next complete service period, States must begin paying in advance or on the first day of the service period. States may also reimburse the child care provider a pro-rated amount that covers the partial time the child was enrolled.

Third, the final rule at (m)(2) as amended, requires States and territories to pay child care providers based on a child's authorized enrollment, to the extent practicable. Further, the final rule revises (m)(2) to require Lead Agencies who determine they cannot pay based on enrollment, to describe their alternative approach in the CCDF Plan, provide evidence that the proposed alternative reflects private pay practices for most child care providers in the State or Territory, and does not undermine the stability of child care providers participating the CCDF program. ACF only expects to approve alternative approaches in limited cases where a distinct need is shown.

The final rule deletes the previous options at former paragraph (l)(2)(ii) that allowed for full payment if a child attended at least 85 percent of authorized time, and paragraph (l)(2)(iii), which allowed for full payment if a child was absent five or fewer days a month. The Act requires States and Territories, to the extent practicable, to implement enrollment and eligibility policies that support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's attendance, which includes occasional absences due to holidays or unforeseen circumstances, such as illness. Neither of the two now-deleted options supported a provider's fixed operational costs, continuity of care for children, or reflect the norm for families paying privately, and going forward, ACF will not approve either option as an alternative approach to the requirement to pay providers based on enrollment.

While States and Territories must base provider payments on a child's enrollment under the final rule, Lead Agencies may continue to require child care providers submit attendance records to ensure children participating in CCDF are utilizing their subsidy. Moreover, this policy change does not affect the policy at § 98.21(a)(5)(i) that allows Lead Agencies to discontinue child care assistance prior to the next re-determination when there have been excessive unexplained absences despite multiple attempts to contact the family and provider, including prior notification of possible discontinuation of assistance.

Comment: Most commenters strongly supported the proposed changes to move to paying prospectively and based on enrollment, noting that the changes were long overdue and will have a significant impact on child care providers. We received many comments sharing the positive impact of prospective payments based on enrollment, and the negative financial impacts of late payments from States and the lost revenue from not being paid when a child is absent. Commenters also noted the proposed changes can help move closer to financing the true cost of providing high-quality care. Others reinforced the fact that current practices of paying after provision of services or paying based on attendance have led some child care providers to choose not to participate in the subsidy program or to limit the number of children receiving subsidies that they will serve at any given time.

A few commenters opposed the proposed changes and expressed concerns about the costs and systems changes that would be necessary to implement these changes, especially prospective payments. Others argued that Lead Agencies should maintain the flexibility to pay child care providers on a reimbursement basis and not cover all absence days.

Response: The rule will increase parents' options, make it easier for providers to accept subsidies, improve stability among child care providers serving children participating in CCDF, and aligns with generally accepted payment practices for private pay families. Therefore, we kept the changes mostly as proposed. In addition to requiring payment practices that meet generally accepted practices, the Act requires at section 658E(c)(4)(B)(iv) (42 U.S.C. 9858c(c)(4)(B)(iv)) that payments be made to child care providers in a timely manner. Paying child care providers after they have provided services is not timely and instead is destabilizing and overlooks the fact that providers have many bills that must be paid at the beginning of the month. As noted above, States and Territories will have the option to justify if paying certain types of providers in advance of services is not a generally accepted private pay practice in their CCDF Plans.

Comment: Some supporters noted these regulations will require many Lead Agencies to make IT and system updates that will take time and introduce new costs and questioned how the 60-day effective date would intersect with the likely timeline for these requirements.

Response: We recognize that many States and Territories will have to make regulatory and systems changes to implement these requirements. To address these concerns, this rule includes the opportunity for implementation extensions via temporary waivers for up to two years.

Comment: Some commenters asked for clarification related to the change at (m)(1) that requires Lead Agencies to pay providers in advance or at the beginning of services.

Response: The NPRM proposed to require "prospective payments" at (m)(1) but based on the comments received and further review of State prospective payment policies, we revised the regulatory language to better reflect what we meant by "prospective payments" and replaced that term with more descriptive language. The central meaning of the proposal remains unchanged. We have also clarified earlier that payments may be made up until the first day of providing care. This language is based off suggestions from commenters, review of state regulations in States that already pay child care providers in advance, and language included in agreements between private pay parents and child care providers. As noted above, this does not limit Lead Agencies in the start date for a child to receive child care services.

Comment: Some commenters asked us to define "enrollment" related to the proposed change at (m)(2)(i). This included asking us to state how many absences must be covered to consider a policy compliant with meeting payment based on enrollment.

Response: We decline to include a definition of "enrollment" in the regulatory language. However, in response to comments, we revised the regulatory language to say payment must be based on "*authorized* enrollment" (italics denote language added in final rule). We also decline to enumerate the number of absences that would be covered because that is contradictory to the requirement to delink payment from absences and pay based on authorized enrollment. As noted earlier, § 98.21(a)(5)(i) allows Lead Agencies to discontinue child care assistance prior to the next re-determination when there have been excessive unexplained absences despite multiple attempts to contact the family and provider, including prior notification of possible discontinuation of assistance.

Comment: Some commenters requested we provide specific examples of policies that would be acceptable alternatives to paying based on enrollment.

Response: We decline to specify what alternatives would be allowable. It is the Lead Agency's responsibility to explain and justify how their alternative approach would not destabilize child care providers. ACF will review individual justifications, including data and other evidence, during CCDF Plan approval. As noted above, ACF will not approve alternatives that mirror the two now removed options (*i.e.,* paying the full amount if a child attends at least 85 percent of authorized time or if a child has five or fewer absences).

Comment: A few commenters requested clarification as to whether child care providers must be paid for days providers are closed for in-service or professional development activities.

Response: Parents that pay privately for child care are usually required to pay for days when providers are closed for holidays, in-service, or professional development activities. Lead Agencies are expected to cover the days providers are closed for holidays and other training and in-service days as part of paying a provider based on the child's authorized enrollment, unless the Lead Agency can provide evidence this would not be considered a generally-accepted payment practice for the private child care market.

Comment: We requested comments and data about generally accepted payment practices and whether those proposed in the NPRM truly reflected generally accepted payment practices. Commenters widely agreed that paying in advance and based on enrollment reflected generally accepted payment practices in their areas, including child care providers, national organizations, and Lead Agencies. The National Association for the Education of Young Children (NAEYC) provided data from a survey conducted during the comment period that found 88 percent of providers stated that private pay families in their care pay prospectively for care. A survey of family child care providers found that 59 percent of programs received payment prospectively.

Response: We appreciate commenters providing data and support for these policies, which reinforce that prospective payment and enrollment-based payment are generally-accepted payment practices for family child care and center-based care in the private pay market. We have retained the proposals with minor adjustments to the regulatory language.

Comment: We requested comments on other policies that may help build supply and stabilize the child care market. Commenters suggested a range of policies, including paying a child care provider by classroom or licensed capacity not by individual slots, setting different requirements for providers depending on the age of children in their care, and investing in child care facilities.

Response: We appreciate these suggestions and encourage Lead Agencies to consider them as they continue to address inadequate child care supply. Some changes in other parts of this final rule, including revising the definition of major renovation to make it easier to invest in facilities improvements, reflect the goals of these comments. However, we have chosen not to make additional specific regulatory changes in this section.

Comment: Some commenters noted that prospective payment and paying based on enrollment may not reflect generally accepted payment practices for certain types of care for providers, such as for school-age care or child care provided by relatives.

Response: We acknowledge there may be some variation in how some types of providers are paid by private pay families, and therefore, we have clarified that Lead Agencies may propose limited exceptions to the requirements at § 98.45(m), if they can justify those exceptions reflect generally accepted payment practices for specific provider types or categories in the private pay market.

Comment: Some commenters were concerned about the administrative burden associated with recoupment of funds in cases of payments for absence days.

Response: When paying based on enrollment, payment for absences is not considered overpayment and does not get recouped, thus administrative burden should not increase because of this policy. Because Lead Agencies will not have to closely align attendance records with payments, we expect a decrease in administrative burden for Lead Agencies and child care providers. Lead agencies are expected to follow their own processes to ensure providers are paid appropriately.

Comment: Some commenters expressed concerns about double paying child care providers for the same period if a child switches providers partway through the service period.

Response: Lead Agencies are expected to implement processes to address if a child changes providers during a service period. Lead Agencies may choose to require providers to certify their expected enrollment prior to receiving their payment in advance and to submit documentation within a certain period to allow for adjustments for children who are newly enrolled or disenrolled in a program.

Additional Payment Practices. This final rule newly adds § 98.45(n) to address Lead Agency payment practices that are only applicable to the child care subsidy system and do not have private pay equivalents. In such instances, a requirement to meet generally accepted payment practices under (m) is inappropriate.

The final rule moves three existing provisions from (m) as redesignated to new paragraph (n). Paragraph (n)(1), redesignated from (l)(4), requires Lead Agencies to ensure that child care providers receive payment for services in accordance with a written agreement or authorization for services; (n)(2), redesignated from (l)(5), requires child care providers receive prompt notice of changes to a family's eligibility status that may impact provider payments; and (n)(3), redesignated from (l)(6), requires that provider payment practices include timely appeal and resolution processes for any payment inaccuracies or disputes.

The final rule adds at § 98.45(n)(4) that Lead Agency payment practices may include taking precautionary measures when a provider is suspected of fraud. For example, it may be prudent in such cases for the Lead Agency to pay a provider retroactively as part of a corrective action plan or during an investigation.

Comment: Commenters expressed support for this allowance.

Response: We agree Lead Agencies need to have the flexibility to adjust policies when providers may be suspected of fraud and have kept the regulatory language as proposed.

This final rule adds § 98.45(n)(5) to require States and Territories demonstrate in their CCDF Plan how they are ensuring they are not reducing the total payment (subsidy payment amount and co-payment) given to child care providers when implementing the requirement at § 98.45(l) to limit co-payments to 7 percent of family income and waiving co-payments for additional families. A more detailed discussion of this addition, including related comments and responses, is earlier in this preamble at § 98.45(l).

Subpart F—Use of Child Care and Development Funds

Subpart F of the CCDF regulations establishes allowable uses of CCDF funds related to the provision of child care services, activities to improve the quality of child care, administrative costs, matching fund requirements, restrictions on the use of funds, and cost allocation. This final rule includes several changes in Subpart F, including requiring some use of grants or contracts for direct services and removing the obsolete phase-in of the quality set-aside.

§ 98.50 Child Care Services

This final rule adds clarifying language at § 98.50(a)(3) that some grants or contracts must be used for slots for children in underserved geographic areas, infants and toddlers, and children with disabilities. Additionally, the final rule further clarifies that grants solely to improve the quality of child care services would not satisfy the requirement at § 98.30(b). This clarifying language is also added to the final rule at new paragraph § 98.50(b)(4).

Comment: As discussed in Subpart D, some commenters wanted clarification as to the definition of "grants and contracts" and whether the requirement is specific to direct services.

Response: The final rule clarifies across sections §§§ 98.16(z), 98.30(b), and 98.50(a) that the requirement is for grants "or" contracts and is in reference to direct services. This clarification responds to some Lead Agencies and other commenters noting the appropriate mechanism for grants or contracts is different in each jurisdiction. All Lead Agencies define the terms "grants" and "contracts" differently, with each term carrying different requirements and processes. Due to the varying nature of how Lead Agencies define these terms, it would be impractical to provide a federal definition. Additionally, in response to comments asking for clarification about what counts as a direct service and if quality set-aside investments could count toward the grant or contract requirement, the final rule clarifies the definition of direct services to explicitly include grant or contracted slots. Specifically, additional language at § 98.50(a)(3) adds the term "for slots" after "grants or contracts" and excludes grants solely to improve the quality of child care services like those in § 98.50(b) from meeting the requirement set out in § 98.30(b). New paragraph § 98.50(b)(4) clarifies these quality amounts cannot be used to satisfy the requirement at § 98.30(b) for grant or contracted slots. A final change was made to the financial reporting requirement at § 98.65(h)(3) to clarify that "direct services" can be for "both grant or contracted slots and certificates."

Comment: Some commenters expressed concerns about program integrity implications of requiring grants or contracts and asked specifically for ACF to clarify how provider changes should be handled.

Response: We share commenters' interest in strong program integrity and defer to Lead Agencies to define these parameters under their already existing systems. ACF is committed to providing technical assistance to Lead Agencies related to best practices in grants or contracting and in monitoring grants or contracts.

Comment: Several comments noted that implementation of policies described (*e.g.* cost estimation model, presumptive eligibility) would necessitate feedback from people with direct experience and need to be adjusted to ensure that they work for families and providers. In addition, many parents, providers, and organizations representing parents and providers who participate in child care subsidy programs commented on how proposed policies would impact their experience, including expressing the need to be directly engaged to support successful implementation.

Response: We agree that people with direct experience in the child care subsidy system, quality initiatives, and the child care market are critical stakeholders in successful implementation of CCDF policies and practices. We have added language to clarify that quality set-aside funds may be used to engage families and providers with direct experience, including compensation for time and related expenses.

Quality Set-aside. Section 98.50(b)(1) reflects section 658G(a)(2)(A) of the Act (42 U.S.C. 9858e(a)(2)(A)), which includes a phased-in increase to the percent of expenditures states and territories must spend on activities to improve the quality of child care. The phase-in ended on September 30, 2020, with the statute maintaining a minimum 9 percent quality set-aside thereafter. The final rule removes the phase-in schedule for the quality set-aside at § 98.50(b)(1) because it is outdated. This update does not impact the current requirement for States and Territories to spend at least 9 percent of their total expenditures, not including State maintenance of effort funds, on quality activities. The final rule adds clarifying language to affirm that Lead Agencies are encouraged to engage parents and providers with direct experience in the child care subsidy system and with quality initiatives because successful implementation of this rule and other CCDF provisions depends on user feedback. The final rule also affirms that quality funds can be used for expenses related to such engagement.

Similarly, the final rule strikes the outdated language at § 98.50(b)(2) that stemmed from Section 658G(a)(2)(B) of the Act (42 U.S.C. 9858e(a)(2)(B)) and included a new permanent requirement for States and Territories to spend at least 3 percent of total expenditures (not including State maintenance of effort funds) on activities to improve the quality and supply of child care for infants and toddlers but delayed the effective date of this requirement until FY 2017. This effective date is no longer necessary in the regulatory language and is now deleted. This update does not impact the current requirement for States and Territories to spend at least 3 percent of their total expenditures (not including State maintenance of effort funds) on activities to improve the quality and supply of child care for infants and toddlers.

Mandatory Funds. The final rule also amends § 98.50(e) to update regulations to align with policies implemented as part of the ARP Act of 2021 (Pub. L. 117-2). In accordance with subtitle I, section 9801 of the ARP Act, Territories received permanent CCDF mandatory funds for the first time in FY 2021. Since CCDF did not provide Territories with CCDF mandatory funds prior to FY 2021, the CCDF regulations did not include requirements of how Territories must spend CCDF mandatory funds. We made this change to codify the requirement included in the approved instructions for completing to the ACF-696 Financial Reporting Form for CCDF State and Territory Lead Agencies[85] that Lead Agencies spend at least 70 percent of CCDF mandatory and matching funds on specific populations related to TANF receipt (families receiving TANF, families transitioning from TANF, and families at-risk of becoming dependent on TANF) applies to Territories, as well as States.

Comment: While one commenter incorrectly stated OCC proposed an increase in quality spending at § 98.50(b)(1) or § 98.50(b)(2), other commenters affirmed these updates helped clarify and did not change existing requirements. Additionally, we received several comments in

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[85] Instruction for Completion of Form ACF-696 Financial Reporting Form for the Child Care and Development Fund (CCDF) State and Territory Lead Agencies. Office of Management and Budget (OMB) #0970-0510. https://www.acf.hhs.gov/sites/default/files/documents/occ/instructions_for_completion_of_form_acf-696_financial_reporting_form-for_ccdf_state_Territory_lead-agencies.pdf.

support of updating the regulation at § 98.50(e) to reflect mandatory funding that has been available to Territories since 2021.

