



August 28, 2023

U.S. Department of Health and Human Services
Administration for Children and Families
Office of Child Care
330 C Street, S.W.
Washington, D.C. 20201

**Re: Notice of Proposed Rulemaking (NPRM), “Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF).” 88 Fed. Reg. 45022 (July 13, 2023)
Docket Number ACF—2023-0003; RIN Number 0970-AD02**

Submitted online via Federal eRulemaking Portal: <https://www.regulations.gov>

Dear Sir/Madam:

Thank you for the opportunity to comment on the above-referenced NPRM. The Association of Christian Schools International (ACSI) is the largest Protestant school association and serves 2,300 member schools in the United States alone and another 3000 schools outside the U.S. for a total of over 5,000 member schools around the globe. Through extended services and resources beyond formal membership, ACSI has the privilege of serving and influencing over 25,000 Christian schools all over the world. ACSI exists to strengthen Christian schools and equip Christian educators worldwide as they prepare students academically and inspire them to become devoted followers of Jesus Christ. Our membership includes a substantial number of early education providers, many of whom choose to participate in the Child Care Development Fund (CCDF) program of the Child Care and Development Block Grant Act (CCDBG).

We would like to point out a serious concern in the NPRM that its emphasis on compelling the use of direct grants and contracts contradicts the statute’s purpose and express language, and thus we urge that this be rectified. The NPRM preamble states that “We propose to **require** states and territories to provide some child care services through grants and contracts as one of many strategies to increase the supply and quality of child care...” [emphasis added]. The 2014 reauthorization of the CCDBG Act (P.L. 113-186) includes the following statutory language:

(b) Parental Rights to Use Child Care Certificates. —Nothing in this subchapter shall be construed in a manner—

- (1) to favor or promote the use of grants and contracts for the receipt of child care services under this subchapter over the use of child care certificates; or*
- (2) to disfavor or discourage the use of such certificates for the purchase of child care services, including those services provided by private or non-profit entities, such as faith-based providers.*

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This statutory language is important and helps to ensure a wide array of providers. As a practical matter, faith-based providers do not typically participate in direct grants or contracts. Certificates, on the other hand, have greater flexibility, which direct grants and contracts lack, to allow respect for the religion that motivates those faith-based providers. The first question about any government program that ACSI member schools will typically ask is whether it will make them a recipient of federal financial assistance. If so, the most frequent decision is to decline participation. Certificates, with greater respect and flexibility for faith-based providers, tend to result in such providers' willingness to participate. As a result, it is easy to see that in any instance in which the use of certificates is replaced by direct grants and contracts, the number of participating providers will necessarily decline.

It is thus hard to see how suppressing the use or availability of certificates contrary to the statute would expand parental choice or the supply of child care. A state which takes funds away from certificates to reallocate them for direct grants and contracts would deprive parents of their choice of child care. Fewer faith-based providers would mean fewer choices, not more. A single mother equipped with a certificate can choose from among multiple providers, including faith-based providers. To take away her certificate in order to give a direct grant or contract only to secular providers is not more choice, but less.

If there are too few providers in a particular location, the question arises as to whether government agencies can do a better job of establishing providers with a grant or contract than the market of parents equipped with certificates could. There is a reason for the fact that, in the words of the NPRM preamble, "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...". Perhaps the overwhelming preference for certificates is, after all, the most effective method for ensuring the widest possible choice for parents and maximum engagement of the widest number of providers over the past 30-plus years of the program's operation? And this despite years of attempts by two Administrations to suppress the use of certificates. Certainly, a long history of success belies any need for a change to direct grants and contracts over certificates in violation of the statute. It strikes one that the argument may well tend in the opposite direction.

Worse yet, depriving parents of their certificates means they are forced to choose only from among secular providers given the vanishingly small number of faith-based providers who would continue to participate. To a large extent, direct grants and contracts tend to drive faith-based providers out of the CCDF program, as explained above. And, even in the case of the NPRM's focus on direct grants and contracts, the NPRM itself would allow parents to choose among the limited number of those providers only "to the maximum extent practicable" to actors *other than* the parent.

This perspective of the challenges faced by faith-based providers under a direct grant and contract regime may not have been fully considered in crafting the NPRM. Those challenges, however, are one among many reasons that the statute itself contains bipartisan language (above) by Senator Tim Scott (R-SC) and then-Senator Mary Landrieu (D-LA) that the NPRM would violate.

Thus, our recommendations are:

#1 – Restore Deleted Language and Insert New Language into Section 98.16

We recommend that the following language be inserted into 98.16(y). Please note that our suggested language for 98.16(y)(1) combines and reconfigures the Department's proposed language in 98.16(y)(1) and 98.16(y)(2), while our suggested language for 98.16(y)(2) is found in existing regulations under Section 98.16(x).

(y)(1) How the Lead Agency will use grants and contracts, child care certificates, or other means such as alternative payment rates to child care providers in order to build supply.

(y)(2) If the Lead Agency employs 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.

(y)(3) Describe how the Lead Agency, in all instances when the Lead Agency employs grants and contracts to meet the purposes of this section, shall provide CCDF families the option to choose a certificate for purposes of acquiring care.

#2 – Delete Language from Section 98.30

We recommend that the following language be *deleted* from Section 98.30(b) of the proposed regulations:

(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 families receiving subsidy who need care for infants and toddlers, children with disabilities, and care during nontraditional hours.

#3 – Delete Language at the end of proposed Section 98.30(b)(2)

We recommend deleting “to the maximum extent practicable” at the beginning and end of the proposed new paragraph. The paragraph should ensure that parental choice outweighs other considerations that others consider “practicable.” The paragraph should thus read:

(b)(2) ~~When~~ If 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.~~

#4 – Add Existing Statutory Language to Section 98.30

We recommend that the following language taken from 42 USC 9858o(a) and (b) be added into Section 98.30 of the proposed regulations:

Parental rights and responsibilities

(a) In general

Nothing in this subchapter shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

(b) Parental rights to use child care certificates

Nothing in this subchapter shall be construed in a manner—

(1) to favor or promote the use of grants and contracts for the receipt of child care services under this subchapter over the use of child care certificates; or

(2) to disfavor or discourage the use of such certificates for the purchase of child care services, including those services provided by private or nonprofit entities, such as faith-based providers.

We urge the Department to make these changes to ensure that the new regulations reflect Congress’ clear intent that parents have maximum choice in selecting the right child care provider for their

children. These changes will help ensure that parental choice is respected, that faith-based providers may continue to be available and able to participate robustly, and will advance the goal of maintaining and increasing access to child care.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "P. George Tryfiates", is positioned above the typed name.

P. George Tryfiates
Vice President for Public Policy and Legal Affairs