Response: As the regulatory language simply removes obsolete language, we have retained the language as proposed.

Subpart G—Financial Management

The focus of Subpart G is to ensure proper fiscal management of the CCDF program, both at the federal level by ACF and the Lead Agency level. The final rule changes to this section include adding recent statutory changes to the CCDF mandatory funds and revising CCDF expenditure reporting requirements.

§ 98.60 Availability of Funds

To reflect that Territories began receiving annual mandatory funds in FY 2021 due to provisions in the ARP Act, this final rule makes two conforming changes at § 98.60(a) to specify where the regulations address mandatory funds for States and where they address mandatory funds for Territories.

This final rule also includes a conforming change at paragraph § 98.60(d)(3) to clarify that Territories must obligate mandatory funds in the fiscal year in which they were granted and must liquidate no later than the end of the next fiscal year. This aligns with CCDF State policy and is needed to clarify new requirements added in the ARP Act. The provisions at paragraphs (d)(4) through (8) have been renumbered accordingly. We did not receive comments on these proposed changes.

§ 98.62 Allotments from the Mandatory Fund

This final rule includes a conforming change at § 98.62(a) to align this regulation with previously discussed changes made to the Social Security Act in the ARP Act. We updated the statutory reference to the Social Security Act to specify the provision referenced section 418(a)(3)(A) (42 USC 618(a)(3)(A)), and we deleted the reference to the amount reserved for

Tribes pursuant to paragraph (b) to reflect that the ARP Act permanently changed the allocation of mandatory funds for Indian Tribes and Tribal organizations to be based on the amount set at section 418(a)(3)(B) of the Social Security Act (42 USC 618(a)(3)(B)) and no longer a percent of the total allocation.

Finally, we added a new paragraph (d) to incorporate changes made in the ARP Act allocating mandatory funds to the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Marianas Islands. Section 418(a)(3)(C) of the Social Security Act (42 USC 618(a)(3)(C)) requires funds to be allocated based on the Territories' "respective needs." In allotting these funds in FY 2021, ACF used the same formula used to allocate funds from the Discretionary funds at § 98.61(b). This final rule codifies that reallotment formula in the regulations. The regulation specifies that the amount of each Territory's mandatory allocation is based on (1) a Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of children under five years of age in all Territories; and (2) an Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the territory. Paragraph § 98.62(d)(2)(i) requires per capita income to be equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time the determination is made and determined every two years.

Comment: We received several comments on the proposed additions to § 98.62 on allotments from the mandatory fund to Indian Tribes and Tribal organizations. All comments on this proposed change expressed concerns about funding levels for Tribal CCDF programs. Some commenters acknowledged that the mandatory set-aside was put forth by Congress in the ARP Act but wished to express disagreement with this change.

Response: This rule makes no changes to funding levels for Tribal Nations. The rule simply reflects the permanent changes made in the ARP Act, such that the allocation of mandatory funds for Tribes be based on the amount set at section 418(a)(3)(B) of the Social Security Act, rather than a percent of the total allocated funds. This change was made by Congress in 2021 and reflected a 71 percent increase in mandatory CCDF funds for Tribes.

§ 98.64 Reallotment and Redistribution of Funds

This final rule updates § 98.64(a) to reflect that Territories began receiving mandatory funds in FY2021 due to the ARP Act. The regulation specifies that Territory mandatory funds are subject to redistribution and that mandatory funds granted to Territories must be redistributed to Territories. It further clarifies that only Discretionary funds awarded to Territories are not subject to reallotment and that Discretionary funds granted to the Territories that are returned after being allotted are reverted to the federal government. This final rule adds a new paragraph (e) to codify these procedures for redistributing Territory mandatory funds. We did not receive comments on these proposals.

§ 98.65 Audits and Financial Reporting

This final rule adds clarifying language at § 98.65(h)(3) that grants or contracts for child care services are considered a direct service expenditure.

Comments: As discussed in Subpart F, many commenters wanted clarification about the definition of grant or contract for direct service and raised confusion about whether this definition of direct service includes grant or contracted slots.

Response: In response to comments, the final rule clarifies at § 98.65(h)(3) that grant or contracted slots are considered a direct service. ACF will also make changes to the ACF-696 instructions to further clarify this reporting requirement and how Lead Agencies should account for grant or contracted slots in financial reporting.

Subpart H—Program Reporting Requirements

Subpart H of the regulations includes administrative reporting requirements for Lead Agencies.

§ 98.71 Content of Reports

Data Amounts Charged Above Co-payment. This final rule deletes the data element at § 98.71(a)(11) that required Lead Agencies to report any amount charged by a child care provider to a family receiving CCDF subsidy more than the co-payment set by the Lead Agency in instances where the provider's price exceeds the subsidy payment amount. This data element created a burden on Lead Agencies and child care providers and was never implemented. Instead, we have revised § 98.45(f)(1) to include this information in what States and Territories must report in their market rate survey or alternative methodology reports related to providers charging families above the State set co-payment. In addition, States must continue to track through their market rate survey or approved alternative methodology or through a separate source how much CCDF child care providers charge amounts to families more than the required co-payment as required at § 98.45(d)(2)(ii) and report on this data in their CCDF Plans as required at § 98.45(b)(5).

This reporting requirement at § 98.71(a)(11) was added to the CCDF regulations in 2016, but it was never added as a data element to the ACF-801 (monthly case-level report) because when ACF proposed adding the data element to the ACF-801 as part of the Paperwork Reduction Act (PRA) process in 2018, five State CCDF Lead Agencies submitted comments objecting to the proposed new data element. Four States indicated that the element would create a reporting burden for families and/or providers, and that it would be challenging to collect and report accurate data. A State also argued that the new element was duplicative of information that States are required to report in their CCDF Plans, and would involve significant costs, especially for States with county administered CCDF programs.

We requested comment on whether the data element should be removed, including potential implications of either instituting or removing the requirement.

Comment: Most commenters on this proposal opposed deleting the element. They noted that with the proposal to cap family co-payments and included in this final rule at § 98.45(l) that it was critical to collect data about how much providers are charging families above the co-payment.

A few commenters expressed support for the proposal to delete the data element, with one Lead Agency stating, "it is very difficult to collect and extract the referenced data due to the wide variation in provider price points and co-payments."

Response: We agree with commenters the data intended to be captured by the original regulation is important to understand how much families receiving subsidies must pay out of pocket for child care. However, the ACF-801 is not the best data collection form to collect this information because it provides monthly case records for all children participating in CCDF. The information for the ACF-801 is mostly collected during a child's eligibility determination and through state data systems. To collect the information for this data element, the State would have to create new reporting for child care providers, adding new burdens on child care providers. Further, these data do not need to be monthly to be useful. Therefore, this rule revises § 98.45(f)(1) to ensure such data is collected in a more appropriate manner. OCC will continue to collect and review State and Territory policies regarding allowing child care providers to charge the difference between the state subsidy rate and the provider's private pay rate through the CCDF Plan pursuant to § 98.45(b)(5).

The final rule makes conforming renumbering changes to (a)(12) through (22).

Presumptive Eligibility. This final rule adds a data element at § 98.71(b)(5) to require Lead Agencies implementing presumptive eligibility to report in the annual aggregate report (ACF-800) the number of presumptively eligible children ultimately determined fully eligible, the number who fail to complete documentation for full eligibility and the number who are determined ineligible after full verification. Comments and responses were discussed earlier under the related requirement at § 98.21(e).

The final rule makes conforming renumbering changes to (b)(6) through (7).

Subpart I—Indian Tribes

This subpart addresses requirements and procedures for Indian Tribes and Tribal organizations applying for or receiving CCDF funds and serves as the Tribal summary impact statement as required by Executive Order 13175.[86] CCDF currently provides funding of about $557 million annually[87] to approximately 265 Tribes and Tribal organizations directly or through consortia arrangements that administer child care programs for approximately 520 federally recognized Indian Tribes. Tribal CCDF programs are intended for the benefit of Indian children, and these programs serve only Indian children. The Tribal CCDF program plays a crucial role in child care access and affordability. Below we discuss the Tribal CCDF program, Tribal consultation, and regulatory changes impacting this Subpart.

The Act is not explicit in how many of its provisions apply to Tribes so ACF traditionally applies requirements of the Act to Tribes through regulation. In the years since the 2016 final rule, Tribal Lead Agencies have taken great efforts to implement CCDF programs in accordance with the regulations. Most CCDF Tribal Lead Agencies receive relatively small award sizes of less than $250,000 and have infrastructure and internal capacity that varies greatly from CCDF State Lead Agencies. ACF continues to hear from Tribes about needing additional program flexibilities to provide high quality child care to Indian children and families. The changes in this final rule as they apply to Tribal Lead Agencies are heavily informed by this feedback as well as the formal consultation conducted during the NPRM comment period. In addition, to provide a more in-depth and long-term opportunity for feedback on the Tribal CCDF program, ACF issued

[86] https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments.

[87] FY23 allocation https://www.acf.hhs.gov/occ/data/gy-2023-ccdf-tribal-allocations-estimated-pending-final-child-count.

a Tribal Request for Information (RFI) that was open for comment from July 27, 2023 to January 2, 2024.[88]

Tribal consultation and comments. ACF is committed to consulting with Tribal Nations prior to promulgating any regulation that has Tribal implications. Immediately following publication of the NPRM, ACF hosted a national webinar specifically for Tribal Lead Agencies to outline and discuss the proposed changes during the comment period. ACF held a formal consultation session virtually in July 2023 with Tribal leaders and Tribal CCDF staff to discuss the impact of the proposed regulations on Tribes. Tribes and Tribal organizations were informed of these events through letters to Tribal leaders and announcements to Tribal CCDF administrators. ACF also distributed materials specifically addressing the impact of the proposed rule on Tribes. ACF published a consultation report on September 5, 2023, which was posted as a supplemental document in the Federal Register on August 20, 2023 and includes information on consultation attendees as well as their specific comments.[89] This final rule was informed by these conversations and comments. Most of the testimony and dialogue included support for the NPRM proposals, with some concerns raised related to fraud determinations, implementation timelines, technical and financial resources to implement the proposed changes. Comments related to fraud and intentional program violations can be found earlier in this preamble as part of the discussion about presumptive eligibility at § 98.21.

Unless explicitly stated in this Subpart, regulations in the 2016 final rule remain in effect for Tribal Lead Agencies. Below we discuss implications for 102-477 programs followed by a discussion of the changes to §§ 98.81, 98.83, and 98.84 in this final rule.

102–477 programs. We note that Tribes continue to have the option to consolidate their CCDF funds under a plan authorized by the Indian Employment, Training and Related Services

[88] https://www.federalregister.gov/documents/2023/07/27/2023-15930/request-for-information-meeting-the-child-care-needs-in-tribal-nations.
[89] https://www.regulations.gov/document/ACF-2023-0003-1665.

Consolidation Act of 2017 (Pub. L. 115–93), originally established in 1992 (Pub. L. 102-477).[90] This law allows federally recognized Tribes and Alaska Native entities to integrate federal grant programs for employment, training, and related services they provide to their communities into a single program plan, budget, and reporting system to address Tribal priorities. ACF publishes guidance for Tribes wishing to consolidate CCDF under the authority created in P.L. 102-477.[91] However, the Bureau of Indian Affairs (BIA) within the Department of Interior (DOI) is the lead federal agency for implementing this program.

§ 98.81 Application and Plan Procedures and § 98.83 Requirements for Tribal Programs

Sliding fee scale. This final rule retains the proposed revision at §§ 98.81(b)(6)(vii) and 98.83(d)(1)(vi) to exempt all Tribal Lead Agencies from the requirement to establish a sliding fee scale and from the provision at § 98.45(l) as redesignated to require parents to pay a co-payment. Therefore, all Tribal Lead Agencies newly have the flexibility to provide CCDF assistance to eligible families without any co-payment. Previously, Tribes with medium and large allocations were subject to the requirements at § 98.45(l) while Tribes with small allocations had the flexibility to exempt all families from co-payments.

Comment: Commenters supported this exemption. Some commenters were supportive of the exemption but were concerned with their ability to implement the change without new resources.

Response: Eliminating co-payments for parents participating in CCDF is an option for Tribal Lead Agencies but not a requirement. Tribes concerned by funding constraints or other matters will have the flexibility to require co-payments if they choose and their established sliding fee scale will not be subject to any requirements outlined in this final rule. If a Tribe

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[90] https://congress.gov/115/plaws/publ93/PLAW-115publ93.pdf.
[91] https://www.acf.hhs.gov/occ/policy-guidance/consolidate-ccdf-under-indian-employment-training-and-related-services.

chooses to require a parent co-payment, we encourage the required amount from families to be as minimal as possible and under 7 percent of a family's income.

Grants and contracts. This final rule maintains the proposed revisions at §§ 98.81(b)(6)(x) and 98.83(d)(1)(i) to exempt all Tribal Lead Agencies from the requirement to use some grants or contracts to provide direct services for underserved geographic areas, infants and toddlers, and children with disabilities as required for States and territories at §§ 98.16(z), 98.30(b)(1), and 98.50(a)(3). Tribal Lead Agencies vary significantly in how they administer the CCDF subsidy program and a requirement to use grants or contracts is not feasible. Tribal Lead Agencies continue to have the option to use this funding mechanism for direct services. We did not receive comments on this area and have retained the language as proposed.

Provider Payment Practices. The final rule at § 98.81(b)(6)(xii) exempts all Tribal Lead Agencies from the requirement to implement provider payment practices in accordance with § 98.16(cc).

Comment: While commenters were supportive of proposed changes to provider payment practices at § 98.45(m), they also expressed concern about Tribal Lead Agencies' ability to implement the changes, especially considering the variability in Tribal Lead Agencies infrastructure to make the necessary systems changes for these policies.

Response: Based on these comments and our focus on providing additional flexibility for Tribal Lead Agencies given the range of infrastructure and capacities, we have chosen to exempt all Tribal Lead Agencies from the requirement to have provider payment practices that reflect generally accepted payment practices, including prospective payments based on enrollment. It is not clear whether these are generally accepted practices across Tribal communities, and the changes included in this final rule remain at the discretion of the Tribal Lead Agency. However, ACF strongly encourages Tribal Lead Agencies to ensure providers are paid in a timely manner and for children's occasional absences.

Quality Funds. Section 98.83(g)(1) previously included a phased-in increase to the percent of expenditures Tribal Lead Agencies must spend on activities to improve the quality of child care. The phase-in ended on September 30, 2020. The final rule removes the phase-in schedule for the quality set-aside at § 98.50(b)(1) because it is outdated. This update does not impact the current requirement for all Tribes to spend at least nine percent of their total expenditures on quality activities. Similarly, the final rule strikes the outdated language at § 98.83(g)(2), which included a new permanent requirement for Tribes with medium and large CCDF allocations to spend at least three percent of total expenditures on activities to improve the quality and supply of child care for infants and toddlers and delayed the effective date of this requirement until FY 2017. This date is no longer necessary in the regulatory language and is now deleted. This update does not impact the current requirement for Tribes with medium and large allocations to spend at least three percent of their total expenditures on activities to improve the quality and supply of child care for infants and toddlers. We did not receive comments on these technical changes.

§ 98.84 Construction and Renovation of Child Care Facilities

Section 98.84 describes the procedures and requirements for Tribal construction or renovation of child care facilities. This final rule extends the deadline for liquidating construction and major renovation funds, specifically by establishing a three-year obligation period and subsequent two-year liquidation period for construction and major renovation funds.

Comment: We received a few comments on this proposal, all of which were supportive. Commenters emphasized that construction and major renovation projects can often take many years to plan and execute and the additional time would help to ensure that facilities are successfully built on Tribal lands.

Response: We appreciate the feedback on this proposed change and are glad to see support for this proposal. We understand that construction and renovation of facilities can be vital to maintaining and increasing high quality child care for children and families. We also recognize that construction projects are complex, expensive, and often long-term, and can therefore take extended time to spend allotted funds. Therefore, we have maintained the proposed change to allow Tribal Lead Agencies up to 5 years to liquidate construction and major renovation funds, which includes three years to obligate funds and an addition two years to liquidate.

Previously, Tribal construction and major renovation funds did not have an obligation deadline. This final rule establishes a three-year obligation period to meet the statutory provision that limits grants to Tribal Lead Agencies to three years. As a Lead Agency cannot change the purposes of the funds after the obligation period, we have determined that we can allow additional time beyond the three years for liquidation.

Comment: We asked for feedback on the potential establishment of guardrails to prevent circumvention of the obligation and liquidation requirements. Some commenters expressed a mix of support for increased flexibility with concerns about unnecessary proposed guardrails.

Response: We appreciate the comments in response to this request. The final rule does not include additional limits related to major renovation and construction.

Subpart J—Monitoring, Non-Compliance, and Complaints

This final rule does not make any changes to Subpart J.

Subpart K—Error Rate Reporting

Subpart K details requirements for the reporting of error rates in the expenditure of CCDF grant funds by the 50 States, the District of Columbia, and Puerto Rico. In addition to the regulatory requirements at subpart K, details regarding error rate reporting requirements are contained in forms and instructions that are established through the Office of Management and

Budget's (OMB) information collection process. Under subpart K, this final rule makes changes to the content of error rate reports.

§ 98.102 Content of Error Rate Reports

To strengthen oversight and monitoring of program integrity risks, this final rule clarifies requirements at § 98.102 for the State Improper Payments Corrective Action Plan (ACF-405). The final rule amends § 98.102(c)(2) to expand the required components of error rate corrective action plans. Specifically, it requires at amended paragraph (c)(2)(ii) that corrective action plans include the root causes of errors as identified in the Lead Agency's most recent ACF-404 Improper Payment Report and other root causes. This change is based on recommendations from the Government Accountability Office (GAO) 20-227, *Office of Child Care Should Strengthen Its Oversight and Monitoring of Program-Integrity Risks.* The final rule also separates previous provision at (c)(2)(ii) into two provisions, with amended paragraph (c)(2)(iii) requiring detailed descriptions of actions to reduce improper payments and the name and/or title of the individual responsible for actions being completed and amended paragraph (c)(2)(iv) requiring milestones to indicate progress towards action completion and error rate reduction. Additionally, we revised paragraph (c)(2)(v), as redesignated, to clarify that the penalty at paragraph (c)(4) is tied to the Lead Agency's completion of their action steps within one year as described in the timeline in their corrective action plan approved by the Assistant Secretary.

The final rule also adds language at paragraph (c)(3) to clarify that the reference to "subsequent progress reports" includes State Improper Payments Corrective Action Plans (ACF-405). Progress reports, including the State Improper Payments Corrective Action Plan (ACF-405), will be required until the Lead Agency's improper payment rate no longer exceeds the error rate threshold designated by the Assistant Secretary, which is currently 10 percent. We added language at (c)(4) to strengthen OCC's ability to assess a penalty if the State does not take action steps "as described." We added the word "as" to clarify that they should not only take the action steps described, but that they should take them "*as* described." The final rule specifies it will be at ACF's discretion to impose a penalty for not following them "as described."

Comment: One commenter expressed support for the proposed change and recommended that OCC include the title, as opposed to the individual's name, of the person responsible for the action to be included because of staffing changes that occur over time.

Response: We appreciate the commenter's recommendation and recognize that staff changes often happen during the corrective action period. Therefore, we have revised the proposed language to specify that the corrective action plan must identify the name and/or title of the individual responsible at § 98.102(c)(2)(iii).

Comment: One commenter noted that this would be unnecessarily burdensome for Lead Agencies because the ACF-404 reports already allows for states to detail the root causes of errors.

Response: OCC is not expanding the ACF-404, but rather, we are providing a clarification around the requirements for the ACF-405. The updated ACF-405 provides a way for states to connect the root causes of error already identified in the ACF-404 with the action steps in the ACF-405. We do not expect this additional component to create a significant burden and that the value of the addition outweighs the burden.

VII. Regulatory Process Matters

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*., as amended) (PRA), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. As required by this Act, we will submit any proposed revised data collection requirements to OMB for review and approval.

The final rule modifies several previously approved information collections, but ACF has not yet initiated the OMB approval process to implement these changes. ACF will publish **Federal Register** notices soliciting public comment on specific revisions to those information collections and the associated burden estimates and will make available the proposed forms and instructions for review.

CCDF title/code	Relevant section in the proposed rule	OMB Control Number	Expiration Date	Description
ACF–118 (CCDF State and Territory Plan)	§§ 98.14, 98.15, and 98.16 (and related provisions).	0970-0114	02/29/2024	The final rule adds new requirements which States and Territories are required to report in the CCDF Plans.
ACF–118–A (CCDF Tribal Plan) Part I and Part II	§§ 98.14, 98.16, 98.18, 98.81, and 98.83 (and related sections).	0970-0198	4/30/2025	The final rule adds new requirements which Tribal lead agencies with medium and large allocations are required to report in the CCDF Plans.
ACF–405 (Error Rate Corrective Action Plan)	§ 98.102	0970-0323	01/31/2025	The final rule modifies this information collection to add new components to the corrective action plans.
ACF-800 (CCDF Annual Aggregate Child Care Data Report- States and Territories)	§ 98.71	0970-0150	03/31/2025	The final rule modifies this existing information collection to require States and

				Territories report on data related to presumptive eligibility.
ACF-801 (CCDF Monthly Child Care Report-States and Territories)	§ 98.71	0970-0167	04/30/2025	The final rule removes the regulatory requirement to report information on additional fees charged to families, where applicable. This data element has never been added to the ACF-801 form.
Consumer Education Website and Reports of Serious Injuries and Deaths	§§ 98.33, 98.42	0970–0473	05/31/2026	The final rule modifies this information collection to require posting information about parent co-payments.

The table below provides current approved annual burden hours and estimated annual burden hours for these existing information collections that are modified by this final rule.

ANNUAL BURDEN ESTIMATES						
Instrument	Total number of respondents	Total number of responses per respondent	Current approved average burden hours per response	Current annual burden hours	Estimated average burden hours per response based on final rule	Estimated annual burden hours based on final rule
ACF–118 (CCDF State and Territory Plan)	56	1	200	3,733	205	3,827

ACF–118–A (CCDF Tribal Plan)	265	1	144	11,448	147	12,985
ACF–405 (Error Rate Corrective Action Plan)	5	2	156	520	156	520
ACF-800 (CCDF Annual Aggregate Child Care Data Report-States and Territories)	56	1	40	2,240	40	2,240
ACF-801 (CCDF Monthly Child Care Report-States and Territories)	56	4	25	5,600	25	5,600
Consumer Education Website	56	1	300	16,800	315	17,640

We did not receive any public comments on these burden estimates, which were included in the NPRM.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act) requires federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term ''small entities,'' as defined in the RFA, comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a 3 percent impact on revenue on at least 5 percent of small entities. The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96–354), that this rule does not result in a significant impact on a substantial number of small entities, as this rule primarily impacts States, territories, and tribes receiving federal CCDF grants. Therefore, an initial regulatory flexibility analysis is not required for this document.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “federal mandates” that may result in expenditures by state, local or tribal governments, in the aggregate, or the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2023 the threshold is approximately $177 million. When such a statement is necessary, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule. The regulatory impact analysis includes information about the costs of the final regulation. As described in the preamble to this final rule, several of the changes are at the option of states, territories, and tribes. In addition, states, territories, and tribes receive over $11 billion annually in federal funding to implement the program.

Executive Order 13132

Executive Order 13132 requires federal agencies to consult with state and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This rule does not have substantial direct impact on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule does not pre-empt state law. In large part, the changes included in the final rule are adopting practices already implemented by many states or are increasing flexibilities in administering the CCDF program. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Assessment of Federal Regulations and Policies on Families

Assessment of Federal Regulations and Policies on Families Section 654 of the Treasury and General Government Appropriations Act of 2000 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF believes it is not necessary to prepare a family policymaking assessment (see Pub. L. 105–277) because the action it takes in this final rule will not have any impact on the autonomy or integrity of the family as an institution.

VIII. Regulatory Impact Analysis

We have examined the impacts of the rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Executive Orders 12866 and 13563 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts;

and equity). This analysis identifies economic impacts that exceed the threshold for significance under Section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094.

We conducted an initial Regulatory Impact Analysis (RIA) in the Notice of Proposed Rulemaking to estimate and describe the expected costs, transfers, and benefits resulting from the proposed rule. This included evaluating State and Territory polices in the major areas of policy change: Eligibility, Payment Rates and Practices, and Family Co-payments. Due to limitations in data, we did not include Tribal policies in our analysis.

Based on feedback received during the public comment period, we have further refined these estimates for the final rule. Some of the more substantial changes made in this version of the RIA include:

- Systems Costs: This RIA now includes a systems cost estimate to account for possible IT changes needed to implement requirements in the final rule;
- Administrative Data: All the calculations in this RIA have been updated to use FY 2021 Preliminary ACF-801 data, which was not available when writing the NPRM; and
- Delineating between Required and Optional Policies: The RIA includes projections for both policies required by the rule and for those that are at Lead Agency option. This version of the RIA has been restructured to better clarify which policies are required and which are optional.

A. **Context and Assumptions**

All changes in this rule are allowable costs within the CCDF program and we expect activities to be paid for using CCDF funding. Each year, approximately $11.6 billion in federal funding is allocated for CCDF.[92] In addition to the federal funding, States may contribute their own funds to access additional federal funds, increasing total FY 2023 CCDF funding to about

[92] https://www.acf.hhs.gov/occ/data/gy-2023-ccdf-allocations-based-appropriations.

$13.7 billion. At the same time, Federal funding for child care has never been sufficient to serve all eligible children and support consistent access to high quality programs. Some States have also been increasing state investment in child care beyond the required levels, but even with combined federal and state resources, states have to make difficult trade offs. Without additional funding, these trade offs will continue as Lead Agencies implement provisions in this rule, including balancing quality improvements, enrolling additional children, and investing in polices that promote stability for enrolled families. However, Lead Agencies have flexibility in how they implement many of the provisions and may adjust other policies to offset or account for additional costs associated with policy changes. They may also draw from other federal funding streams to support the policy changes included in this rule, including through allowable transfers from TANF.

1. **Baseline**

To get an accurate account of the costs, transfers, and benefits of this rule, we first established a baseline for current CCDF State and Territory practices. The policies described in this RIA represent the most current information available regarding the policies that were in place at the time that this final rule was published. The Lead Agency data and policies described in this RIA are gathered primarily from:

- *ACF-801 (2021, preliminary):*[93] This is case-level data that are collected monthly. The preliminary 2021 data are the most recent data available.
- *ACF-118 (State and Territory Plan, 2022-2024):*[94] This is the application for CCDF funds and provides a description of, and assurances about, the Lead Agency's child care program and all services available to eligible families. Data from the FFY 2022-2024 State and Territory Plans were the most current data available.

[93] Unpublished ACF-801 Preliminary Administrative Data.
[94] https://www.acf.hhs.gov/occ/report/acf-118-overview-state-territorial-plan-reporting.

- *CCDF Policies Database (2020):*[95] The CCDF Policies Database, managed by the Office of Planning, Research, and Evaluation (OPRE) and the Urban Institute, is a single source of information on the detailed rules for States’ and Territories’ CCDF child care subsidy programs. Data was from the “State Variations in CCDF Policies as of October 1, 2020.

Since dollar figures are collected from reports that span different years, we adjust all dollar amounts to account for inflation. For the purposes of this RIA, all dollar figures were converted to 2023 dollars.

Table 1 – Average Monthly Adjusted Number of Families and Children Served (FY 2021)[96]

Average Number of Families	Average Number of Children
797,200	1,313,700

Table 2 – Number of Child Care Providers Receiving CCDF Funds (FY 2021)[97]

Licensed or Regulated				Legally Operating without Regulation[98]							TOTAL
				Child’s Home		Family Home		Group Home		Center	
Child’s Home	Family Home	Group Home	Center	Relative	Non-Relative	Relative	Non-Relative	Relative	Non-Relative		
114	44,510	20,289	70,204	11,213	4,266	46,791	12,172	0	0	5,310	214,861

2. **Implementation Timeline**

Provisions included in the final rule are effective 60 days from the date of publication of the final rule. Compliance with provisions in the final rule would be determined through ACF

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95 CCDF Policies Database, 2020 data. https://ccdf.urban.org/.
96 Unpublished ACF-801 Preliminary Administrative Data.
97 Ibid.
98 For ACF-801 reporting purposes, “legally operating without regulation” means a legally operating, unregulated child care provider that, if not participating in the CCDF program, would not be subject to any state or local child care regulations. https://www.acf.hhs.gov/sites/default/files/documents/occ/ACF-801_Form_and_Instructions_for_federal_fiscal_years_FY2023_and_later.pdf

review and approval of CCDF Plans, including Plan amendments, as well as through other federal monitoring, including on-site monitoring visits as necessary.

While this rule does not have specific implementation dates for individual provisions, we acknowledge that it may take Lead Agencies some time to implement the policies included in this final rule particularly since some of these are at the Lead Agency's option and some of the changes in this final rule may require State, Territory, or Tribal legislative or regulatory action in order to implement. During the public comment period, we received a number of comments about the one year implementation period. Commenters pointed out that implementing these changes would require a significant amount of time, especially when factoring in the changes that require legislative approval. Therefore, in response to comments received during the public comment period, we are allowing Lead Agencies the option to request transitional and legislative waivers for 2 years, which will allow up to two years of implementation instead of one.

This revised cost estimate assumes a two year ramp up period. Our projections assume a third of the full costs/transfers/benefits in year 1, two-thirds in year 2, with full implementation in year 3 and the following years. The exception to this is the systems-related cost estimate. Since this represents the upfront cost of changing IT systems, those will be split evenly across the implementation period and will not have an ongoing cost in year 3 and beyond. The costs, transfers, and benefits in this estimate are phased-in as follows:

- **Year 1:** One third of the full costs/transfers/benefits estimate, with half of the cost of the systems-related estimate.
- **Year 2:** Two-thirds of the full costs/transfers/benefits estimate, with half of the cost of the systems-related estimate.
- **Years 3 through 5:** Full costs/transfer/benefits estimate, with no systems-related cost since that would no longer apply.

The RIA examines the potential costs, transfers and benefits over a 5 year window. During the public comment period, it was clear that some commenters were confusing the 5 year window with the implementation timeline. To clarify, the 5 year examination window is not the implementation timeline. The purpose of the 5 year window is to examine the impact of the regulation over time. Since the projected costs, transfers, and benefits stabilize by the beginning of year 3, we chose a 5 year window for our projections.

3. **Need for Regulatory Action**

Congress last authorized the Act in November 2014. In September 2016, HHS published a final regulation, clarifying the new provisions of the Act and building on the priorities that Congress included in reauthorization. In the years since then, HHS has carefully explored the successes and challenges in the Act's implementation, learned from the experiences of Lead Agencies, providers, families, and early educators, and assessed the impact and implications of the COVID-19 public health emergency.

The revisions in this final rule are designed to build on the work of the past, creating a program that effectively supports child development and family economic well-being.

These policies will help families access high-quality child care and mitigate myriad negative consequences of inadequate access to care. Specifically, the revisions:

- Lower child care costs for families,
- Improve parent choice and strengthen child care payment practices, and
- Streamline the process to access child care subsidies.

CCDF plays a vital role in helping families with low incomes afford child care and go to work, but some current regulations do not adequately support families or further CCDF's purpose and goals. This regulatory action provides much needed direction to improve access to affordable child care by lowering parents' costs and increasing parents' child care options. Further, this regulatory action provides additional clarity around what is and what is not allowed.

B. Analysis of Transfers and Costs

OMB Circular A-4 notes the importance of distinguishing between costs to society as a whole and transfers of value between entities in society. While some of these policies may represent budget impacts to CCDF Lead Agencies, from a society-wide perspective, they mostly redistribute costs from one portion of the population to another.

Most of the impacts from these provisions are categorized as transfers. These transfers between entities are discussed in more detail later in this regulatory analysis. The exceptions are:

- Administrative costs associated with grants and contracts;
- IT systems-related costs associated with prospective payment, enrollment-based payment, and grants and contracts; and
- Benefits associated with encouraging an online component to the initial eligibility application process.

During the public comment period, we requested comment about potential systems needs to get a better understanding of the potential need in this area. We received comments about the cost to updating IT systems in order to comply with the requirements in the final rule and received some examples from Lead Agencies about the scope of the changes that would need to be made. The systems estimate was not included in the version of RIA in the NPRM, since the public comment period sought additional information on this matter. Based on the information we received, we are adding this systems cost to this version of the RIA. The discussion of this estimate is included in Systems (Cost) section below.

The RIA examines the impact of both required and recommended policies, which our calculations estimate the annualized impact to be $206.6 million in transfers, $13.1 million in costs, and $15.3 million in benefits. However, it is important to distinguish between the policies that Lead Agencies are required to implement and the policy options which Lead Agencies are allowed to choose whether or not to adopt. To make this distinction as clear as possible, we are organizing our analysis by required and optional policies in the final rule. Based on the calculations in this RIA, we estimate the quantified impact of the required policies in the final rule to be an annualized amount of $57.2 million in transfers and $9.0 million in costs. We estimate the quantified impact of the optional policies in the final rule to be an annualized amount of $149.4 million in transfers, $4.1 million in costs, and $15.3 million in benefits.

1. *Transfers and Costs to Implement Requirements in the Final Rule*

In this RIA, we examine all the components of the final rule that project to have an economic impact. Of those that are required, we have identified Additional Child Eligibility, Enrollment-based Payment, and the Permissible Co-payments as transfers, while Grants and Contracts and Systems-related costs are designated as costs. When we isolate just those policies that are required in the final rule, we project an annualized total of $57.2 million in transfers and an annualized total of $7.9 million in costs.

<u>Additional Child Eligibility (Transfer)</u>: This policy clarifies how Lead Agencies must comply with current regulations by offering at least a full 12 months of eligibility to all children receiving CCDF subsidies, even if they are additional children in a family already participating in CCDF. Currently some Lead Agencies are out of compliance with this requirement by limiting the eligibility period for an additional child until the end of the existing child's eligibility period, at which point all children in the family would be re-determined. This clarification benefits children currently participating in CCDF because it increases the length of time they would receive child care subsidies, but for this estimate, is considered a transfer because those funds are not being used to enroll new children into the CCDF program. The estimate for this is based on the following assumptions:

- Number of Additional Children: We do not currently have data on the birth rate of new children among CCDF families, however, according to the CDC, the fertility rate is 56.3

births per 1,000 women aged 15-22, or 5.63 percent.[99] For the sake of this analysis, we are assuming that 5 percent of the current CCDF population would have a new child within the year. We then applied this to the number of families served (ACF-801 data) to estimate the number of new children per year.

- Average Number of Additional Months of Care: For this estimate, we are assuming that the new children would receive an average of 6 additional months of care (or half of the required minimum 12-month eligibility) due to this policy. Since the minimum would be zero months and the maximum would be twelve months, absent specific data in this area, taking the middle between the maximum and the minimum amount of possible assistance was the most reasonable estimate and one that would minimize a misestimate.
- Number of Lead Agencies Currently Out of Compliance: We calculated the percentage of Lead Agencies that would need to change their policies to comply with this new policy, examining the range of transfer amounts if 5 percent and 45 percent of Lead Agencies needed to come into compliance. However, based on policy questions received since the 2016 final rule, for this estimate we calculate that a quarter of Lead Agencies will have to update their policies, so we are taking 25 percent of the total estimate.

Using the above assumptions and applying the average weighted subsidy amount (ACF-801 data), we came to an annualized transfer amount of $31.4 million.

<u>Enrollment-based Payment (Transfer)</u>: This policy requires Lead Agencies to pay providers based on enrollment instead of attendance. During the comment period, we received comments in support of this policy including one that cited a survey that showed 80 percent of child care center directors, administrators and family child care owners, and operators who responded to the survey would be more likely to serve CCDF families if the Lead Agency paid based on enrollment instead of attendance. To estimate the financial impact of this policy, we

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[99] https://www.cdc.gov/nchs/fastats/births.htm.

used data from the CCDF Policy Database and the CCDF State and Territory Plans to determine (1) which Lead Agencies would need to change their policy, (2) how many absence days those Lead Agencies are currently allowing, and (3) how many additional days of care they would have to pay for under this new policy.

To begin, we had to identify an average absence rate for children in child care. According to a 2015 study of Washington D.C.'s Head Start program,[100] students were absent for eight percent of school days on average. This works out to 1.8 days per month (weekdays only). However, seven percent of children missed 20 percent or more of enrolled days (equivalent to 4.4 or more weekdays per month). In another study among a nationally representative sample of Head Start children, children were on average absent 5.5 percent of days (or 1.2 days per month).[101] However, 12 percent of children were chronically absent, that is, absent for more than ten percent of days (or more than 2.1 days per month). And in a study of kindergarten attendance in one county in a mid-Atlantic state, researchers found that on average, kindergartners missed 9.9 days of school (out of the entire school year); that works out to about 1 day per month.[102]

During the public comment process, a commenter referenced an American Academy of Pediatrics study[103] on child illness, saying that the data in this study suggests that the RIA may have been underestimating the rate of absences. However, upon closer examination of the data in that study, it showed that children are sick an average of 14 times over the first 3 years of life, for a median of 94 days over those 3 years. This works out to 31 days per year or 2.6 days per month. When we adjust to account for weekdays vs. weekends, this comes to an average estimate

[100] https://www.urban.org/sites/default/files/publication/39156/2000082-absenteeism-in-dc-public-schools-early-education-program_0.pdf.
[101] Ansari, A., and Purtell, K.M. (2018). Absenteeism in Head Start and Children's Academic Learning. Child Development, 89(4): 1088-1098.
[102] Ansari, A. (2021). Does the Timing of Kindergarten Absences Matter for Children's Early School Success? School Psychology, 36(3): 131-141.
[103] Morrison, J. (May 23, 2018). Are Young Children Really Sick All The Time? AAP Journals Blog. https://publications.aap.org/journal-blogs/blog/1994/Are-Young-Children-Really-Sick-All-The-Time?

of 1.8 sick weekdays per month, which is consistent with the Head Start estimates referenced above.

Taking the literature into consideration, this estimate assumes that a small number (12 percent) of children would be absent 5 days a month; the remaining children would be absent only 2 days a month. We then calculated how many additional days per month each State would have to pay for when they adopt this new policy. We then applied that number of additional days to the average daily subsidy rate (based on ACF-801 data). This gave us an annualized total of $13.2 million.

Permissible Co-payments (Transfer): This policy determines co-payments above 7 percent of a family's income to be an impermissible barrier to child care access and prohibits them. We categorize this policy as a transfer because it transfers the cost from families who would otherwise pay high out of pocket costs or forgo care to Lead Agencies.

To calculate this, we took the CCDF State and Territory Plan data on family co-payments, where Lead Agencies report their lowest and highest co-pay amounts. Lead Agencies report the family income levels associated with those co-payment amounts, so we then calculated what the 7 percent threshold would be and how many of the reported co-payments were above that threshold. There were 22 Lead Agencies that reported co-payment levels above 7 percent of the family's income. This impacts over sixty thousand CCDF families. Since CCDF State and Territory Plan data includes the exact amount of the co-payment, we were able to calculate precisely how much of each co-payment was above the 7 percent threshold. Using CCDF data on the number of families, we estimated the cost burden that would be transferred from families to Lead Agencies.

Since the highest co-pay amounts would only apply to CCDF families at the highest income levels, we used ACF-801 data which shows that 19 percent of families are in the highest income category (above 150 percent of federal poverty line (FPL)).[104] When we apply the current amount of co-pay over 7 percent to these families, we get an annualized transfer amount of $12.6 million.

This is a likely overestimate, because while families with incomes above 150 percent of FPL are the highest income category in our available data, not all of these families would be paying the highest possible co-payment. Families remain federally eligible for CCDF until their incomes reach 85 percent of State Median Income, which is significantly higher than 150 percent of FPL. Additionally, there may be families with incomes below 150 percent of FPL that are currently paying above the 7 percent co-pay threshold, however those families would likely be more than offset by the overestimate included in our methodology.

We received comments in this area from Lead Agencies stating that while they understand the intent of this requirement, it would take some time and changes to their current subsidy IT system. In recognition of comments in this area, we have adjusted the implementation timeline (through transitional waivers) and added a systems-related estimate to this RIA.

<u>Grants and Contracts (Cost)</u>: To address lack of supply for certain types of care, the final rule also requires the use of some grants and contracts for direct services. Grants or contracts can be one of the most effective tools to build supply in underserved geographic areas and for underserved populations. They also have the benefit of providing greater financial stability for child care providers.

To estimate the financial impact of implementing the grants and contracts requirement, we estimated the costs for a small, medium, and large States based on FFY 2021 CCDF caseload that include staff to manage grants and contracts (program manager, fiscal office staff, monitoring staff), travel, and administrative costs. For staff costs, we identified staff positions

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104 https://www.acf.hhs.gov/sites/default/files/documents/occ/Characteristics_of_Families_and_Children_FY2020.pdf

necessary to accomplish the kind of changes that would be necessary to implement these policies and used national BLS wage data[105] to estimate the amount of salary needed for implementation. This included program managers ($92,720 annual salary), fiscal office staff ($49,710 annual salary), and monitoring staff ($59,650 annual salary). As with other cost estimates, we multiplied salary data by two to account for benefits. Since we know that there would be a range of possible costs, we estimated a high-end and low-end estimate for each of these items. For staffing, the estimate included a range of staffing expectations depending on the size of the state. For the high-end estimates, this ranged from approximately one and a half FTEs for small States to over three designated FTEs in the larger States. The low-end estimates assume that States already have infrastructure and personnel for grants and contracts in place so the estimates assign part time duties to handle the new requirement. The costs were based on information gathered by the technical assistance providers that have worked with Lead Agencies on implementing grants and contracts. We applied these estimated costs to those States that are not currently using grants and contracts in a manner that is consistent with the requirement.

We averaged these costs over the 5-year window used for this analysis, taking into account the 2-year phase-in period, and came to an estimated annualized amount of $4.9 million to implement this policy.

Systems (Costs): During the public comment period, we asked for comment in this area and received comments stating that there would be a cost to updating IT systems in order to comply with the requirements in the final rule. This estimate was not included in the RIA of the NPRM, but now that we have received additional information and context, we are adding this to this version. One commenter mentioned the delinking provider payments from child attendance required 6 months to make the required changes to their existing systems. In another example, the commenter mentioned that it took over a year to revise their procurement system in order to

[105] https://www.bls.gov/oes/current/oes_nat.htm.

implement prospective payments. Another commenter said that the proposed changes would take a minimum of one year to implement and requested a two-year delay in implementation to ensure successful rollout. In response to these and related comments, we have expanded the implementation timeline to two years (through transitional and legislative waivers) and added this systems cost estimate to the RIA.

Lead Agency IT systems needs will vary widely depending on a number of factors, including but not limited to the current state of the IT system and which Lead Agencies have already implemented some of these policies (particularly those Lead Agencies who utilized COVID-related funding to implement policies now covered by the final rule). Rather than trying to estimate the individual systems cost of individual provisions, we used a method based on projected FTEs, including costs associated with contractors and procurement, needed to make these changes. This estimate is meant to cover a number of provisions in the final rule, some of which are required and some that are optional. Since the allocation of expenses to required versus optional policies will depend on each state's needs, for the purposes of this estimate we are evenly distributing the costs, with 50 percent of this systems estimate assigned to required policies and 50 percent of the systems estimate assigned to optional policies.

First, we identified staff positions necessary to accomplish the kind of changes that would be necessary to implement these policies. The staff that we identified from the BLS database[106] were: Project Manager (Computer Systems Design and Related Services) with an annual salary of $113,950, Computer and Information Systems Managers (which includes the duties of a business and systems analyst) with an salary of $173,670, Database Architects at an annual salary of $136,540, and Database Administrators with an annual salary of $102,530. For the purposes of these calculations, we took wage data from the BLS database and multiplied the average salary for each position by two to account for employee benefits.

[106] BLS Database https://www.bls.gov/oes/current/oes_nat.htm.

To develop our range of estimates, we came up with three scenarios: a low, medium, and high estimate to represent three different potential levels of need. For each tier, we estimated the number of employees (and the percentage of their time) necessary to handle a volume of changes. The tiers are as follows:

- Low Need (equivalent to 1.25 FTEs or 2,600 project hours): 1 Project Manager (25 percent), 1 Computer and Information Systems Manager (25 percent), 1 Database Architect (25 percent), and 1 Database Administrator (50 percent). Cost per Lead Agency: $315,000 for the full two-year implementation period.
- Medium Need (equivalent to 2.5 FTEs or 5,200 hours): 1 Project Manager (50 percent), Computer and Information Systems Manager (50 percent), 1 Database Architect (50 percent), and 1 Database Administrator (100 percent). Cost per Lead Agency: $630,000 for the full two-year implementation period.
- High Need (equivalent to 5 FTEs or 10,400 hours): 1 Project Manager (100 percent), 1 Computer and Information Systems Manager (100 percent), 1 Database Architect (100 percent), and 2 Database Administrators (100 percent). Cost per Lead Agency: $1.3 million for the full two-year implementation period.

Since each State's need will vary depending on the current state of their IT system and the particular policies they are attempting to implement, for the purposes of this RIA, we assume an even distribution of one third of the States at each tier of need. Based on this analysis, we estimated the total systems cost for the implementation window would be $41.0 million. When distributed across the implementation window, that comes to approximately $20.6 million per year for the first two years, half of which would be to implement the required policies in the rule. Since this is the cost of an upfront IT systems change, once those changes are complete, our estimate does not include an ongoing cost in years 3 through 5. The projected cost of this would be $10.3 million per year to implement required policies over the 2 year implementation period.

When projected out over the 5 year examination window (which is the timeframe we are using to analyze all other policies in the RIA), the annualized cost is $4.1 million for implementing required policies in the final rule.

Table 3 – Requirements in the Final Rule, Transfers and Costs ($ in millions)

	Implementation Period (years 1-2)	Ongoing annual average (years 3-5)	Annualized transfer amount (over 5 years)			Total present value (over 5 years)		
			Undis-counted	Discounted		Undis-counted	Discounted	
				3%	7%		3%	7%
Transfers ($ in millions)								
Additional Child Eligibility	$19.6	$39.2	$31.4	$31.0	$30.5	$156.9	$146.2	$133.7
Enrollment-based Payment	$8.3	$16.5	$13.2	$13.1	$12.9	$66.2	$61.6	$56.4
Permissible Co-payments	$7.9	$15.7	$12.6	$12.4	$12.2	$62.9	$58.6	$53.6
Total	**$35.7**	**$71.5**	**$57.2**	**$56.5**	**$55.5**	**$285.9**	**$266.4**	**$243.7**
Costs ($ in millions)								
Grants and Contracts	$3.1	$6.1	$4.9	$4.8	$4.8	$24.5	$22.8	$20.9
Systems	$10.3	$0	$4.1	$4.3	$4.5	$20.6	$20.3	$19.9
Total	**$13.3**	**$5.1**	**$9.0**	**$9.1**	**$9.3**	**$450**	**$43.1**	**$40.7**

2. *Transfers and Costs to Implement Optional Policies in the Final Rule*

In addition to the above requirements, this rule makes new clarifications that show a range of policy options that Lead Agencies have at their disposal. While these are not required, we do encourage Lead Agencies to adopt these policies when possible and are therefore accounting for the potential impacts in this RIA. For these optional policies, we have identified Presumptive Eligibility, Paying Full Rate, Waiving Co-payments as transfers. For costs in this area, we are allocating the remaining 50 percent of the overall Systems cost estimate to the implementation of optional policies. When we isolate the transfer and cost impact of optional policies in the final rule, we project an annualized total of $149.4 million in transfers and an annualized total of $4.1 million in costs.

Presumptive Eligibility (Transfer): This policy permits, but does not require, CCDF Lead Agencies to allow families to begin receiving child care assistance before all required documentation has been submitted.

Presumptive eligibility primarily constitutes a transfer from families, who would otherwise pay unsubsidized child care costs or forego costs while their application is under review, to Lead Agencies. More specifically, if some families who receive presumptive assistance are found to be ineligible once full documentation is received, that would be considered a transfer of resources between certain populations of families.

Based on other programs that have used presumptive eligibility, such as Medicaid and the Children's Health Insurance Program (CHIP), we do not anticipate this will be a high percentage of families, particularly since Lead Agencies using this policy can put in place documentation requirements that would limit the number of families that are inaccurately determined to be eligible. However, to the extent these cases may occur, they would represent a transfer of funds from CCDF-eligible children to CCDF-ineligible children. The cost in this estimate relies on the following assumptions:

- Estimated Number of Children: Not all families would need to use presumptive eligibility. Given that this is a new policy and there is not data to support some of the variables in this estimate, for the purposes of this calculation, we calculated that of the children applying for CCDF, only a fraction will actually utilize presumptive eligibility. This estimate assumes that every month, a number equal to 5 percent of the current CCDF population would use the presumptive eligibility option.
- Anticipated Lead Agency Take-up: This policy is not required, and we do not anticipate that all Lead Agencies will adopt this policy option. For the purposes of the RIA, we used reports showing 21 States currently use presumptive eligibility for Medicaid and CHIP[107]

[107] https://www.medicaid.gov/medicaid/enrollment-strategies/presumptive-eligibility/index.html.

(as of August 31, 2021) as a proxy for those Lead Agencies that would also adopt it for CCDF. We are not assuming that these exact same States will also use presumptive eligibility, but we believe that it is helpful in estimating the percentage of families for whom this policy would apply.

- Percentage of Children Eventually Determined Ineligible: An Urban Institute study on presumptive eligibility found a small number of families receiving presumptive eligibility were eventually found to be ineligible. [108] The study does not cite a specific figure, but a low estimate seems reasonable because CCDF Lead Agencies can put safeguards in place (*e.g.*, requiring certain documentation before allowing presumptive eligibility) that would limit the number of families that are eventually determined ineligible. The estimate currently assumes that 5 percent of presumptive eligibility families—a small subset of families receiving CCDF—would eventually be found ineligible. We examined a range of possibilities for families that may eventually be found ineligible, with estimates as high as 10 percent and as low as 2.5 percent of presumptive eligibility families. However, lacking any specific data in this area, we believe that 5 percent is a reasonable estimate.
- Amount of Time that CCDF-Ineligible Children will Receive Care: The range of possible months of assistance that a family could receive through this policy is between zero and 3 months. Since this is a new policy, absent relevant data, we are estimating that families will receive half of the 3 months allowed by the policy (6 weeks) before they are found to be ineligible.

Applying the average subsidy amount of approximately $8,400 per year[109] (which has been adjusted for inflation to 2023 dollars) to the above assumptions, we calculated an annualized transfer of $16.4 million for this policy.

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[108] Adams, G. (2008). Designing Subsidy Systems to Meet the Needs of Families: An Overview of Policy Research Findings. Washington, DC: Urban Institute. https://www.urban.org/sites/default/files/publication/31461/411611-Designing-Subsidy-Systems-to-Meet-the-Needs-of-Families.pdf.

[109] Unpublished Preliminary FY 2021 CCDF Administrative Data.

Paying Established Payment Rate (Transfer): This policy codifies existing policies that Lead Agencies may pay child care providers the full published subsidy rate even if the provider's private pay rate is lower to help cover the cost of providing care. We are categorizing this as a transfer because it would transfer the cost burden from the providers (who are currently providing equivalent services at relatively low rates) to the CCDF Lead Agency.

There are several limitations in the data that are discussed below. Given these limitations we initially used two different methods to assess the cost burden in the NPRM, which were used to validate each other. While the two approaches used very distinct methodologies, they arrived at similar estimates. However, data limitations preclude us from using both methodologies for the final rule. In the final rule, we updated our estimates throughout the RIA to reflect the most recent FY21 data, but do not have FY21 microlevel data. However, since the two analyses validated each other for the FY20 data set in the NPRM, we feel confident using our updated FY21 projection from Approach 1, described below.

- Base Subsidy Rates vs. Actual Payments (Approach 1): For this approach, we examined the following factors:
    - Base Subsidy Rates versus Actual Subsidy Payments: We examined the difference between the (1) Base Subsidy Rate as reported in the CCDF State and Territory Plans[110] and (2) the Average Subsidy Rate (the government portion of actual payments, excluding parent co-payment) as reported in the ACF-801 data.[111] To the extent that the average subsidy payment is lower than the reported base subsidy rate, we are attributing a portion of this difference to current policy limitations (*i.e.*, Lead Agencies currently paying providers no more than their private pay rate). While there may be a variety of factors explaining why the average subsidy payment is lower than the base payment rate (including co-payments), such as variation in attendance, for

[110] https://www.acf.hhs.gov/occ/report/acf-118-overview-state/territorial-plan-reporting.
[111] Unpublished Preliminary FY 2021 CCDF Administrative Data.

the purposes of this estimate we are attributing 25 percent of this difference to current policy limitations.

Note: The average subsidy payment figures in this calculation also include payments to providers that are above the reported base rate due to tiered reimbursement rates for higher quality and other characteristics. We did not have the data necessary to remove those payments. However, we still wanted to adjust our figures to account for these payments. Approach 2 (described below) used microdata to remove payments above the base rate from the sample and found that the difference between base rate and actual payments was twice as large as the amount when those payments remained in the sample. Using this information, we applied a factor of two to increase our estimate, simulating the removal of such payments (those paying above the base rate) from our sample.

- Setting: We looked at two sets of data: one for Family Child Care Home providers (including Group Homes) and another for Child Care Centers. We combined the estimates from each of these to come to the final total.
- Anticipated Take-up: Since this is not required and is an option already available to Lead Agencies, we examined a range of implementation rates. The annual amount for this estimate could be as high as $394 million if 25 percent of States adopted this policy and as low as $79 million if only 5 percent of States chose to implement. However, actual take-up will likely depend on availability of funding and given that this policy option is already available to Lead Agencies, we believe that a take-up rate in the middle to lower end of our estimated range would be the most accurate. For the purposes of this estimate, we assume that 10 percent of Lead Agencies will take up this policy.

Our calculation for approach #1 gave us an annual estimated transfer of $157.4 million when fully implemented and using the most recent FY 21 CCDF Administrative Data.

Once we take into account the 2-year implementation period, we have a final annualized transfer estimate of $126.0 million per year to implement this provision.

Waiving Co-payments for Additional Populations (Transfer): This policy allows Lead Agencies to choose to more easily waive co-payments for families with incomes up to 150 percent of FPL, families with children in foster and kinship care, and for eligible families with children with disabilities. Lead Agencies currently are automatically allowed this flexibility for families up to 100 percent of FPL and for vulnerable populations (and may propose to waive co-payments beyond 100 percent of FPL so long as they have a sliding scale). One Lead Agency submitted a comment highlighting an internal survey of participating families that showed the positive impact of waiving co-payments, which allowed families to continue to work or go back to work, explore educational opportunities, and achieve better financial security. To calculate the financial impact of this policy, we used state-by-state data (ACF-801) to determine how many CCDF families currently have a co-payment. This eliminates families from the estimate that already have their co-pays waived. We then look at the low and high co-pay amounts (as reported in the CCDF State and Territory Plans) and apply it to the remaining CCDF families based on the income distribution of CCDF families (ACF-801 data). We did not conduct separate estimates for children in foster and kinship care and children with disabilities because we have limited data on current co-payments for these populations.

For the purposes of this estimate, we applied the low co-payment level to families with incomes between 0-100 percent of FPL and the high co-payment levels to families with incomes between 100-150 percent of FPL. We note that this is likely an overestimate because families with incomes in the 100-150 percent of FPL range are not the highest earning families in the

CCDF program (which allows income up to the higher threshold of 85 percent of State Median Income, though this varies by state).

We then calculated the number of co-payments that would be waived if a subset of Lead Agencies implemented this policy. We calculated the transfer amount for a range of possibilities, including scenarios with a low estimate of 5 percent of Lead Agencies implementing the policy and a high estimate of 45 percent of Lead Agencies. However, based on anecdotal evidence and policy questions that have been submitted to OCC by Lead Agencies, we chose to use a midpoint of 25 percent implementation for the RIA.

Then, because Lead Agencies would have the option for how widely they chose to waive co-payments and how they apply these waivers to families within the State or territory, we estimated this at different tiers, showing the cost if Lead Agencies waived co-pays for 25 percent, 50 percent, 75 percent, and 100 percent of families with incomes under 150 percent of FPL. For the purposes of this cost estimate, we are assuming that the States adopting this policy will waive co-pays for 75 percent of families with incomes under 150 percent of FPL. This gave us an annualized transfer amount of $7.1 million to implement this policy.

Systems (Costs): We explain our methodology for the systems estimate above. When distributed across the two year implementation window, we estimate approximately $20.6 million per year for the first two years. Since this is the cost of an upfront IT systems change, once those changes are complete, our estimate does not include an ongoing cost in years 3 through 5. The projected cost of this would be $10.3 million per year to implement the optional policies over the 2 year implementation period. When projected out over the 5 year examination window (which is the timeframe we are using to analyze all other policies in the RIA), the annualized cost is $4.1 million for implementing optional policies in the final rule.

Table 4 – Optional Policies in the Final Rule, Transfers and Costs ($ in millions)

	Implementation Period (years 1-2)	Ongoing annual average (years 3-5)	Annualized transfer amount (over 5 years)			Total present value (over 5 years)		
			Undis-counted	Discounted		Undis-counted	Discounted	
				3%	7%		3%	7%
Transfers ($ in millions)								
Presumptive Eligibility	$10.2	$20.4	$16.4	$16.2	$15.9	$81.8	$76.2	$69.7
Paying Established Payment Rate	$78.7	$157.4	$126.0	$124.4	$122.3	$629.8	$586.8	$536.7
Waiving Co-payments for Additional Populations	$4.5	$8.9	$7.1	$7.1	$6.9	$35.7	$33.3	$30.4
Total	**$93.4**	**$186.8**	**$149.5**	**$147.6**	**$145.2**	**$747.2**	**$696.2**	**$636.8**
Costs ($ in millions)								
Systems	$10.3	$0	$4.1	$4.3	$4.5	$20.6	$20.3	$19.9
Total	**$10.3**	**$0**	**$4.1**	**$4.3**	**$4.5**	**$20.6**	**$20.3**	**$19.9**

C. Analysis of Benefits

The changes made by this regulation have the following primary benefits:

- Lowering parents' cost of care;
- Expanding parents' options for child care;
- Strengthening payment practices to child care providers;
- Making it possible for more providers to accept families with subsidy; and
- Easing family enrollment into the subsidy program.

Implementation of this rule will have direct impacts on two primary beneficiaries: working families with low incomes and child care providers serving children receiving CCDF subsidy.

In examining the benefits of this rule, there are both benefits that we were able to quantify (*e.g.*, applying online) and other benefits that, while we were not able to quantify for this analysis, have very clear positive impacts on children funded by CCDF, their families who need assistance to work, child care providers that care for and educate these children, and society at large. Where we are unable to quantify impacts of policies, we offer qualitative analysis on the benefit that the regulation will have on children, families, child care providers, and the public.

Lowering the cost of child care: For many families, child care is prohibitively expensive. In 34 States and the District of Columbia, enrolling an infant in a child care center costs more than in-state college tuition.[112] More than 1 in 4 families, across income levels, commits at least 10 percent of their income to child care. Households with incomes just above the federal poverty level are most likely to commit more than 20 percent of their income to child care.[113] In response, families often seek out less expensive care – which may have less rigorous quality or safety standards – or parents, particularly women, exit the workforce entirely.[114]

Among other purposes, Congress designated the Act to "promote parental choice," to "support parents trying to achieve independence from public assistance," and to "increase the number and percentage of low-income children in high-quality child care settings" (sec. 658A(b), 42 U.S.C. 9857(b)). High co-payments undermine these statutory purposes. Despite receiving child care subsidies, child care affordability remains a concern for families with low incomes and prevents families from feeling empowered to make child care decisions that best meet their needs. In 2019, 76 percent of surveyed households that searched for care for their young children had difficulty finding care that met their needs. Among this group, when respondents were asked the main reason for difficulty, the most common barrier was cost,

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[112] Child Care Aware of America. (2022). Price of Care: 2021 child care affordability analysis. Arlington, VA: Child Care Aware of America https://www.childcareaware.org/catalyzing-growth-using-data-to-change-child-care/#ChildCareAffordability.

[113] National Survey of Early Care and Education Project Team (2022): Erin Hardy, Ji Eun Park. 2019 NSECE Snapshot: Child Care Cost Burden in U.S. Households with Children Under Age 5. OPRE Report No. 2022-05, Washington DC: Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS). https://www.acf.hhs.gov/opre/report/2019-nsece-snapshot-child-care-cost-burden-us-households-children-under-age-5.

[114] Hill, Z., Bali, D., Gebhart, T., Schaefer, C., & Halle, T. (2021) Parents' reasons for searching for care and results of search: An analysis using the Access Framework. OPRE Report #2021–39. Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. https://www.acf.hhs.gov/opre/report/parents-reasons-searching-early-care-and-education-and-results-search-analysis-using.

followed by a lack of open slots.[115] Receiving child care subsidies alone is not enough for parents to feel secure in making ends meet. Multiple studies found that parents receiving subsidy continue to experience substantial financial burden in meeting their portion of child care costs.[116] Other research shows that higher out-of-pocket child care expenses (which may include co-payments) reduce families' child care use and parental (particularly maternal) employment.[117] Given that co-payments have been shown to limit parents' access to child care among CCDF-participating families in terms of both parents' ability to afford particular child care settings as compared to higher-income families (even among families eligible to receive CCDF), ACF is changing § 98.45 to reduce parent co-payments.

To make child care more affordable to families participating in CCDF, we make family co-payments above 7 percent of family income impermissible because they are a barrier to accessing care. The revisions also make it easier for Lead Agencies to waive co-payments for additional families.

Increase parent choice and strengthen and stabilize the child care sector: The revisions in this regulation require and encourage generally accepted payment rates and practices for providers that better account for the cost of care, and when implemented, would increase parent choice in care, support financial stability for child care providers that currently accept CCDF subsidies, and encourage new providers to participate in the subsidy system.

Correcting detrimental payment practices is critical for ensuring all families have access to high-quality child care. This regulation requires Lead Agencies to pay providers prospectively

[115] National Center for Education Statistics. 2019. National Household Education Surveys Program 2019. https://nces.ed.gov/nhes/young_children.asp.

[116] Scott, E. K., Leymon, A. S., & Abelson M. (2011). Assessing the Impact of Oregon's 2007 Changes to Child-Care Subsidy Policy. Eugene, Oregon: University of Oregon; Grobe, Deana & Weber, Roberta & Davis, Elizabeth & Scott, Ellen. (2012). Struggling to Pay the Bills: Using Mixed-Methods to Understand Families' Financial Stress and Child Care Costs. 10.1108/S1530-3535(2012)0000006007.

[117] Morrissey, Taryn W. "Child care and parent labor force participation: a review of the research literature." *Review of Economics of the Household* 15.1 (2017): 1-24. https://link.springer.com/content/pdf/10.1007/s11150-016-9331-3.pdf.

based on enrollment. To address lack of supply for certain types of care for populations prioritized in the Act, the rule also requires the use of some grants and contracts for direct services. Additionally, the regulation clarifies that Lead Agencies may pay providers the full established state payment rate, even if the rate is above the private pay price to adjust for the cost of care. Payments based on enrollment[118] and through grants and contracts[119] helped providers remain financially stable during the peak of the COVID-19 public health emergency. The revisions to payment practices and higher subsidy rates are also linked to higher-quality care and increases in the supply of child care.[120] [121] [122]

Streamline the process to access child care subsidies: The revisions in this regulation encourage Lead Agencies to reduce the burden on families to access child care subsidies. Current subsidy eligibility determination and enrollment processes create administrative burden that unnecessarily complicates how families access subsidies[123] and how fast.

In the context of child care subsidies, administrative burden disrupts initial and continued access to care, both of which are detrimental to children's development and families' employment security.[124] We see administrative burden play out, for example, when Lead Agencies assess family eligibility. A substantial portion of families who lose benefits still meet the criteria for participation. Within a few months, those same families can demonstrate eligibility and return for subsequent enrollment.[125] Workers with unexpected hours or limited

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[118] Lieberman, A. et al. (2021). Make Child Care More Stable: Pay by Enrollment. New America.
[119] Workman, S. (2020). Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care. Center for American Progress.
[120] Lieberman, A. et al. (2021). Make Child Care More Stable: Pay by Enrollment. New America.
[121] Workman, S. (2020). Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care. Center for American Progress.
[122] Greenberg, E. et all (2018). Are Higher Subsidy Payment Rates and Provider-Friendly Payment Policies Associated with Child Care Quality? Urban Institute.
[123] Adams, G. and Compton, J. (2011). Client-Friendly Strategies: What Can CCDF Learn from Research on Other Systems? Urban Institute.
[124] Adams, G., & Rohacek, M. (2010). Child care instability: Definitions, context, and policy implications. Urban Institute.
[125] Grobe, D., Weber, R. B., & Davis, E. E. (2008). Why do they leave? Child care subsidy use in Oregon. Journal of Family and Economic Issues.

control over their schedule are significantly more likely to lose child care subsidies.[126] Further, families who electively exit the program are three times more likely to do so during their redetermination month than any other time.[127] These studies suggest that these families missed out on benefits because of administrative challenges rather than issues with eligibility.

We were able to quantify the impact of the policy to encourage CCDF Lead Agencies to implement policies that ease the burden of applying for child care assistance, including allowing online methods of submitting initial CCDF applications. This would be a benefit to families who would not have to take time off from work, job search, or other activities to apply for child care assistance. To estimate this benefit, we used the following factors:

- Number of Families that would Benefit: As a baseline for the number of families that would be impacted by this policy, we assumed that the number of families applying every month is equal to 5 percent of the current CCDF monthly caseload, which means that over the course of a year, families equal to 60 percent of the current caseload are applying for child care. However, many more people apply for CCDF than receive assistance, so we doubled this number, assuming that for every family who applies to CCDF and receives assistance, there may be another family who applies and does not receive assistance.
- Estimated Time Saved: We are estimating that the online option would save families from missing 4 hours of time or half of a full day's work. This accounts for the time to actually process the application in person and time to travel to and from the appointment.
- Wages: We adopt an hourly value of time based on after-tax wages to quantify the opportunity cost of changes in time use for unpaid activities. This approach matches the default assumptions for valuing changes in time use for individuals undertaking

[126] Henly, J. et al. (2015). Determinants of Subsidy Stability and Child Care Continuity. Urban Institute.
[127] Grobe, D., Weber, R. B., & Davis, E. E. (2008). Why do they leave? Child care subsidy use in Oregon. Journal of Family and Economic Issues.

administrative and other tasks on their own time, which are outlined in an ASPE report on "Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices."[128] We start with a measurement of the usual weekly earnings of wage and salary workers of $1,059.[129] We divide this weekly rate by 40 hours to calculate an hourly pre-tax wage rate of $26.48. We adjust this hourly rate downwards by an estimate of the effective tax rate for median income households of about 17 percent, resulting in a post-tax hourly wage rate of $21.97. We adopt this as our estimate of the hourly value of time when calculating benefits associated with this impact. If we were to use a fully-loaded wage of $37.56/hour, the cost of full implementation would be over $30 million. However, for the accounting statement, we use the post-tax hourly wage of $21.97.

Using the above figures and applying them to the CCDF caseload, we estimate an annualized benefit of $15.3 million related to this policy.

Table 5 – Optional Policies, Benefits ($ in millions)

	Implementation Period (years 1-2)	Ongoing annual average (years 3-5)	Annualized benefit amount (over 5 years)			Total present value (over 5 years)		
			Undis-counted	Discounted		Undis-counted	Discounted	
				3%	7%		3%	7%
Streamlining the Process to Access Child Care Subsidies	$9.6	$19.2	$15.3	$15.1	$14.9	$76.6	$71.4	$65.3
Total	**$9.6**	**$19.2**	**$15.3**	**$15.1**	**$14.9**	**$76.6**	**$71.4**	**$65.3**

[128] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. 2017. "Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices." https://aspe.hhs.gov/reports/valuing-time-us-department-health-human-services-regulatory-impact-analyses-conceptual-frameworkhttps://aspe.hhs.gov/reports/valuing-time-us-department-health-human-services-regulatory-impact-analyses-conceptual-framework.

[129] U.S. Bureau of Labor Statistics. Employed full time: Median usual weekly nominal earnings (second quartile): Wage and salary workers: 16 years and over [LEU0252881500A], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/LEU0252881500A.https://fred.stlouisfed.org/series/LEU0252881500A. Annual Estimate, 2022.

Research clearly points to the benefits of access to high-quality child care, including immediate benefits for improved parenting earnings and employment.[130]In turn, improved employment and economic stability at home, combined with high-quality experiences and nurturing relationships in early childhood settings, reduces the impact of poverty on children's health and development. Evidence further shows the positive effects of high-quality child care are especially pronounced for families with low incomes and families experiencing adversity. Therefore, as children and families go through periods of challenge or transition, timely access to reliable and affordable care is especially critical. This includes when parents start a new job or training program, experience changes in earnings or work hours, move to a new area, or lose access to an existing care arrangement, which some families report are the circumstances that bring them to first apply for CCDF subsidies.[131] These are also circumstances under which CCDF has the potential to substantially impact family earnings, economic stability, and well-being.

Improving access to assistance also yields benefits in terms of child development outcomes for children who participate in CCDF as a result of this regulation. The provisions in this rule improve access and some children who might not have received subsidized care under the current rule (*e.g.*, those whose parents could not pay the co-pay) would receive subsidized care under these regulations. For these children, they are likely to receive higher quality care than they otherwise would have. Research has demonstrated clear linkages between high quality

[130] Morrissey, T.W. 2017. Child care and parent labor force participation: a review of the research literature. Review of Economics of the Household 15, 1–24. https://doi.org/10.1007/s11150-016-9331-3; Blau, D., Tekin, E. (2007). The determinants and consequences of child care subsidies for single mothers in the USA. Journal of Population Economics 20, 719–741. https://doi.org/10.1007/s00148-005-0022-2.; Shonkoff, J. P., & Phillips, D. A. (Eds.). (2000). *From neurons to neighborhoods: The science of early childhood development.* National Academy Press.; Herbst, C. (2017). Universal Child Care, Maternal Employment, and Children's Long-Run Outcomes: Evidence from the US Lanham Act of 1940. Journal of Labor Economics, 35 (2). https://doi.org/10.1086/689478.
[131] Lee, R., Gallo, K., Delaney, S., Hoffman, A., Panagari, Y., et al. (2022). Applying for child care benefits in the United States: 27 families' experiences. US Digital Response. https://www.usdigitalresponse.org/projects/applying-for-child-care-benefits-in-the-united-states-27-families-experiences.

child care and positive child outcomes, including school readiness, social-emotional outcomes, educational attainment, employment, and earnings.[132]

D. Distributional Effects

We considered, as part of our regulatory impact analysis, whether changes would disproportionately benefit or harm a particular subpopulation. As discussed above, benefits accrue both directly and indirectly to society. Some of the policies included in this regulation are at the Lead Agency option, so the impacts will be dependent upon (1) if the Lead Agency chooses to adopt the policy, and (2) how they choose to implement the policy given the available funding. When examining the potential impacts of these policies, there are several required policies where certain subsets of the population may be impacted differently by the policies.

While the policies will limit the amount of family co-payment that CCDF families will have to pay, the child care providers must still be compensated for that amount. That means that the burden of those co-payment costs shift to the CCDF Lead Agency. Given finite funding for CCDF, the increase in payments for which Lead Agencies are now responsible would mean that there are less resources for new CCDF families because families that participate in CCDF receive higher subsidies for a longer period of time and for more children.

Similarly, the requirement to pay providers based on a child's enrollment rather than attendance will stabilize funding for providers, may increase the amount a Lead Agency pays if they were not previously paying for absence days in the same manner parents without child care subsidies by for absence days. This creates a transfer in resources from the child care provider,

[132] Deming, David. 2009. "Early Childhood Intervention and Life-Cycle Skill Development: Evidence from Head Start." American Economic Journal: Applied Economics, 1 (3): 111-34.; Duncan, G. J., and Magnuson, K. 2013. "Investing in Preschool Programs." Journal of Economic Perspectives, 27 (2): 109-132.; Duncan, G. J., and Magnuson, K. 2013. "Investing in Preschool Programs." Journal of Economic Perspectives, 27 (2): 109-132.; Weiland, C., Yoshikawa, H. 2013. "Impacts of a Prekindergarten Program on Children's Mathematics, Language, Literacy, Executive Function, and Emotional Skills." Child Development, 86(6), 2112-2130.; Heckman, James J., and Tim Kautz. "Fostering and Measuring Skills Interventions That Improve Character and Cognition." In The Myth of Achievement Tests: The GED and the Role of Character in American Life. Edited by James J. Heckman, John Eric Humphries, and Tim Kautz (eds). University of Chicago Press, 2014. Chicago Scholarship Online, 2014. https://doi.org/10.7208/chicago/9780226100128.003.0009

who previously had to continue running the program without funding on days when the child was absent, to the Lead Agency. This shift in funding could decrease the amount of funding allocated by the Lead Agency for direct services, and therefore, could result in a decrease in the number of children served. Based on our estimated amount of combined required transfers (at full implementation; from enrollment-based payment, permissible co-payments, grants or contracts, and systems investments) and the average subsidy payment amount, we estimate that the transfers for these required policies could lead to a reduction in caseload of approximately 4,570 children per year, or about a third of 1 percent of the FY 2021 caseload, without additional resources.

For the eligibility policies, we are not projecting a direct reduction in caseload. This is because for both the presumptive eligibility policy and the new child eligibility policy, these represents transfers from one child to another. The result is a shift in which child is occupying a CCDF slot, but we do not project that these policies would lead to a decrease in the number of children served.

For those children who potentially would have received subsidies under the previous rule, but do not receive subsidies under this final rule, it is possible that they would receive unregulated care which tends to be lower quality and less stable. However, we expect that, overall, these policies will improve quality and stability of care for children who continue to participate in CCDF.

While we do not anticipate a direct reduction in caseload from the eligibility policies themselves, we do acknowledge that there will be IT systems changes required to implement these policies. In response to comments received, this version of the RIA now includes an estimate of the systems-related costs necessary for compliance with the final rule. These are upfront costs that would be incurred during the implementation period, so these changes could result in a potential reduction in caseload during the first two years. Based on the projected costs, we estimate that updating systems to implement requirements in this rule could lead to a reduction in the caseload of approximately 1,225 per year for the first two years. This caseload reduction would not apply in subsequent years.

The total projected caseload reduction per year for the final rule will increase at an irregular rate because it simultaneously takes into account the upfront cost of the systems-related changes (which only applies during years 1 and 2) and the phased-in impact of other requirements during the implementation period, which gradually increases during years 1 and 2. Using the 2-year implementation window, the potential caseload reduction is represented in Table 6 below. The total projected reduction to the caseload could be 2,750 in Year 1 and 4,570 in year 3. The potential reduction to the caseload of 4,570 would remain the same in year 3 and beyond because the transfers and costs are projected to stabilize once the implementation window has ended.

Table 6: Potential Annual Caseload Reduction in the Final Rule

	Year 1	Year 2	Years 3-5
Final Rule Requirements (enrollment-based payment,+permissible co-payments+grants/contracts)	1,525	3,050	4,570
Systems-Related Costs	1,225	1,225	0
TOTAL	**2,750**	**4,275**	**4,570**

Breakeven Analysis: While we acknowledge the costs of updating systems, several commenters stated that we should also acknowledge the potential cost savings of these policies. In particular, commenters noted that streamlining eligibility processes will reduce administrative burden for Lead Agencies and therefore offset the potential costs.

In response to these comments, we conducted a breakeven analysis to determine by how much the Lead Agencies' administrative burden would need to be reduced in order to offset the projected costs of systems-related IT changes. To do this, we used BLS data which lists the average salary for "Eligibility Interviewers, Government Programs" as $50,020, which equals 2,080 labor hours. We then multiplied that by two to account for benefits, giving us $100,040 per FTE.

Using a 5-year window, to offset the systems cost of $41.1 million which is incurred over the first two years ($10.3 million per year from required policies and $10.3 million per year from optional policies), Lead Agencies would collectively have to save an average of $8.2 million per year over the 5 years. When distributed across 56 Lead Agencies, this comes out to approximately $150,000 per Lead Agency. This means that if for each year, Lead Agencies were able to reduce their administrative burden by the equivalent 1.5 FTE across the entire state or territory, the cost of updating systems would be offset by the end of the 5-year window.

E. Analysis of Regulatory Alternatives

In developing this rule, we considered a wide range of policy options before settling on these final versions of the policies. Among these alternatives, we considered:

- *Presumptive eligibility:* The policy for presumptive eligibility allows for Lead Agencies to provide families with up to three months of subsidy while the family completes the full eligibility determination process. In designing this policy, we considered a period of two months instead of three months. Using the same assumptions described above, we estimated that two-month presumptive eligibility period would be a transfer of $13.6 million. When compared to the estimated transfer of $20.4 million for a three-month presumptive eligibility period, we determined that the value of the additional month of stability and continuity of care for families outweighed the minimal savings of a two-month presumptive eligibility period.
- *Not regulating:* Another alternative would be to not pursue a regulation and leave the existing policies as they currently stand. For characterization of relevant future conditions

in the absence of regulatory changes, please see the "Baseline" section of this regulatory impact analysis.

Accounting Statement (Table of Quantified Costs, Including Opportunity Costs, Transfers and Benefits): As required by OMB Circular A-4, we have prepared an accounting statement table showing the classification of the impacts associated with implementation of this final rule. This table includes both required and optional policies.

Table 7 – Quantified Costs, Transfers and Benefits ($ in millions)

	Implementation Period (year 1-2)	Ongoing annual average (years 3-5)	Annualized cost (over 5 years)			Total present value (over 5 years)		
			Undis-counted	Discounted		Undis-counted	Discounted	
				3%	7%		3%	7%
Transfers ($ in millions)								
Required Policies								
Additional Child Eligibility[133]	$19.6	$39.2	$31.4	$31.0	$30.5	$156.9	$146.2	$133.7
Enrollment-based Payment[134]	$8.3	$16.5	$13.2	$13.1	$12.9	$66.2	$61.6	$56.4
Permissible Co-payments[135]	$7.9	$15.7	$12.6	$12.4	$12.2	$62.9	$58.6	$53.6
Transfers Subtotal (Required Policies)	*$35.7*	*$71.5*	*$57.2*	*$56.5*	*$55.5*	*$285.9*	*$266.4*	*$243.7*
Optional Policies								
Presumptive Eligibility[136]	$10.2	$20.4	$16.4	$16.2	$15.9	$81.8	$76.2	$69.7
Paying Established Payment Rate[137]	$78.7	$157.4	$126.0	$124.4	$122.3	$629.8	$586.8	$536.7
Waiving Co-payments for Additional Populations[138]	$4.5	$8.9	$7.1	$7.1	$6.9	$35.7	$33.3	$30.4
Transfers Subtotal (Optional Policies)	$93.4	$186.8	$149.4	$147.6	$145.2	$747.2	$696.2	$636.8
Total Transfers	**$129.1**	**$258.3**	**$206.6**	**$204.1**	**$200.7**	**$1,033.2**	**$962.6**	**$880.5**

[133] Transfer from families applying to enter the CCDF program to families that already have children receiving CCDF assistance

[134] Transfer to some combination of child care providers and CCDF families *from* some combination of other CCDF families and CCDF Lead Agencies

[135] Transfer to CCDF families *from* some combination of other CCDF families and CCDF Lead Agencies

[136] Transfer from CCDF-eligible families to non-CCDF eligible families

[137] Transfer to some combination of child care providers and CCDF families *from* some combination of other CCDF families and CCDF Lead Agencies

[138] Transfer to CCDF families *from* some combination of other CCDF families and CCDF Lead Agencies

Costs ($ in millions)								
Required Policies								
Grants and Contracts	$3.1	$6.1	$4.9	$4.8	$4.8	$24.5	$22.8	$20.9
Systems	$10.3	$0	$4.1	$4.3	$4.5	$20.6	$20.3	$19.9
Costs Subtotal (Required Policies)	*$13.3*	*$6.1*	*$9.0*	*$9.1*	*$9.3*	*$45.0*	*$43.1*	*$40.7*
Optional Policies								
Systems	$10.3	$0	$4.1	$4.3	$4.5	$20.6	$20.3	$19.9
Costs Subtotal (Optional Policies)	$10.3	$0	$4.1	$4.3	$4.5	$20.6	$20.3	$19.9
Total Costs	**$23.6**	**$6.1**	**$13.1**	**$13.4**	**$13.8**	**$65.6**	**$63.3**	**$60.6**
Benefits ($ in millions)								
Optional Policies								
Streamlining the Process to Access Child Care Subsidies	$9.6	$19.2	$15.3	$15.1	$14.9	$76.6	$71.4	$65.3
Benefits Subtotal (Optional Policies)	*$9.6*	*$19.2*	*$15.3*	*$15.1*	*$14.9*	*$76.6*	*$71.4*	*$65.3*
Total Benefits	**$9.6**	**$19.2**	**$15.3**	**$15.1**	**$14.9**	**$76.6**	**$71.4**	**$65.3**

F. Impact of Final Rule

Based on the calculations in this RIA, we estimate the quantified impact of the required policies in the final rule to be an annualized amount of $57.2 million in transfers and $9.0 million in costs.

We estimate the quantified impact of the optional policies in the final rule to be an annualized amount of $149.4 million in transfers, $4.1 million in costs, and $15.3 million in benefits.

When we combine the projections for required and optional policies, the annualized totals are $206.6 million in transfers, $13.1 million in costs, and $15.3 million in benefits.

However, the RIA only quantifies the estimated impact of the final rule on the Lead Agencies, parents, and child care providers that interact with the CCDF program, which is only a small portion of the child care market. Whether a family can access and afford child care has far reaching impacts on labor market participation and potential earnings, which then affects businesses' ability to recruit and retain a qualified workforce, affecting overall economic growth.[139]

IX. Tribal Consultation Statement

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires agencies to consult with Indian Tribes when regulations have substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. The discussion in subpart I in section V of the preamble serves as the Tribal impact statement and contains a detailed description of the consultation and outreach in this final rule.

Jeff Hild, Acting Assistant Secretary of the Administration for Children and Families, approved this document on February 8, 2024.

(Catalog of Federal Domestic Assistance Program Number 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

List of Subjects in 45 CFR Part 98

Child care, Grant programs-social programs.

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Xavier Becerra,
Secretary,
Department of Health and Human Services.

[139] U.S. Department of the Treasury. (September 2021). The Economics of Child Care Supply in the United States. https://home.treasury.gov/system/files/136/The-Economics-of-Childcare-Supply-09-14-final.pdf.

For the reasons set forth in the preamble, we amend 45 CFR part 98 as follows:

PART 98 – CHILD CARE AND DEVELOPMENT FUND

1. The authority citation for part 98 is revised to read:

Authority: 42 U.S.C. 618, 9858,

2. Amend § 98.2 by:

a. Revising the definitions of *Major renovation* and *State*;

b. Adding, in alphabetical order, the definitions of *Territory* and *Territory mandatory funds*; and

c. Revising the definition of *Tribal mandatory funds*.

The revisions and additions read as follows:

§ 98.2 Definitions.

* * * * *

Major renovation means any renovation that has a cost equal to or exceeding $350,000 in CCDF funds for child care centers and $50,000 in CCDF funds for family child care homes, which amount shall be adjusted annually for inflation and published on the Office of Child Care website. If renovation costs exceed these thresholds and do not include:

(1) Structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or

(2) Extensive alteration of a facility such as to significantly change its function and purpose for direct child care services, even if such renovation does not include any structural change; and improve the health, safety, and/or quality of child care, then it shall not be considered major renovation;

* * * * *

State means any of the States and the District of Columbia, and includes Territories and Tribes unless otherwise specified;

* * * * *

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas Islands;

Territory mandatory funds means the child care funds set aside at section 418(a)(3)(C) of the Social Security Act (42 U.S.C. 618(a)(3)(C)) for payments to the Territories;

Tribal mandatory funds means the child care funds set aside at section 418(a)(3)(B) of the Social Security Act (42 U.S.C. 618(a)(3)(B)) for payments to Indian Tribes and tribal organizations;

* * * * *

3. Amend § 98.13 by revising paragraph (b)(4) to read as follows:

§ 98.13 Applying for Funds.

* * * * *

(b) * * *

(4) A certification that no principals have been debarred pursuant to 2 CFR 180.300;

* * * * *

4. Amend § 98.15 by revising paragraphs (a)(8) and (b)(12) to read as follows:

§ 98.15 Assurances and certifications.

* * * * *

(a) * * *

(8) To the extent practicable, enrollment and eligibility policies support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences in accordance with § 98.45(m);

* * * * *

(b) * * *

(12) Payment practices of child care providers of services for which assistance is provided under the CCDF reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF assistance, pursuant to § 98.45(m); and

* * * * *

5. Amend § 98.16 by:

a. Revising and republishing paragraph (h) and revising paragraph (k);

b. Redesignating paragraphs (x) through (ii) as paragraphs (bb) through (ll);

c. Adding new paragraphs (x) through (aa); and

d. Revising newly redesignated paragraphs (ee) and (ff).

The revisions and additions read as follows:

§ 98.16 Plan provisions.

* * * * *

(h) A description and demonstration of eligibility determination and redetermination processes to promote continuity of care for children and stability for families receiving CCDF services, including:

(1) An eligibility redetermination period of no less than 12 months in accordance with § 98.21(a);

(2) A graduated phase-out for families whose income exceeds the Lead Agency's threshold to initially qualify for CCDF assistance, but does not exceed 85 percent of State median income, pursuant to § 98.21(b);

(3) Processes that take into account irregular fluctuation in earnings, pursuant to § 98.21(c);

(4) Processes to incorporate additional eligible children in the family size in accordance with § 98.21(d);

(5) Procedures and policies for presumptive eligibility in accordance with § 98.21(e), including procedures for tracking the number of presumptively eligible children;

(6) Procedures and policies to ensure that parents are not required to unduly disrupt their education, training, or employment to complete initial eligibility determination or re-determination, pursuant to § 98.21(f);

(7) Processes for using eligibility for other programs to verify eligibility for CCDF in accordance with § 98.21(g);

(8) Limiting any requirements to report changes in circumstances in accordance with § 98.21(h);

(9) Policies that take into account children's development and learning when authorizing child care services pursuant to § 98.21(i); and,

(10) Other policies and practices such as timely eligibility determination and processing of applications;

* * * * *

(k) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost-sharing by the families that receive child care services for which assistance is provided under the CCDF and how co-payments are affordable for families, pursuant to § 98.45(l). This shall include a description of the criteria established by the Lead Agency, if any, for waiving contributions for families;

* * * * *

(x) A description of the supply of child care available regardless of subsidy participation relative to the population of children requiring child care, including care for infants and toddlers, children with disabilities as defined by the Lead Agency, children who receive care during nontraditional hours, and children in underserved geographic areas, including the data sources used to identify shortages in the supply of child care providers.

(y) A description of the Lead Agency's strategies and the actions it will take to address the supply shortages identified in paragraph (x) of this section and improve parent choice specifically for families eligible to participate in CCDF, including:

(1) For families needing care during nontraditional hours, which may include strategies such as higher payment rates, engaging with home-based child care networks, partnering with

employers that have employees working nontraditional hours, and grants or contracts for direct services;

(2) For families needing infant and toddler care, which must include grants or contracts for direct services pursuant to § 98.30(b) and described further in paragraph (z) of this section and may include additional strategies such as enhanced payment rates, training and professional development opportunities for the child care workforce, and engaging with staffed family child care networks and/or child care provider membership organizations;

(3) For families needing care for children with disabilities, which must include grants or contracts for direct services pursuant to § 98.30(b) and described further in paragraph (z) of this section and may include additional strategies such as enhanced payment rates, training and professional development opportunities for the child care workforce, and engaging with staffed family child care networks and/or child care provider membership organizations;

(4) For families in underserved geographic areas, which must include grants and contracts for direct services pursuant to § 98.30(b) and described further in paragraph (z) of this section and may include additional strategies such as enhanced payment rates, training and professional development opportunities for the child care workforce, and engaging with staffed family child care networks and/or child care provider membership organizations; and,

(5) A method of tracking progress toward goals to increase supply and support equal access and parental choice.

(z) A description of how the Lead Agency will use grants or contracts for direct services to achieve supply building goals for children in underserved geographic areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and, at Lead Agency option, children who receive care during nontraditional hours. This must include a description of the proportion of the shortages for these groups would be filled by contracted or grant funded slots Lead Agencies must continue to provide CCDF families the option to choose a certificate for the purposes of acquiring care.

(aa) A description of how the Lead Agency will improve the quality of child care services for children in underserved geographic areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and children who receive care during nontraditional hours.

* * * * *

(ee) A description of generally accepted payment practices applicable to providers of child care services for which assistance is provided under this part, pursuant to § 98.45(m), including practices to ensure timely payment for services, to delink provider payments from children's occasional absences to the extent practicable, cover mandatory fees, and pay based on a full or part-time basis;

(ff) A description of internal controls to ensure integrity and accountability, processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud, and procedures in place to document and verify eligibility, pursuant to § 98.68;

* * * * *

6. Amend § 98.19 by revising the section heading and paragraphs (b)(1) and (f) to read as follows:

§ 98.19 Requests for Temporary Waivers

* * * * *

(b) *Types.* Types of waivers include:

(1) *Transitional and legislative waivers.* Lead Agencies may apply for temporary waivers meeting the requirements described in paragraph (a) of this section that would provide transitional relief from conflicting or duplicative requirements preventing implementation, or an extended period of time in order for a State, territorial or tribal legislature to enact legislation to implement the provisions of this subchapter. Such waivers are:

(i) Limited to a two-year period;

(ii) May not be extended, notwithstanding paragraph (f) of this section;

(iii) Are designed to provide States, Territories and Tribes at most one full legislative session to enact legislation to implement the provisions of the Act or this part, and;

(iv) Are conditional, dependent on progress towards implementation, and may be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

* * * * *

(f) *Renewal.* Where permitted, the Secretary may approve or disapprove a request from a State, Territory or Tribe for renewal of an existing waiver under the Act or this section for a period no longer than one year. A State, Territory or Tribe seeking to renew their waiver approval must inform the Secretary of this intent no later than 30 days prior to the expiration date of the waiver. The State, Territory or Tribe shall re-certify in its extension request the provisions in paragraph (a) of this section, and shall also explain the need for additional time of relief from such sanction(s) or provisions.

* * * * *

7. Amend § 98.21 by:

a. Revising paragraph (a)(2)(iii);

b. Redesignating paragraphs (d) through (g) as paragraphs (h) through (k); and

c. Adding new paragraphs (d) through (g).

The revisions and additions read as follows:

§ 98.21 Eligibility determination processes.

(a) * * *

(2) * * *

(iii) If a Lead Agency chooses to initially qualify a family for CCDF assistance based on a parent's status of seeking employment or engaging in job search, the Lead Agency has the option to end assistance after a minimum of three months if the parent has still not found employment, although assistance must continue if the parent becomes employed during the job search period.

* * * * *

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

(e) 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:

(1) The Lead Agency may issue presumptive eligibility prior to full documentation of a child's eligibility if the Lead Agency first obtains a less burdensome minimum verification requirement from the family.

(2) If, after full documentation is provided, a child is determined to be ineligible, the Lead Agency shall ensure that a child care provider is paid and shall not recover funds paid or owed to a child care provider for services provided as a result of the presumptive eligibility determination except in cases of fraud or intentional program violation by the provider

(3) Any CCDF payment made on behalf of a presumptively eligible child prior to the final eligibility determination shall not be considered an error or improper payment under subpart K of this part and will not be subject to disallowance so long as the payment was not for a service period longer than the period of presumptive eligibility.

(4) If a child is determined to be eligible, the period of presumptive eligibility will apply to the minimum of 12 months of eligibility prior to re-determination described in paragraph (a) of this section.

(5) The Secretary may deny the use of federal funds for direct services under presumptive eligibility for Lead Agencies under a corrective action plan for error rate reporting pursuant to § 98.102(c).

(f) The Lead Agency shall establish procedures and policies to ensure parents, especially parents receiving assistance through the Temporary Assistance for Needy Families (TANF) program are not required to unduly disrupt their education, training, or employment in order to complete the eligibility determination or re-determination process, including the use of online applications and other measures, to the extent practicable.

(g) 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 as appropriate according to § 98.68(c) for CCDF, such as:

(1) Benefit programs with income eligibility requirements aligned with the income eligibility at § 98.20(a)(2)(i) may be used to verify a family's income eligibility; and

(2) Benefit programs with other eligibility requirements aligned with § 98.20(a)(3) may verify:

(i) A family's work or attendance at a job training or educational program;

(ii) A family's status as receiving, or need to receive, protective services; or

(iii) Other information needed for eligibility.

* * * * *

8. Amend § 98.30 by revising paragraph (b) to read as follows:

§ 98.30 Parental choice.

* * * * *

(b)(1) Lead Agencies shall increase parent choice by providing some portion of the delivery of direct services via grants or contracts, including at a minimum for children in underserved geographic areas, infants and toddlers, and children with disabilities.

(2) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

* * * * *

9. Amend § 98.33 by:

a. Redesignating paragraphs (a)(4)(ii) through (a)(4)(iv) as (iii) through (v) and adding a new paragraph (a)(4)(ii);

c. Revising (a)(5); and,

d. Adding paragraph (a)(8).

The revision and additions read as follows:

§ 98.33 Consumer and provider education.

* * * * *

(a) * * *

(4) * * *

(ii) Areas of compliance and non-compliance;

* * * * *

(5) Aggregate data for each year for eligible providers including:

(i) Number of deaths (for each provider category and licensing status);

(ii) Number of serious injuries (for each provider category and licensing status);

(iii) Instances of substantiated child abuse that occurred in child care settings; and,

(iv) Total number of children in care (for each provider category and licensing status).

* * * * *

(8) The sliding fee scale for parent co-payments pursuant to § 98.45(l), including the co-payment amount a family may expect to pay and policies for waiving co-payments.

* * * * *

10. Amend § 98.43 by revising paragraphs (a)(1)(i), (c)(1) introductory text, (c)(1)(v), (d)(3)(i) introductory text, and (d)(4) to read as follows:

§ 98.43 Criminal background checks.

(a)(1) * * *

(i) Requirements, policies, and procedures to require and conduct background checks, and make a determination of eligibility for child care staff members (including prospective child care staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver services for which assistance is provided under this part as described in paragraph (a)(2) of this section;

* * * * *

(c)(1) The State, Territory, or Tribe in coordination with the Lead Agency shall find a child care staff member ineligible for employment for services for which assistance is made available in accordance with this part, if such individual:

* * * * *

(v) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, and sexual assault, or of any misdemeanor involving child pornography.

* * * * *

(d) * * *

(3) * * *

(i) The staff member received qualifying results from a background check described in paragraph (b) of this section;

* * *

(4) A prospective staff member may begin work for a child care provider described in paragraph (a)(2)(i) of this section after receiving qualifying results for either the check described at paragraph (b)(1) or (b)(3)(i) of this section in the State where the prospective staff member resides. Pending completion of all background check components in paragraph (b) of this section, the staff member must be supervised at all times by an individual who received a qualifying result on a background check described in paragraph (b) of this section within the past five years.

*****

11. Amend § 98.45 by:

a. Revising paragraphs (b)(5) and (6) and (d)(2)(ii);

b. Revising paragraphs (f)(1)(ii)(B) and (iii);

c. Adding new paragraph (f)(1)(iv);

d. Redesignating paragraphs (g) through (l) as paragraphs (h) through (m);

e. Adding a new paragraph (g);

f. Revising newly redesignated paragraphs (l)(3) and (4) and (m); and,

g. Adding a new paragraph (n).

The revisions and additions read as follows:

§ 98.45 Equal access.

* * * * *

(b) * * *

(5) How co-payments based on a sliding fee scale are affordable and do not exceed 7 percent of income for all families, as stipulated at paragraph (l) of this section; if applicable, a rationale for the Lead Agency’s policy on whether child care providers may charge additional amounts to families above the required family co-payment, including a demonstration that the policy promotes affordability and access; analysis of the interaction between any such additional amounts with the required family co-payments, and of the ability of subsidy payment rates to provide access to care without additional fees; and data on the extent to which CCDF providers charge such additional amounts (based on information obtained in accordance with paragraph (d)(2) of this section);

(6) How the Lead Agency's payment practices support equal access to a range of providers by providing stability of funding and encouraging more child care providers to serve children receiving CCDF subsidies, in accordance with paragraph (m) of this section;

* * * * *

(d) * * *

(2) * * *

(ii) CCDF child care providers charge amounts to families more than the required family co-payment (under paragraph (l) of this section) in instances where the provider's price exceeds the subsidy payment, including data on the size and frequency of any such amounts.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(B) Higher-quality care, as defined by the Lead Agency using a quality rating and improvement system or other system of quality indicators, at each level;

(iii) The Lead Agency’s response to stakeholder views and comments; and,

(iv) The data and summary required at paragraph (d)(2)(ii) of this section.

* * * * *

(g) To facilitate parent choice, increase program quality, build supply, and better reflect the cost of providing care, it is permissible for a Lead Agency to pay an eligible child care provider the Lead Agency’s established payment rate at paragraph (a) of this section, which may be more than the price charged to children not receiving CCDF subsidies.

* * * * *

(l) * * *

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

(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 are in foster or kinship care or otherwise receive or need to receive protective

services, that are experiencing homelessness, that have children who have a disability as defined at § 98.2, that are enrolled in Head Start or Early Head Start (42 U.S.C. 9831 *et seq.*), or that meet other criteria established by the Lead Agency.

(m) The Lead Agency shall demonstrate in the Plan that it has established payment practices applicable to all CCDF child care providers that reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF subsidies, which must include (unless the Lead Agency can demonstrate that such practices are not generally-accepted for a type of child care setting):

(1) Ensure timeliness of payment to child care providers by paying in advance of or at the beginning of the delivery of child care services to children receiving assistance under this part;

(2) Support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences by:

(i) Basing payment on a child's authorized enrollment; or,

(ii) An alternative approach for which the Lead Agency provides a justification in its Plan that the requirements at paragraph (m)(2)(i) of this section are not practicable, including evidence that the alternative approach will not undermine the stability of child care programs.

(3) Pay providers on a part-time or full-time basis (rather than paying for hours of service or smaller increments of time); and

(4) Pay for reasonable mandatory registration fees that the provider charges to private-paying parents.

(n) The Lead Agency shall demonstrate in the Plan that it has established payment practices applicable to all CCDF providers that:

(1) Ensure child care providers receive payment for any services in accordance with a written payment agreement or authorization for services that includes, at a minimum, information regarding payment policies, including rates, schedules, any fees charged to providers, and the dispute resolution process required by paragraph (n)(3);

(2) Ensure child care providers receive prompt notice of changes to a family's eligibility status that may impact payment, and that such notice is sent to providers no later than the day the Lead Agency becomes aware that such a change will occur;

(3) Include timely appeal and resolution processes for any payment inaccuracies and disputes;

(4) May include taking precautionary measures when a provider is suspected of fiscal mismanagement; and

(5) Ensure the total payment received by CCDF child care providers is not reduced by the determination of affordable family co-payment as described in the sliding fee scale at § 98.45(l).

12. Amend § 98.50 by:

a. Revising paragraphs (a)(3) and (b)(1) and (2);

b. Adding paragraph (b)(4); and

c. Revising paragraph (e) introductory text.

The revisions and addition read as follows:

§ 98.50 Child care services.

(a) * * *

(3) Using funding methods provided for in § 98.30 including grants or contracts for slots for children in underserved geographic areas, for infants and toddlers, and children with disabilities. Grants solely to improve the quality of child care services like those in (b) of this section would not satisfy the requirements at § 98.30(b); and

* * * * *

(b) * * *

(1) No less than nine percent shall be used for activities designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care as described at § 98.53; and

(2) No less than three percent shall be used to carry out activities at § 98.53(a)(4) as such activities relate to the quality of care for infants and toddlers.

* * * * *

(4) Amounts reserved pursuant to this subsection may not be used to satisfy requirements at § 98.30(b).

* * * * *

(e) Not less than 70 percent of the State and Territory Mandatory and Federal and State share of State Matching Funds shall be used to meet the child care needs of families who:

* * * * *

13. Amend § 98.53 by redesignating (b) through (f) as (c) through (g) and adding a new paragraph (b) to read as follows:

§ 98.53 Activities to improve the quality of child care

* * * * *

(b) Lead Agencies are strongly encouraged to engage families and providers with direct experience in the child care subsidy system to improve the quality of child care and child care subsidy policy. Lead Agencies may expend quality funds to support such engagement including:

(1) Planning and implementing an engagement strategy to solicit and implement feedback from families, child care providers, and staff who have direct experience with the child care subsidy program and/or quality improvement activities;

(2) Compensating participating parents, child care providers, and child care staff for their time and for expenses incurred as a result of their participation (*i.e.* transportation, child care); and

(3) Hiring parents, child care providers, or child care staff to serve as subject matter experts in the development or refinement of subsidy policy and quality initiatives.

* * * * *

14. Amend § 98.60 by:

a. Revising and republishing paragraph (a);

b. Redesignating paragraphs (d)(3) through (d)(8) to (d)(4) through (d)(9); and

c. Adding a new paragraph (d)(3).

The revisions and additions read as follows:

§ 98.60 Availability of funds.

(a) The CCDF is available, subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget as follows:

(1) Discretionary Funds are available to States, Territories, and Tribes;

(2) State Mandatory and Matching Funds are available to States;

(3) Territory Mandatory Funds are available to Territories; and

(4) Tribal Mandatory Funds are available to Tribes.

* * * * *

(d) * * *

(3) Mandatory Funds for Territories shall be obligated in the fiscal year in which funds are granted and liquidated no later than the end of the succeeding fiscal year.

* * * * *

15. Amend § 98.62 by revising paragraphs (a) introductory text and (b) introductory text and adding paragraph (d) to read as follows:

§ 98.62 Allotments from the Mandatory Fund.

(a) Each of the 50 States and the District of Columbia will be allocated from the funds appropriated under section 418(a)(3)(A) of the Social Security Act, less the amounts reserved for technical assistance pursuant to § 98.60(b)(1) an amount of funds equal to the greater of:

* * * * *

(b) For Indian Tribes and tribal organizations will be allocated from the funds appropriated under section 418(a)(3)(B) of the Social Security Act shall be allocated according to the formula at paragraph (c) of this section. In Alaska, only the following 13 entities shall receive allocations under this subpart, in accordance with the formula at paragraph (c) of this section:

* * * * *

(d) The Territories will be allocated from the funds appropriated under section 418(a)(3)(C) of the Social Security Act based upon the following factors:

(1) A Young Child factor--the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(2) An Allotment Proportion factor--determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(i) Per capita income shall be:

(A) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(B) Determined every two years.

(ii) [Reserved]

16. Amend § 98.64 by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 98.64 Reallotment and redistribution of funds.

(a) According to the provisions of this section State and Tribal Discretionary Funds are subject to reallotment, and State Matching Funds and Territory Mandatory Funds are subject to redistribution. State funds are reallotted or redistributed only to States as defined for the original allocation. Tribal funds are reallotted only to Tribes. Mandatory Funds granted to Territories are redistributed only to Territories. Discretionary Funds granted to the Territories are not subject to reallotment. Any Discretionary funds granted to the Territories that are returned after they have been allotted will revert to the Federal Government.

* * * * *

(e)(1) Any portion of the Mandatory Funds that are not obligated in the period for which the grant is made shall be redistributed. Territory Mandatory Funds, if any, will be redistributed on the request of, and only to, those other Territories that have obligated their entire Territory Mandatory Fund allocation in full for the period for which the grant was first made.

(2) The amount of Mandatory Funds granted to a Territory that will be made available for redistribution will be based on the Territory's financial report to ACF for the Child Care and Development Fund (ACF-696) and is subject to the monetary limits at paragraph (b)(2) of this section.

(3) A Territory eligible to receive redistributed Mandatory Funds shall also use the ACF-696 to request its share of the redistributed funds, if any.

(4) A Territory's share of redistributed Mandatory Funds is based on the same ratio as § 98.62(d).

(5) Redistributed funds are considered part of the grant for the fiscal year in which the redistribution occurs.

17. Amend § 98.65 by revising paragraph (h)(3) to read as follows:

§ 98.65 Audits and financial reporting

* * * * *

(h) * * *

(3) Direct services for both grant or contracted slots and certificates;

* * *

* * * * *

18. Amend § 98.71 by;

a. Removing paragraph (a)(11);

b. Redesignating paragraphs (b)(5) and (6) as (b)(6) and (7); and

c. Adding a new paragraph (b)(5).

The addition reads as follows:

§ 98.71 Content of reports

(b)* * *

(5) For Lead Agencies implementing presumptive eligibility in accordance with § 98.21(e):

(i) The number of presumptively eligible children ultimately determined fully eligible;

(ii) The number of presumptively eligible children for whom the family does not complete the documentation for full eligibility verification; and,

(iii) The number of presumptively eligible children who are determined not to be eligible after full verification;

* * * * *

19. Amend § 98.81 by revising paragraphs (b)(6)(vii) through (ix) and adding paragraphs (b)(6)(x) through (xii) to read as follows:

§ 98.81 Application and Plan procedures.

* * * * *

(b) * * *

(6) * * *

(vii) The description of the sliding fee scale at § 98.16(k);

(viii) The description of the market rate survey or alternative methodology at § 98.16(r);

(ix) The description relating to Matching Funds at § 98.16(w);

(x) The description of how the Lead Agency uses grants or contracts for supply building at § 98.16(z);

(xi) The description of how the Lead Agency prioritizes increasing access to high-quality child care in areas with high concentration of poverty at § 98.16(aa); and

(xii) The description of provider payment practices at § 98.16(ee).

* * * * *

20. Amend § 98.83 by revising and publishing paragraph (d)(1) and revising paragraphs (g) introductory text and (g)(1) and (2) to read as follows:

§ 98.83 Requirements for tribal programs.

* * * * *

(d)(1) Tribal Lead Agencies shall not be subject to:

(i) The requirements to use grants or contracts to build supply for certain populations at § 98.30(b);

(ii) The requirement to produce a consumer education website at § 98.33(a). Tribal Lead Agencies still must collect and disseminate the provider-specific consumer education information described at § 98.33(a) through (d), but may do so using methods other than a website;

(iii) The requirement to have licensing applicable to child care services at § 98.40;

(iv) The requirement for a training and professional development framework at § 98.44(a);

(v) The market rate survey or alternative methodology described at § 98.45(b)(2) and the related requirements at § 98.45(c), (d), (e), and (f);

(vi) The requirement for a sliding fee scale at § 98.45(l);

(vii) The requirement to have provider payment practices that reflect generally accepted payment practices at § 98.45(m);

(viii) The requirement that Lead Agencies shall give priority for services to children of families with very low family income at § 98.46(a)(1);

(ix) The requirement that Lead Agencies shall prioritize increasing access to high-quality child care in areas with significant concentrations of poverty and unemployment at § 98.46(b);

(x) The requirements to use grants or contracts at § 98.50(a)(3);

(xi) The requirements about Mandatory and Matching Funds at § 98.50(e);

(xii) The requirement to complete the quality progress report at § 98.53(f);

(xiii) The requirement that Lead Agencies shall expend no more than five percent from each year's allotment on administrative costs at § 98.54(a); and

(xiv) The Matching fund requirements at §§ 98.55 and 98.63.

* * * * *

(g) Of the aggregate amount of funds expended (*i.e.,* Discretionary and Mandatory Funds):

(1) For Tribal Lead Agencies with large, medium, and small allocations, no less than nine percent shall be used for activities designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care as described at § 98.53; and

(2) For Tribal Lead Agencies with large and medium allocations, no less than three percent shall be used to carry out activities at § 98.53(a)(4) as such activities relate to the quality of care for infants and toddlers.

* * * * *

21. Amend § 98.84 by revising paragraph (e) to read as follows:

§ 98.84 Construction and renovation of child care facilities.

* * * * *

(e) In lieu of obligation and liquidation requirements at § 98.60(e), Tribal Lead Agencies shall obligate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded. Tribal construction and major renovation funds must be liquidated at the end of the second succeeding fiscal year following this obligation deadline. Any Tribal construction and major renovation funds that remain unliquidated by the end of this period will revert to the Federal government.

* * * * *

22. Amend § 98.102 by revising and republishing paragraph (c) to read as follows:

§ 98.102 Content of Error Rate Reports.

* * * * *

(c) Any Lead Agency with an improper payment rate that exceeds a threshold established by the Secretary must submit to the Assistant Secretary for approval a comprehensive corrective action plan, as well as subsequent reports describing progress in implementing the plan.

(1) The corrective action plan must be submitted within 60 days of the deadline for submitting the Lead Agency's standard error rate report required by paragraph (b) of this section.

(2) The corrective action plan must include the following:

(i) Identification of a senior accountable official;

(ii) Root causes of error as identified on the Lead Agency’s most recent ACF-404 and other root causes identified;

(iii) Detailed descriptions of actions to reduce improper payments and the name and/or title of the individual responsible for ensuring actions are completed;

(iv) Milestones to indicate progress towards action completion and error reduction goals;

(v) A timeline for completing each action of the plan within 1 year, and for reducing the improper payment rate below the threshold established by the Secretary; and

(vi) Targets for future improper payment rates.

(3) Subsequent progress reports including updated corrective action plans must be submitted as requested by the Assistant Secretary until the Lead Agency’s improper payment rate no longer exceeds the threshold.

(4) Failure to carry out actions as described in the approved corrective action plan or to fulfill requirements in this paragraph (c) will be grounds for a penalty or sanction under § 98.92.

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